

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 090451-EM
ORDER NO. PSC-10-0267-CFO-EM
ISSUED: April 28, 2010

ORDER GRANTING GAINESVILLE REGIONAL UTILITIES
AND GAINESVILLE RENEWABLE ENERGY CENTER, LLC'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION
(DOCUMENT NO. 02222-10)

On March 1, 2010, pursuant to Rule 25-22.006(3)(a)1., Florida Administrative Code ("F.A.C."), Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC ("GREC LLC") filed a Notice of Intent to Request Confidential Classification ("Notice of Intent") of certain information provided in their response to Staff's Fourth Set of Interrogatories (Nos. 80-106), Interrogatory No. 102 (Document No. 01389-10). On March 29, 2010, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006(3), F.A.C., GRU and GREC LLC filed a Request for Confidential Classification (Document No. 02222-10) This request was filed in Docket No. 090451-EM. No objection has been filed in response to either the Notice of Intent or the Request for Confidential Classification.

Request for Confidential Classification

Section 366.093(1), F.S., provides that "any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from Section 119.07(1) [the Public Records Act]." Section 366.093(3), F.S., defines proprietary confidential business information as information that is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations, and has not been voluntarily disclosed to the public. Paragraphs (a), (d) and (e) of Section 366.093(3), F.S., provide that proprietary confidential business information includes, but is not limited to "[t]rade secrets;" "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information."

GRU and GREC LLC contend that portions of the information contained in their response to Staff's Fourth Set of Interrogatories (Nos. 80-106), specifically information contained in the Table on Page 45 of the Response to Staff's Interrogatory No. 102 entitled "Comparison of GRU's Biomass Generation Alternatives," falls within these categories and thus constitutes proprietary confidential business information entitled to protection under Section 366.093(2), F.S., and Rule 25-22.006(3), F.A.C. GRU and GREC LLC state that this information is intended to be and is treated by GRU and GREC LLC as private and has not been

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publicly disclosed, except pursuant to confidentiality agreements or legal process, as required by Section 366.093(3), F.S.

GRU and GREC LLC allege the information for which they seek confidential classification is confidential summary information regarding the net present value of GRU's projected payments, and the levelized cost of electricity, under each of the six binding proposals submitted to GRU in its request for proposals and competitive solicitation processes that led to the selection of the 100 MW proposal for the Gainesville Renewable Energy Center, submitted by Nacogdoches Power, LLC, Covanta, and Sterling Planet (the "Proposers"). GRU and GREC LLC state the information reflects the confidential, proprietary business information of GREC LLC, Covanta, and Sterling Planet, the disclosure of which would cause harm to the competitive business interests of each of these entities. Additionally, GRU and GREC LLC maintain the information is also regarded as trade secret information by all three entities.

GRU and GREC LLC aver that, with respect to the information for the Nacogdoches Power proposals, the Commission is aware that GREC LLC is the successor to Nacogdoches Power, and GREC LLC is developing other biomass projects in Florida and elsewhere and is currently in discussions with other utilities in the State of Florida regarding agreements to sell power from such facilities. GRU and GREC LLC state the information regarding the Nacogdoches Power proposals in the Table on Page 45 of the Response includes confidential, proprietary, trade secret cost information for GREC LLC's proposal to GRU, and that disclosure of such information would harm GREC LLC's competitive business interests.

GRU and GREC LLC further aver that, with respect to the information for the Covanta and Sterling Planet proposals, GRU is obliged to treat this information as trade secret information per the specifications of Covanta and Sterling Planet. GRU and GREC LLC believe that both Covanta and Sterling Planet are developing other biomass projects in Florida and elsewhere and that these companies are currently in discussions with other utilities regarding agreements to sell power from such facilities. Moreover, GRU believes that the subject information for Covanta and Sterling Planet is not relevant to the scope of the issues prescribed for the supplemental hearing. GRU avers the information in the Table on Page 45 of the Response regarding the Covanta and Sterling Planet proposals includes confidential, proprietary, trade secret cost information for Covanta's and Sterling Planet's proposals to GRU, and disclosure of such information would harm these entities' competitive business interests. GRU maintains that it has asked Covanta and Sterling Planet for permission to release their confidential information (including both the information in the table and also their proposals, which were requested by Staff's Request for Production of Documents No. 16), either for public disclosure or under cover of a request for confidential classification, but that permission has not been granted. GRU and GREC LLC assert that neither GREC LLC, Covanta, or Sterling Planet has seen the confidential information of each other.

Additionally, GRU and GREC LLC allege that disclosure of the information would impair the competitive business interests of the Proposers by revealing their confidential pricing information to their business competitors, which would enable their business competitors to compete against the Proposers to Proposers' detriment, including enabling such competitors to

"reverse engineer" proprietary pricing structure information that the Proposers developed for their proposals submitted to GRU. GRU and GREC LLC also allege disclosure of the information would impair the Proposers' competitive business interests by revealing to other potential purchasers of power from other projects being developed by the Proposers and their affiliates confidential pricing information which could be used to establish a floor from which potential purchasers could negotiate against any of the respective Proposers. Finally, GRU and GREC LLC allege disclosure of the information would impair GREC LLC's competitive business interests by revealing to potential vendors upon whom GREC LLC must rely for goods and services necessary to its performance under proposed power purchase agreements, information that would adversely impact GREC LLC's ability to contract for such necessary goods and services on favorable terms.

Request to Find Good Cause Shown

In the Request for Confidential Classification, GRU and GREC LLC acknowledge that the March 29, 2010, filing of the Request is more than 21 days after the filing of the Notice of Intent (filed March 1, 2010), but assert good cause, as required by Rule 25-22.006(3)(a)1., F.A.C., exists for the delay. GRU and GREC LLC assert that counsel for GRU and GREC LLC routinely relies on his secretary to notify him of upcoming due dates, but said secretary was absent from work due to illness during the week in which the Request was due; as a result, counsel failed to note the pending due date. GRU and GREC LLC assert that counsel determined the Request had not been filed late on Friday, March 26, 2010, and filed the Request on the following business day, Monday, March 29, 2010.

Ruling

By its plain language, Rule 25-22.006(3)(a)1., F.A.C., contemplates that a Request for Confidential Classification can be granted after the 21 day period if "good cause" is demonstrated. GRU and GREC LLC have provided a sufficient explanation for the delay in filing the Request for Confidential Classification, and I therefore find GRU and GREC LLC have shown good cause why the Request should be granted.

Upon review, it is apparent that the information contained in the Response to Staff's Interrogatory No. 102 for which confidential classification is sought, specifically the information contained in the Table on Page 45 of the Response, satisfies the criteria set forth in Section 366.093(3), F.S., for classification as proprietary confidential business information and thus, shall be treated as confidential. The identified information clearly constitutes "[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms" and "[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information." I note that this information is of an identical type and nature as information which has previously been determined to be confidential, proprietary business information. Thus, the information identified in Document No. 02222-10, specifically the Table on Page 45 of the Response to Staff's Interrogatory No. 102

entitled "Comparison of GRU's Biomass Generation Alternatives," shall be granted confidential classification.

Pursuant to Section 366.093(4), F.S., the information for which confidential classification is granted herein shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. At the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless GRU, GREC LLC, or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC's Request for Confidential Classification of information contained in Document No. 02222-10, specifically the Table on Page 45 of the Response to Staff's Interrogatory No. 102 entitled "Comparison of GRU's Biomass Generation Alternatives," is granted. It is further

ORDERED that the information in Document No. 02222-10 for which confidential classification has been granted, as described above, shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 28th day of April, 2010.



NATHAN A. SKOP

Commissioner and Prehearing Officer

(SEAL)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and

time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.