

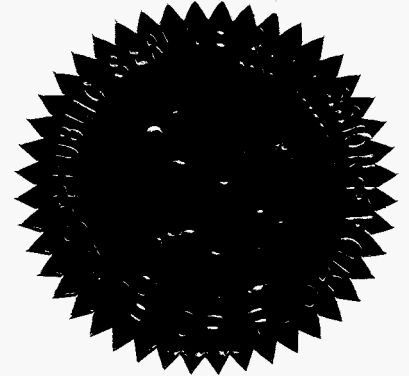
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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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.



PROCEEDINGS: MOTION HEARING

COMMISSIONER
PARTICIPATING: COMMISSIONER NATHAN A. SKOP
PREHEARING OFFICER

DATE: Tuesday, April 27, 2010

TIME: Commenced at 10:00 a.m.
Concluded at 11:18 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
JANE FAUROT, RPR
Official FPSC Reporters
(850) 413-6734/(850) 413-6732

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION OFFICE

1 APPEARANCES:

2 DIAN R. DEEVY, 1702 S.W. 35 Place, Gainesville,
3 Florida 32608, appearing pro se.

4 PAULA H. STAHER, 4621 Clear Lake Drive, Gainesville,
5 Florida 32607, appearing pro se.

6 ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LAVIA,
7 III, ESQUIRE, Young van Assenderp, P.A., 225 South Adams
8 Street, Suite 200, Tallahassee, Florida 32301, appearing on
9 behalf of Gainesville Regional Utilities and Gainesville
10 Renewable Energy Center, LLC.

11 MARTHA CARTER BROWN, ESQUIRE, FPSC General Counsel's
12 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
13 32399-0850, appearing on behalf of the Florida Public Service
14 Commission staff.

15 MARY ANNE HELTON, DEPUTY GENERAL COUNSEL, FPSC
16 General Counsel's Office, 2540 Shumard Oak Boulevard,
17 Tallahassee, Florida 32399-0850, appearing as advisor to the
18 Commission.

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P R O C E E D I N G S

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2 **COMMISSIONER SKOP:** Good morning. I'd like to call
3 this hearing proceeding to order, and if staff could please
4 read the notice.

5 **MS. BROWN:** By notice issued April 22nd, 2010, this
6 time and place was set for a motion hearing in Docket Number
7 090451-EM, joint petition to determine need for Gainesville
8 Renewable Energy Center in Alachua County by Gainesville
9 Regional Utilities and Gainesville Renewable Energy Center,
10 LLC. The purpose of the motion hearing is set out in the
11 notice.

12 **COMMISSIONER SKOP:** Thank you. And if we could take
13 appearances, please.

14 **MR. WRIGHT:** Robert Scheffel Wright and John T.
15 Lavia, III, appearing on behalf of Gainesville Regional
16 Utilities and Gainesville Renewable Energy Center, LLC. Also
17 with us today just in case, Commissioner Skop, is Al Morales,
18 who is the Chief Financial Officer of American Renewables, the
19 parent of GREC, LLC.

20 **COMMISSIONER SKOP:** Thank you.

21 **MS. DEEVY:** Dian Deevey, an Intervenor in this case.

22 **COMMISSIONER SKOP:** Thank you.

23 **MS. STAHMER:** Paula Stahmer, Intervenor.

24 **COMMISSIONER SKOP:** Thank you.

25 Staff.

1 **MS. BROWN:** Martha Carter Brown on behalf of the
2 Commission.

3 **MS. HELTON:** Mary Anne Helton, advisor to the
4 Commission.

5 **COMMISSIONER SKOP:** Thank you.

6 Okay. Just for the parties, how we're going to
7 proceed with the motion hearing this morning is I'm going to
8 allow the parties five minutes total for each side to make a
9 brief oral argument and then we'll proceed from there. So,
10 Mr. Wright, you're recognized.

11 Actually, excuse me, we will go to the parties
12 first. Ms. Stahmer, Ms. Deevey, you're recognized.

13 **MS. STAHMER:** Thank you, Commissioner. I'll be
14 brief, hopefully, and simply reiterate some of the essentials
15 that I feel have bearing on this issue.

16 Intervenors readily acknowledge that Petitioners
17 have been timely and prompt in their responses to our
18 requests for revisions to the proposed NDAs. However, I
19 think some of the chronology creates the misimpression that
20 every time a new NDA was presented to us, we came up with a
21 new reason asking for additional revisions. And, in fact,
22 we have been quite constant in our concerns about the
23 presumption of harm in that acceding to such a provision
24 waives our rights to defend ourselves on any material
25 elements that would go to a claim of improper disclosure and

1 resulting harm.

2 We feel that it would not put the Petitioners in
3 any jeopardy to remove that kind of language. They have the
4 resources to pursue such action, far greater resources than
5 we have, and so there's nothing improper about insisting
6 that if they wish to bring a case, they've got to prove
7 whatever allegations they might be attempting to prosecute.

8 Our other concern is that somehow the impression
9 has been created that we have an intention to divulge
10 confidential information to the public. We have no such
11 intention. We would not do so.

12 The one thing we have requested is that
13 Petitioners acknowledge we have the right to communicate
14 with the City Commissioners, who are, at least in part, true
15 parties of interest in this proceeding, in order to make
16 sure that certain information regarding these proceedings
17 has been brought to their attention. And we're willing to
18 follow a procedure, a mechanism that the Petitioners would
19 recommend such as delivering such written communications
20 through Petitioners' attorney. We simply ask for an
21 affirmation from them that they will not interfere with
22 those communications or refuse to deliver or somehow edit
23 those communications.

24 We think that these two issues have, go directly
25 to having appropriate access that's not unreasonably

1 encumbered, and that our request with regard to
2 communicating with the Commissioners is completely inside
3 the scope of these proceedings since the Commissioners are
4 the primary decision-makers with regard to the entire
5 contract with GREC.

6 Again, I wish to assuage any anxieties that
7 Petitioners have that we intend to divulge anything. And in
8 fact in our reply, which I now am told is not something you
9 can consider, but we did point out to Inter -- to
10 Petitioners that we received redacted documents from them
11 several weeks ago. The redactions were not complete, but we
12 were nevertheless able to read the entire text -- (telephone
13 ringing) oh, I apologize. I thought I had turned that off.
14 We were able to read the entire text of the confidential
15 information and we have not shared that with anyone. And
16 for Petitioners' information, we have copies of what we have
17 determined to be in the redacted text and we will provide it
18 to them.

19 And we think the documents that we have are very
20 important, but we have not shared any of it with anyone.
21 And, therefore, for those reasons I think our requests are
22 quite reasonable.

23 **COMMISSIONER SKOP:** Thank you. Mr. Wright or
24 Ms. Deevey, do you have anything to add briefly?

25 **MS. DEEVY:** Yes. Sorry. I have two things to add,

1 and that is that I have consulted with my own personal
2 attorney, and she says under no circumstances should I sign
3 this agreement agreeing in advance that if American Renewables
4 should decide that some information I had used was -- that I
5 had in fact violated the confidentiality agreement, that I
6 would accept their decision in this regard and also not attempt
7 to protect myself in court. And I think that's quite
8 unreasonable. She thought it was unreasonable, and she didn't
9 think that any attorney would advise a client to sign such a
10 document. So I cannot sign the document, the NDA that they
11 have offered presently.

12 **COMMISSIONER SKOP:** Thank you.

13 Mr. Wright, you're recognized for five minutes.

14 **MR. WRIGHT:** Thank you, Commissioner. Schef Wright
15 on behalf of Petitioners Gainesville Regional Utilities and
16 GREC, LLC.

17 This is not a motion to compel discovery. GREC,
18 LLC and GRU have made discovery, we have responded to
19 interrogatories, we have furnished documents. We have twice
20 made the confidential information documents available to the
21 Intervenors: The first time on March 26th, the second time
22 we were prepared to do so on April 14th. They asked to
23 change that date to April 16th. We had the documents
24 available on that date in our office, and they canceled
25 their appointments both times.

1 This is not a motion that has anything whatsoever
2 to do with the Intervenor's access to confidential
3 information or their use of confidential information in this
4 proceeding. The Intervenor do not dispute any of the terms
5 of access or use, and not one of their six elements of
6 requested relief has anything to do with access or use of
7 confidential information in this proceeding. At least
8 Intervenor Stahmer, and I assume as well Intervenor Deevey,
9 acknowledge her duty, acknowledges her duty not to disclose
10 the confidential information.

11 Obviously, if there were any disclosure -- if
12 there were never any disclosure of confidential information
13 outside the proceeding, there would never be a problem. So
14 why are we here? Apparently we're here because the
15 Intervenor, in our opinion, have improperly asked you to
16 issue an order protecting them from the consequences of
17 disclosing GREC, LLC's confidential information outside the
18 proceeding when in fact, pursuant to Section 366.093(2), the
19 disclosure of information outside the proceeding is exactly
20 what the statutes are supposed to protect against.

21 The statute reads, "The Commission shall issue
22 appropriate protective orders designating the manner for
23 handling such confidential information during the course of
24 the proceeding and for protecting such information from
25 disclosure outside the proceeding."

1 Your case law on this issue is not exhaustive or
2 extensive, but one case cited in our response states the
3 following. This is Order PCS-03-1415-PC0-SU issued
4 December 15, 2003. "Any information provided pursuant to a
5 discovery request for which proprietary confidential
6 business information status is requested shall be treated by
7 the Commission and the parties," underlining in original,
8 "as confidential. The utility is free to require the
9 parties to this proceeding to enter into nondisclosure
10 agreements to maintain the confidentiality of the material
11 prior to providing the requested information to them, in
12 accordance with customary practice. The utility," Island
13 Environmental Utility in that case, "is, of course, also
14 free to take whatever legal action it deems appropriate in
15 the event of a breach of any such agreement."

16 Items A, B and C of the Intervenors' requested
17 relief attempt to assign burdens and to ask you to interject
18 yourself into matters that are properly for the courts.
19 Obviously we have to prove a breach to get relief. They can
20 defend. There's no suggestion whatsoever in anything we
21 filed that they can't defend themselves. What we have done
22 is used the statutory language in defining confidential
23 information with respect to the fact that it would cause
24 harm. Your statute provides, it defines proprietary
25 confidential information as information the disclosure of

1 which would cause harm to the persons or company's business
2 operations has not been disclosed unless disclosed pursuant
3 to a statutory provision order of the court and so on. That
4 is the language we have used in there.

5 For you to have found, for the Commission to have
6 found confidentiality status to attach to our information
7 necessarily involves the determination that its disclosure
8 would cause harm. It's that language that we believe is
9 quite properly included in the agreement.

10 The other information, the other request for
11 relief they've asked for, the one thing that is within the
12 bounds of customary practice that they have asked for is a
13 three-year continuing obligation not to disclose. I agree.
14 That's within the bounds of customary practice. So is five
15 years, so is ten years, and in fact even indefinite is not
16 out of line. We have actually included a recent NDA in the
17 FPL rate case in which the nondisclosure obligation
18 continues until the information becomes otherwise public.

19 Finally, their suggestion that they should be
20 allowed to convey the information to the Gainesville City
21 Commission is obviously on its face outside the proceeding.
22 This proceeding is a need determination before the Florida
23 Public Service Commission. Nothing we have done -- they
24 have not challenged any of our, the terms of our NDA as it
25 affects their access to or use of confidential information

1 in this proceeding. We have advised them that because the
2 City Commission is represented by counsel, they may not as
3 parties to this case, a status which they chose, communicate
4 with represented parties absent permission of counsel.
5 Clearly their desires to use the confidential information
6 from this case in some proceeding or other involving the
7 Gainesville City Commission doesn't have anything to do with
8 this need determination.

9 In sum, your statutes require that the Commission
10 protect the confidential information from disclosure outside
11 the proceeding. That is all we ask. We ask that you deny
12 their motion to compel. Thank you.

13 **COMMISSIONER SKOP:** Thank you, Mr. Wright.

14 Okay. Before we address the Intervenors' prayer
15 for relief, I have two questions to Mr. Wright.

16 First, Mr. Wright, with respect to the proposed
17 nondisclosure agreement, can you explain why your client did
18 not offer terms and conditions which were substantially
19 similar to that offered to their municipal counterparties --

20 **MR. WRIGHT:** Yes, sir.

21 **COMMISSIONER SKOP:** -- in terms of the ten-year and
22 the liquidated damages and so on?

23 **MR. WRIGHT:** Well, I think we're here today on the
24 nondisclosure agreement that is on the table, which does not
25 include a liquidated damages provision at all. The

1 consequential damages provision -- the critical difference
2 between the nondisclosure agreements between GREC and the
3 municipalities is that we are essentially aligned parties.
4 Those municipalities want to purchase the output of the
5 Gainesville Renewable Energy Center project. In order for them
6 to make an informed decision as to whether to enter into that
7 business transaction, they needed to see the Power Purchase
8 Agreement.

9 In the case of our nondisclosure agreement with,
10 our proposed nondisclosure agreement with the Intervenors,
11 the Intervenors are avowed opponents of this project and
12 they are clearly adversarial. Their relief seeks to, to
13 make it easier for them to use the information outside the
14 proceeding. That's, that's the key difference there.

15 Regarding the -- and so -- and by the way, it's
16 not ten years. It's five years. We unilaterally modified
17 that. And even ten years, it is not outside the bounds of
18 customary practice.

19 **COMMISSIONER SKOP:** Again, I respect the rights of
20 the parties to enter into an agreement, and it's not for this
21 Commission to force the parties into a contractual agreement.
22 That would be beyond the scope of the Commission's
23 jurisdiction.

24 I think the concern I have, Mr. Wright, is that
25 over a month ago at one of our previous status conferences

1 when we had the Intervenors, the parties were going to go
2 forth in good faith and try and work out an acceptable
3 methodology for allowing the Intervenors to gain access to
4 the redacted data that the company and your client deems to
5 be confidential or proprietary or would subject your clients
6 to competitive harm if it was disseminated beyond the scope
7 of the proceeding. I understand that.

8 I think that the concern I have though is that
9 initially the position taken that your company and your
10 client, I mean your clients have now regressed from is a
11 ten-year period with a whole host of requirements that were
12 far in excess of terms that were offered to municipalities
13 or other people that had a need to know the redacted
14 information.

15 So here we are a month later. We're still talking
16 about this. And, again, I think that raises the concern.
17 They're showing some positive movement. And you may
18 respond.

19 **MR. WRIGHT:** Thank you. I believe that the event
20 you're speaking of was the prehearing conference on April the
21 5th. By the time we got to April 5th, the liquidated damages
22 provision was out and we had unilaterally, without even being
23 asked to, reduced the nondisclosure term from ten years to five
24 years.

25 Following the prehearing conference on April 5,

1 Ms. Stahmer said to me, "I believe we are on common ground.
2 We can do this." I said, "Great." On April 8th, three days
3 later, I sent them a nondisclosure agreement. They
4 indicated they wanted to review the documents in Tallahassee
5 on April 14 and 15. We made those arrangements. They then
6 said they'd like to do it on the 16th. We modified our
7 schedule to accommodate that.

8 We thought we had a deal on April 5th,
9 Commissioner, and it was not until either the night of
10 April 15th -- I think it was the night of April 15th that,
11 or the afternoon of April 15th that they said no. What they
12 asked for after telling us we had an agreement and after I
13 sent them revised agreements and actually further revised,
14 individualized them at Ms. Deevey's request, they said, "No.
15 We want to be able to communicate to the City
16 Commissioners." Again, that's clearly outside the scope.
17 We thought we had a deal three weeks ago, Commissioner.

18 **COMMISSIONER SKOP:** And I respect that, Mr. Wright.
19 Again, my comments are not, again, in any way directed towards
20 your action as counsel. Again, you're zealously advocating
21 your clients' position. Just it seems to me initially, and
22 we're beyond that at this point, but the terms and conditions,
23 it's clear to me initially those were not offered on the
24 substantial similar terms to those that were offered to other
25 parties in this, in this matter. I mean, not parties, but

1 other, you know, counterparties.

2 **MR. WRIGHT:** If I may, there, there were no other
3 adversarial parties involved. These were folks with whom we
4 wanted to do business and who want to do business with us.

5 **COMMISSIONER SKOP:** I understand. And just to the
6 Intervenors, from my perspective, again, the law is very clear
7 on this. We've already granted confidential determination as
8 to, to the redacted data. That being said, the Commission's
9 preference has always been for transparency. The state's
10 position has always been one for transparency, and I know that
11 transparency is important to the people of the State of
12 Florida. But, you know, the law is what it is and I have to
13 follow the law.

14 I guess where this leaves us is I have one
15 additional question, and then we're going to figure out how
16 we're going to proceed to resolve this difference of opinion
17 between the parties. Obviously the Intervenors aren't
18 happy, Mr. Wright, your clients aren't happy, and I guess it
19 falls upon my shoulders to craft a solution. And usually
20 when that happens, it's not always the best outcome, so --
21 for all parties. So we'll get to that in a moment.

22 But, Mr. Wright, just also in respect to another
23 aspect that the Intervenors have raised and you've rebutted
24 in a responsive pleading, do you know if the City
25 Commissioners have been provided access to the confidential

1 information?

2 **MR. WRIGHT:** Yes, sir, they have.

3 **COMMISSIONER SKOP:** Under a nondisclosure agreement
4 that was executed separately?

5 **MR. WRIGHT:** We have a nondisclosure, separate
6 nondisclosure agreement with the City of Gainesville. Yes,
7 sir.

8 **COMMISSIONER SKOP:** Okay. Signed or executed by the
9 City itself or each of the individual Commissioners?

10 **MR. WRIGHT:** I don't believe that it was executed by
11 individual City Commissioners. I believe that it was executed
12 by Mr. Hunzinger on behalf of GRU, although I honestly can't
13 swear to you that's true. It might have been executed by
14 Mr. Manasco, who is the General Counsel for GRU.

15 **COMMISSIONER SKOP:** Okay. And that, that's a little
16 bit of a thorny issue because of the quasi-governmental nature
17 of GRU and elected officials sitting effectively as the
18 fiduciaries or the board of directors of GRU. That kind of
19 gets more complicated than I think the Commission needs to get
20 into in light of the, one of the aspects of the Intervenors'
21 prayer for relief. But that's, that's, that's a little bit of
22 a thorny issue for lack, so I wanted to get some clarity on
23 that.

24 All right. One other housekeeping matter before
25 we move forward. To the Intervenors, both have provided a

1 reply to the Petitioners' responsive pleading. It's not the
2 Commission's practice to consider that absent extraordinary
3 circumstances, so I'm not going to base any of my decisions
4 based upon anything that has been raised here.

5 **MS. STAHMER:** Certainly.

6 **COMMISSIONER SKOP:** What is of interest to the
7 Commission, to the parties would be allowing the parties to all
8 have equal footing as we move forward to prosecute the case and
9 go to hearing. And right now there's a difference of opinion
10 between what is necessary and acceptable to grant the
11 Intervenors access to the redacted information. It would be a
12 real simple, nice thing in life if none of the information was
13 redacted, but that's not the situation we have here before us,
14 and I've already previously rendered a confidentiality ruling.

15 Ms. Stahmer, you're briefly recognized.

16 **MS. STAHMER:** Thank you, Commissioner. I just wanted
17 the opportunity to respond to a few of Mr. Wright's comments
18 because I would dispute them.

19 The issue about being able to share the
20 information with the City Commissioners was not a new issue.
21 It was something that has been discussed in writing and
22 orally on an ongoing basis. The farthest we got with
23 Petitioners was that we could make a request to the GRU
24 attorney to possibly forward information to the City
25 Commissioners. We have no intention or desire to use this

1 confidential material in any way outside this proceeding.

2 With regard to whether or not Commissioners have
3 had actual access to the confidential documents, they may
4 have been told they do, but we have reason to believe there
5 are a number of very important documents that, shall we say,
6 were not brought to their attention. And had they been,
7 might have raised some questions.

8 And, indeed, in response to one of our
9 interrogatories where we specifically asked a question
10 regarding certain documents, the response was, oh, we
11 explained everything to the Commissioners about this issue.
12 They didn't say those particular documents were provided to
13 the Commissioners. That may have been an oversight or a
14 slightly loose response, but, nevertheless, we have our
15 doubts. And our only wish in this regard is to ensure that
16 the City Commissioners have actually seen certain materials.
17 They're free to dismiss it. Petitioners' attorneys are free
18 to argue with them and say, oh, don't pay any attention to
19 those crazy women. They don't know what they're talking
20 about anyway.

21 But the notion that somehow -- since presumably
22 the City Commissioners should have been made privy to all of
23 this stuff in the first place, what is the harm and how is
24 it outside the scope of this proceeding if we provide
25 duplicate copies of what Petitioners insist they've already

1 seen?

2 **COMMISSIONER SKOP:** Okay. To that point, again, the
3 issue with contacting the City Commissioners, I mean, again,
4 one would think in the State of Florida we'd have open
5 transparency, I think, because of the pending nature of the
6 proceeding and the involvement of the elected officials wearing
7 two hats, one as elected officials on behalf of the City of
8 Gainesville, and the other being fiduciaries to GRU. It makes
9 things very thorny. You know, it implicates, you know,
10 Sunshine Law, public records exemptions. You know, we could
11 look recently to the NCAA case for what happens when something
12 is in the hands of, you know, a public entity. So, again, that
13 raises some issues that are, that are outside the core of this
14 proceeding. One moment.

15 So we'll get back to that in a second. And,
16 Ms. Stahmer, you're recognized again for additional
17 comments. But I want to keep it brief so we can move
18 forward in a constructive manner.

19 **MS. STAHMER:** Certainly. With regard to the
20 confidential documents, inasmuch as Petitioners maintain the
21 Commissioners have access, the City Commissioners have access
22 to these confidential documents already, then there is no
23 reason to insist that if we happen to provide copies to them of
24 this confidential information, that somehow it immediately
25 falls into the public realm. It's quite possible for the

1 Commissioners to receive confidential information all the time.
2 And if we provide our written communications in sealed
3 envelopes to Petitioners' attorneys for them to transmit to the
4 City Commission, it's no different from the Petitioners
5 themselves sharing confidential information. So their, their
6 raised concern about somehow if we communicate with the
7 Commissioners, it's going to be seen on CNN in a few days is,
8 is unreasonable.

9 **COMMISSIONER SKOP:** And to that point, I think that
10 the point that's trying to be made by Mr. Wright is that GRU
11 and GREC are represented by counsel. Typically in an
12 adversarial proceeding you can't just circumvent that. You
13 have to go through counsel.

14 The thorn in the side here is the capacity of the
15 elected City Commissioners or the Mayor to the extent that
16 you want as a citizen to be able to approach them to -- or
17 to address issues, but in this case it's just a thorny
18 issue.

19 The, the point that, that I wanted to ask you,
20 because this is one of the requests for relief that I think
21 that would give me some real heartburn in getting into, as
22 is my understanding when we go back to hearing that, that
23 there is testimony that will be given by at least one City
24 Commissioner or if not in fact the Mayor, would that not
25 provide you with adequate opportunity to conduct

1 cross-examination to any concerns that you had, thereby
2 allowing you to communicate those concerns, although not
3 speaking to the confidential information? You would have
4 to, you know, point to it in some way, but you couldn't, you
5 couldn't --

6 **MS. STAHER:** Well, it presents the opportunity for
7 me to ask the Mayor, who is an avowed proponent of this
8 project. And given our prior experience dealing with both the
9 City Commission and GRU, it's clear to us that the Mayor is
10 often privy to information that is not shared with City
11 Commissioners.

12 **COMMISSIONER SKOP:** Okay. I don't, I don't want to
13 get into the inner operations of Gainesville government or GRU.

14 **MS. STAHER:** I understand.

15 **COMMISSIONER SKOP:** I'm going to try and keep us on
16 point here. Because what's of concern to me is that we're
17 approximately five days away from hearing. The Intervenors do
18 not at this point have access to the redacted information.
19 Obviously Mr. Wright, on behalf of his client, is trying to
20 ensure that the information is appropriately safeguarded
21 because they deem it to be confidential and propriety,
22 proprietary, and it may cause competitive harm if it's released
23 per the representations.

24 I think the important part is to make sure that we
25 find a way, a convenient way to get the Intervenors the

1 information they need so that they can conduct their
2 discovery in anticipation of going to hearing. Because,
3 again, the last thing I want is to get bogged down into some
4 sort of due process, maybe substantive or procedural, that
5 would not be good for anyone.

6 So I think that we, we have two options. The way
7 I see it is, as I previously stated, the Commission
8 cannot --

9 **MS. DEEVY:** Commissioner?

10 **COMMISSIONER SKOP:** Hold on for one second, please.

11 I think that we have two options as I see it, as I
12 previously stated. The Commission cannot impose a contract
13 upon the parties, nor will I do so. Okay? If I have to
14 flesh something out, I can do so via other vehicles that are
15 within the discretion of the Commission.

16 So I think before we move forward I'll hear from
17 you, Ms. Deevey, briefly to any concern. And then we're
18 going to find a way to work this out in an expeditious
19 manner.

20 **MS. DEEVY:** Yes. Well, I -- Mr. Wright in his
21 rebuttal made a statement that I'd challenge. And he said
22 obviously we must prove harm in the case that I am believed to
23 have disclosed confidential information. But that's the whole
24 point. The issue that we're concerned about is that they do
25 not have to prove harm, that we admit in advance that any claim

1 of harm they make we will accept, and that's what my attorney
2 didn't like. And if they, if they are willing to say that they
3 must prove harm in that connection, well, then I think it's
4 essentially -- it would be possible for me to look at the, at
5 the redacted information, which I'm very anxious to see many of
6 the components that have been hidden so far. And I think it
7 would be very difficult for me to make intelligent
8 cross-examination of witnesses without at least some of that
9 information.

10 **COMMISSIONER SKOP:** Okay. And I respect that. And,
11 again, I've granted confidentiality based upon, previously
12 based upon the petition that was brought before the Commission
13 and given my authority as Prehearing Officer. And I looked at
14 some of the information and, you know, it was questionable to
15 me on some aspects whether it was indeed confidential. But,
16 again, it's pretty broad in terms of what they can claim to be
17 confidential or proprietary or business sensitive that results
18 in competitive harm. The statute is what it is. We don't
19 always have to like it, but it's something I have to follow
20 absent a showing to the contrary.

21 To your concern, I think that we'll get to that.
22 What I'm trying to do is find a happy medium. Obviously
23 you've received some legal advice from your private
24 attorney. Ms. Stahmer has her position. You have positions
25 that may align or may not align as intervening parties.

1 Then we have GREC and Mr. Wright, who is seeking to protect
2 his clients' interests, and all of which could be solved by
3 complete, open transparency which we don't have
4 unfortunately.

5 So I think there's two ways to proceed. You know,
6 something that this Commission I wish would use more would
7 be arbitration, letting the parties kind of get together and
8 try and work out their differences. And that's typically
9 the preferable method. It's a method I like to use, just
10 encourage the parties that unless you want me deciding it,
11 that the parties can kind of get together and go do it. The
12 other alternative is for me to decide it, and either one of
13 those two things will happen today.

14 If it would be constructive, you know, I'm willing
15 to adjourn briefly to give the parties 30 minutes to try and
16 work through their differences. And I'm not so sure whether
17 that would be constructive or not given the differing
18 opinions that I tend to, tend to be hearing before us.

19 My other alternative, again, is I can use the
20 mechanism of a protective order, which is not a contract
21 upon the parties, to ensure that the Intervenors are allowed
22 discovery in terms that are consistent with protecting the
23 interests of the confidential information and addressing the
24 concerns of Mr. Wright's clients, but equally ensuring that
25 the Intervenors are granted full and fair access to the

1 redacted data as we move forward to hearing.

2 So, Ms. Helton, if you want to provide any
3 additional input, that might be appreciated at this point.
4 But I think other than that, my inclination would probably
5 be take a 30-minute recess to give the parties time to try
6 and work through their differences. And absent that, I'll
7 be prepared to rule on the protective order.

8 **MS. HELTON:** I thought Mr. Wright's argument that
9 this is really not a motion to compel was persuasive in my
10 opinion. I don't know whether, Commissioner, you did. But it
11 sounds to me as if the GRU is willing to provide the
12 information, has made offers to provide the information to the
13 Intervenors. So it's, I think, a little bit misleading to say
14 that this is a motion to compel here. This is really a motion
15 to have the Commission determine the terms of how the
16 Intervenors will review that information or look at that
17 information.

18 Our rule expands a little bit on the language that
19 Mr. Wright read from 366.093. And it says that, "A finding
20 of confidentiality notwithstanding, a source may consent to
21 inspection or examination by any person. Such consent shall
22 not constitute a waiver of confidentiality, and only the
23 person specified in the consent may inspect or examine the
24 material. The Commission may be requested to issue a
25 protective order to recognize the terms and conditions of

1 the consent. All persons are urged to seek mutual agreement
2 regarding access prior to bringing a controversy to the
3 Commission."

4 So I think based on that language it makes sense
5 to me to adjourn the proceeding today for 30 minutes to see
6 if we can get some kind of mutual agreement between the
7 parties with maybe having the, the clock a little bit of an
8 impetus there.

9 I am concerned though that, about the statements
10 on the record by the Intervenors that -- it seems to me that
11 one of the purposes that they want this information for is
12 to share it with the City. Well, presumably the City has
13 already seen it if they, I'm assuming, were instrumental in
14 having the petition for need filed with the Commission. And
15 it concerns me because the information that they are wanting
16 to review is information that the Commission needs to assess
17 whether the determination of need should be provided. And
18 any rulings that you make should govern what happens here at
19 the Commission, not how the information is used elsewhere.

20 **COMMISSIONER SKOP:** Thank you, Ms. Helton. And I
21 tend to agree with not getting into matters that are outside
22 the jurisdiction of the Commission and how information is used,
23 although the protective order provision does allow the
24 Commission to kind of protect the information from disclosure
25 outside the proceeding. So I think it falls squarely within

1 the scope of that.

2 Just before we adjourn, again, I think that there
3 may be a more expeditious way of going about this, and that
4 would be just for me to grab the bull by the horns and go,
5 you know, have a protective order crafted in a manner that
6 would be fair in my mind to both parties. It would allow
7 access to the data. And that may be very well --
8 irrespective of what the parties agree, I may just take that
9 extraordinary step in light of some of the things that are
10 going on here to further protect the information and make
11 sure that all the parties are aware of the ground rules.

12 But I think to Ms. Helton's point, I think part of
13 my disappointment with the parties is that again we are this
14 late in the game and we have not yet reached an amicable
15 agreement to get the Intervenors the information they need.
16 And, again, we can go back to the terms and conditions from
17 far ago and that's water over the dam. But, again, I think
18 at least my desire, the Commission's desire is to see the
19 parties work together in good faith to try and overcome
20 differences so that the Commission doesn't have to get
21 involved in micromanaging.

22 And I think that, you know, I think that on the
23 front end could things have been done differently? Yes.
24 But, again, Mr. Wright only represents his clients. And on
25 the back end could things have been done differently? They

1 probably could have and probably should have.

2 So, again, what I'd like to do is give the parties
3 an opportunity to try and overcome their differences. I'll
4 allow 30 minutes. If more time is needed, certainly all you
5 need to do is ask. If it looks as if, based upon your
6 individual positions, that the terms are still not going to
7 be acceptable, I'm relatively certain I can craft something
8 out within the scope of a protective order that would pretty
9 much preclude the need for an NDA and allow access to the
10 parties under a very succinct set of conditions that may or
11 may not be to the liking of all the parties, but I'm sure
12 it'll get the job done.

13 Ms. Stahmer.

14 **MS. STAHMER:** May I comment? Thank you.

15 Again, I wish to assure the Commission as well as
16 the Petitioners, we have no intention and no wish to
17 disclose any confidential material to people who would not
18 similarly be bound by the duty to maintain whatever
19 information they might receive in confidence as well. We
20 are not seeking a roundabout way of being insulated from the
21 consequences of a willful breach. And we have real
22 difficulty understanding on what basis Petitioners can
23 object to our wish to, through their own attorneys, provide
24 to Commissioners, who supposedly already are bound by
25 confidentiality provisions and have been made privy to this

1 information, that we simply draw something to their
2 attention. We're not talking about making arguments to them
3 or speaking to them in person. It would simply be in
4 writing. We'd transfer copies of documents we think, we
5 hope that they have been made aware of. And according to
6 Petitioners, they had access to all of this. So what is the
7 harm? And, again, I don't think it's outside the scope of
8 this proceeding to make sure Commissioners, City
9 Commissioners really have seen some of these documents.

10 **COMMISSIONER SKOP:** Okay. Thank you. And any other
11 comments from staff, Ms. Helton, before we take a brief recess?

12 **MS. BROWN:** No, Commissioner.

13 **COMMISSIONER SKOP:** Okay. All right. So with that
14 in mind, the Intervenors' prayer for relief is basically
15 outlined on Page 6 of their motion to compel. Again, this has
16 been styled as a motion hearing. Whether or not that's
17 appropriate will be left for another day. But we need to work
18 this issue out amicably amongst the parties so that the
19 Intervenors can get the information they need.

20 So what we're going to do is I'm going to hold off
21 on considering the requested relief, allow the parties to
22 try and work together for 30 minutes in good faith. If
23 there does not appear to be a compromise and we don't need
24 30 minutes, then please feel free to come in and we'll
25 reconvene and we'll set the terms and conditions pursuant to

1 a protective order that the Commission deems to be fair and
2 appropriate.

3 So, Mr. Wright, do you have anything to add to
4 that?

5 **MR. WRIGHT:** I would observe two things,
6 Commissioner.

7 One, none -- the Intervenors have not challenged
8 any of the terms and conditions of the NDA relating to
9 access to the information or use of the information in this
10 proceeding.

11 As an aside to that, not only have we already made
12 it available twice, the information is available today in
13 our offices. We are expecting the Intervenors one way or
14 the other to be there.

15 Finally, with respect to their repeated attempts
16 to, to induce you to, to provide for them having access to
17 the Gainesville City Commission, what they are trying to do
18 is use confidential information, to insert that into the
19 political processes of the City of Gainesville where the
20 project has routinely and consistently been unanimously
21 approved by the City Commission.

22 The real point for you though is that's a
23 political process within the City of Gainesville. It's not
24 part of this need determination proceeding. Thank you.

25 **COMMISSIONER SKOP:** Thank you. Okay. With that

1 we'll stand adjourned for 30 minutes, and we will reconvene at
2 15 after the hour.

3 (Recess taken.)

4 Okay. We are going to go back on the record at
5 this point, and have the parties been able to resolve their
6 differences?

7 **MR. LaVIA:** Commissioner Skop, Jay LaVia on behalf of
8 GRU and GREC. We heeded your instructions and met and were
9 able to reach an agreement. If you'd like, I can describe it
10 to you.

11 **COMMISSIONER SKOP:** Please. And, again, has that
12 been executed? Again, my preference probably would have been
13 to issue a protective order. I think it would probably have
14 been a little bit more expedient, but I'll respect the
15 agreement of the parties.

16 **MR. LaVIA:** Thank you, Commissioner.

17 The agreement that we've reached, in essence, will
18 include the request for relief included in Paragraphs D and
19 E of their prayer. And we will amend the NDA that is the
20 current draft. We have already showed the language to the
21 Intervenors, and they're comfortable with the language. And
22 as Mr. Wright noted earlier, we are prepared to provide
23 access as soon as they want to come to our office.

24 **COMMISSIONER SKOP:** And with respect to -- again,
25 I'll respect what the parties have agreed to, but on Page 5 of

1 the draft NDA, they talked about two alternatives for granting
2 access to the information. It seemed to me that five would
3 have been the preferable method, and that's probably where I
4 would have went if I'd gone to a protective order, but is
5 6 still on the table, or what have the parties agreed to?

6 **MR. WRIGHT:** One moment, Commissioner.

7 **MR. LaVIA:** Actually, it's my understanding that the
8 Intervenors are going to sort of do both.

9 **COMMISSIONER SKOP:** I'm sorry?

10 **MR. WRIGHT:** We believe that it's going to be a
11 hybrid, that they will both take notes that may be left behind
12 under seal and take notes that do not contain confidential
13 information that they may take away with them following
14 inspection by us. So we've agreed, as a matter of practice, to
15 that hybrid approach.

16 **COMMISSIONER SKOP:** So this is in the alternative of
17 not giving a full paper copy, this is going to be an on-site
18 inspection. So Paragraph 6 or whatever will be kind of
19 stricken out with the \$100,000 security or posting of a letter
20 of credit is that --

21 **MR. LaVIA:** Commissioner, I think you're looking at
22 an old draft.

23 **COMMISSIONER SKOP:** Okay. All right.

24 **MR. LaVIA:** That was stricken a long time ago --

25 **COMMISSIONER SKOP:** Okay. Great.

1 **MR. LaVIA:** -- in March.

2 **COMMISSIONER SKOP:** All right. So if the parties
3 have reached an agreement, I assume that will be duly executed
4 by the parties in a timely matter so that we won't have to
5 address this issue on a forward-going basis, and that we can
6 proceed to hearing in a --

7 **MR. LaVIA:** Thank you, Commissioner. Sorry for
8 taking your time.

9 **COMMISSIONER SKOP:** No problem. With that, any
10 comment from staff?

11 **MS. BROWN:** None, Commissioner.

12 **COMMISSIONER SKOP:** All right. Since the parties
13 have resolved their difference amicably, it's a good thing.
14 Mediation for the Commission, to let the parties work it out
15 between themselves, it appears that has been accomplished. So
16 with that we will stand adjourned.

17 Thank you.

18 **MR. LaVIA:** Thank you.

19 **MS. STAHER:** Thank you.

20 (The motion hearing concluded at 11:18 a.m.)

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STATE OF FLORIDA)
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COUNTY OF LEON) CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 28th day of April, 2010.

Linda Boles
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STATE OF FLORIDA)
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COUNTY OF LEON)


CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

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DATED THIS 28th day of April, 2010.



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