

Dorothy Menasco

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Sunday, May 02, 2010 7:49 PM
To: paulastahmer@aol.com; diandv@bellsouth.net; Raymond "Skip" Manasco; Erik Saylor; Filings@psc.state.fl.us; Martha Brown; Theresa Walsh; Schef Wright
Subject: Electronic Filing - Docket 090451-EM
Attachments: 090451.GRU-GREC.Resp2Req4OfficialRec.5-3-10.pdf

a. Person responsible for this electronic filing:

Robert Scheffel Wright
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301
(850) 222-7206
swright@yvlaw.net

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 7 pages.

e. The document attached for electronic filing is Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC's Response in Opposition to Intervenors' Request for Official Recognition.

(see attached file: 090451.GRU-GREC.Resp2Req4OfficialRecl.5-3-10.pdf)

Thank you for your attention and assistance in this matter.

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

DOCUMENT NUMBER-DATE

03635 MAY -3 09

FPSC-COMMISSION CLERK

5/3/2010

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) DATED: May 3, 2010
RENEWABLE ENERGY CENTER, LLC.)
_____)

GAINESVILLE REGIONAL UTILITIES AND
GAINESVILLE RENEWABLE ENERGY CENTER, LLC'S
RESPONSE IN OPPOSITION TO INTERVENORS' REQUEST
FOR OFFICIAL RECOGNITION

Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC ("GREC LLC") (collectively the "Petitioners"), by and through undersigned counsel, hereby file their response in opposition to Intervenors' "Request for Official Recognition of Documents" (the "Request for Official Recognition" or the "Request") and in support thereof state:

1. On Saturday, May 1, 2010 (at approximately 10:59 a.m.), Intervenors served the Petitioners with their Request for Official Recognition. Intervenors electronically transmitted their Request for Official Recognition on Saturday, May 1, 2010, at 2:12 p.m. The Request for Official Recognition identifies 9 categories of documents for which the Intervenors request official recognition; however, the Request for Official Recognition does not explain why these documents qualify for official recognition.

The Applicable Statutory Framework

2. The Intervenors' Request for Official Recognition is governed by Section 120.569(2)(i), 90.202 and 90.203, Florida Statutes ("F.S."). Section 120.569(2)(i), F.S., provides:

When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.

Section 90.202, F.S., provides a specifically enumerated list of 13 categories of documents and other matters of which a tribunal may take official recognition. Section 90.203, F.S., provides:

A court shall take judicial notice of any matter in s. 90.202 when a party requests it and:

(1) Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request.

(2) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

The Commission has recognized that its determination of the efficacy of a request for official recognition is governed by Sections 90.202 and 90.203, F.S. See, e.g., In re: Petition by Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone for arbitration of an interconnection agreement with Quincy Telephone Company d/b/a TDS Telecom, pursuant to Section 252 of the Federal Communications Act of 1934, as amended, and Sections

120.57(1), 120.80(13), 364.012, 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C., Order No. PSC-09-0546-PCO-TP (August 6, 2009) (hereinafter "In re: Petition of Comcast") (denying, in part, a request for official recognition for failure to comply with Sections 90.202 and 90.203, F.S.).

The Intervenors' Request for Official Recognition Should Be Denied

3. As the moving party, the Intervenors have the burden to establish that the nine categories of documents identified in Paragraph 4 of the Request for Official Recognition meet the statutory requirements for the Commission to take official recognition of them. Intervenors have failed to meet their burden.

4. Not one of the nine categories of documents set forth in Paragraph 4 of the Request for Official Recognition qualifies as one of the types of documents specifically enumerated in Section 90.202, F.S., of which the Commission can take official recognition. The documents are discussed more specifically below:

a. The documents identified in paragraphs 4(a) and 4(c) are a report and a draft report that were submitted to the Gainesville City Commission. The only documents of a municipality that qualify for official recognition are duly

enacted ordinances and regulations of Florida municipalities. See Fla. Stat. § 90.202(10). Accordingly, these documents do not meet the statutory criteria for official recognition and the Intervenor's request should be denied.

b. The document identified in paragraph 4b of the Request (GRU's Ten-Year Site Plan) does not meet any of the statutory criteria for official recognition and the Intervenor's request should be denied. However, GRU/GREC LLC has agreed to stipulate to the admission of this document, thus the Intervenor's request is moot.

c. The document identified in Paragraph 4d of Intervenor's Request (a USDA Fuel Value Calculator) was not published in the Federal Register (see Fla. Stat. § 90.202(3)) and does not represent an official action of a federal executive department (see Fla. Stat. § 90.202(5)). Accordingly, the document does not meet the statutory criteria for official recognition and the Intervenor's request should be denied.

d. The documents identified in Paragraphs 4e and 4f (Gainesville Sun newspaper articles) do not meet any of the statutory criteria for official recognition and the Intervenor's request concerning these documents should be denied. Newspaper articles are not the proper subject for official recognition.

e. The documents identified in Paragraphs 4g and 4h are composite exhibits prepared by the Intervenors. With regard to the information the Intervenors selectively gleaned from GRU's Ten-Year Site Plans, the fact that GRU/GREC LLC have stipulated to the admission of the Ten-Year Site Plans has absolutely no bearing on whether the documents are susceptible to official recognition. These composite documents do not come close to meeting any of the statutory criteria for judicial notice. Accordingly, the Intervenors' request with regard to these documents should be denied.

f. The documents identified in the second Paragraph identified as 4e in the Request (a chronology of actions of the Gainesville City Commission and supporting documentation) again do not come close to meeting any of the specifically enumerated statutory criteria for judicial notice and the Intervenors' request should be denied.

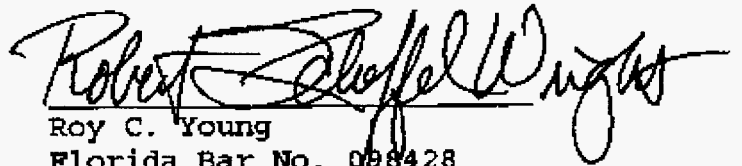
Conclusion

5. Official recognition is not intended to be a mechanism by which a party can attempt to introduce evidence for which that party cannot find a sponsoring witness. To qualify for official recognition, the Intervenors' documents must meet one of the 13 specific statutory criteria set forth in Section 90.202, F.S. See In re: Petition of Comcast at 3 (stating that

the Commission is "precluded from officially recognizing" documents that do not meet the requirements of Section 90.202, F.S.). None of the documents identified in Intervenors' Request for Official Recognition meet the requirements of Section 90.202, F.S., and thus the Intervenors' Request must be denied.

Respectfully submitted this 3rd day of May, 2010.

Young van Assenderp, P.A.



Roy C. Young
Florida Bar No. 098428
Robert Scheffel Wright
Florida Bar No. 966721
John T. Lavia, III
Florida Bar No. 853666
225 South Adams Street
Suite 200
P.O. Box 1833
Tallahassee, Florida 32302
(850) 222-7206
(850) 561-6834 (fax)

Attorneys for GREC LLC

CERTIFICATE OF SERVICE

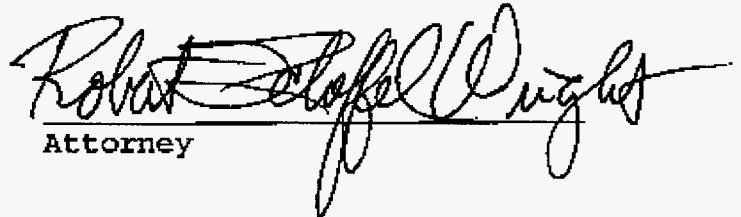
I hereby certify that a copy of the foregoing was served upon the following by United States Mail and electronic mail on this 3rd day of May, 2010.

Erik L. Saylor/Martha Carter Brown
Senior Attorney, Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
esaylor@psc.state.fl.us

Paula H. Stahmer
4621 Clear Lake Drive
Gainesville, Florida 32607
paulastahmer@aol.com

Dian R. Deevey
1702 SW 35th Place
Gainesville, Florida 32608
diandv@bellsouth.net

Raymond O. Manasco, Jr.
Utilities Legal Services
Gainesville Regional Utilities
P.O. Box 147117, Sta. A-138
Gainesville, Florida 32614


Attorney