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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 Paula H. Stahmer, Intervener

d. There are a total of 20 pages, including this cover page.

e. The document attached for electronic filing is Intervener Stahmer's Post Hearing brief

Thank you for your attention and assistance in this matter.

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Paula H. Stahmer

5/14/2010

DOCUMENT NUMBER-DATE
04098 MAY 14 2010
FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:

DOCKET NO. 090451-EM

JOINT PETITION TO DETERMINE NEED
FOR GAINESVILLE RENEWABLE ENERGY
CENTER IN ALACHUA COUNTY, BY
GAINESVILLE REGIONAL UTILITIES
AND GAINESVILLE RENEWABLE ENERGY
CENTER, LLC.

DATE: May 13, 2010

**POST-HEARING STATEMENT OF ISSUES AND POSITIONS
AND BRIEF OF INTERVENER STAHERM**

Intervener Paula H. Stahmer, pursuant to the Prehearing Order in this docket, Order No. PSC-09-0814-PHOEI, and the Order Establishing Procedure, Order No. 09-0671-PCO-EI, and pursuant to Rule 28-106.215, Florida Administrative Code ("F.A.C."), hereby submits her Post-hearing Statement of Issues and Positions and Brief. Citations to the Supplemental Hearing Transcript are in the form STR- (page number), citations to hearing exhibits are in the form EXH (exhibit number) at (page number), citations to the transcript from the December 9, 2009, customer hearing in Gainesville are in the form TR-(page number). Otherwise, citations refer to document numbers as listed in the PSC Docket or pdf files provided by the PSC.

SUMMARY OF THE PETITIONERS' REQUESTED RELIEF

Intervener respectfully seeks the Commission's denial of the application of need for the Gainesville Renewable Energy Center (the "Project" or the "GREC Project"), a 100-megawatt net biomass fueled electrical power plant to be constructed and operated by GREC LLC on land leased from the City of Gainesville at GRU's Deerhaven Generating Station. The Project will be

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an economic burden for the ratepayers of Gainesville Regional Utilities, and it is an extravagant waste of the city of Gainesville's resources that could deleteriously impact the fiscal integrity of both GRU and the city.

Giving full and appropriate consideration to the criteria set forth in the Commission's need determination statute, Section 403.519, Florida Statutes, the Commission should deny the requested determination of need. Specifically, with regard to each of the statutory criteria, while the proposed project may seem to meet some of the criteria when analyzed out of context, the overarching financial burden, open-ended risk and lack of credibility as to so many of Petitioners' assertions all justify the denial of the application. Rather than promote GRU's resources for providing reliable, reasonably priced electricity, the project will inevitably strain resources so as to deprive ratepayers and the utility with needed flexibility for the uncertain future.

1. The Project will not enhance GRU's system reliability and integrity; instead it will encumber the utility with outdated technology for which it and its ratepayers will be paying an extravagant amount of money. As Petitioners acknowledge, GRU does not need new base load capacity in the immediate future. Therefore, GRU should take advantage of its temporary security and seek out more modern technologies while implementing even more DSM programs and conservation policies. The best way to secure the utility's future and protect beleaguered ratepayers is to diminish the demand for consumption, not increase it.

2. The GREC Project will not provide electricity at a reasonable cost. The Petitioners have ignored the forecasts of their own experts and consultants who almost uniformly predict a significant and rapid increase in the costs of woody biomass. Recent federal regulatory action also suggests that woody biomass will be subject to controls not contemplated by Petitioners.

Additionally, Petitioners' own evidence casts doubt on the manner by which the charges and costs under the PPA agreed to by the Petitioners was arrived at.

3. The GREC Project may contribute to fuel diversity but not to supply reliability, and it will *not* displace a significant proportion of GRU's fossil-fueled generation with biomass fuels. Petitioners have made it very clear that they intend to increase their customer base rather than diminish demand, and they anticipate using all of GRU's current fleet as well as the new GREC.

4. GRU does not need additional generating capacity and energy until well into the future and would better serve its ratepayers by conserving its resources rather than depleting them by constant and increased demand.

5. While there may be no conservation measures that can quickly supplant 100MW of energy, that is a false standard to measure against. Additional conservation and DSM measures can dramatically reduce current demand load and that is a far cheaper and less risky course of action. A false sense of urgency has been created by dangling the lure of GREC and its alleged benefits, then claiming the denial of this application would be a terrible loss as though its alleged benefits were both a certainty and a necessity. This seduction should be weighed against the enormous investment into a questionable though currently popular alternative to fossil fuels, and take into consideration the risk of ratepayers being lumbered with a white elephant posited on public land.

6. The GREC Project is a highly speculative venture and the cost-effectiveness of a 100 MW woody biomass plant is dubious given the increasing regulatory climate regarding all resources. In the immediate moment, woody biomass may seem more cost-effective than natural gas-fired alternatives; however, it is not more cost-effective than conservation and DSM. GREC itself is not a cost-effective enterprise for the ratepayers given what may be an unusually

exorbitant basis for calculating charges to ratepayers for energy produced by GREC and Petitioners' intentions to promote a larger customer base. Reducing consumption is the most effective way to reduce one's carbon footprint. As stated above, recent federal regulatory action also suggests that woody biomass will be subject to controls not contemplated by Petitioners.

INTERVENER STAHMER'S STATEMENT OF POSITION

It is recognized that the statutory framework for the PSC to examine applications for need determination is essentially delineated in the statement of issues contained in the

Nevertheless, in any proceeding where the presiding officials are charged with evaluating the impact of requested action on the welfare of a particular community and of the state as a whole, certain issues of equity inevitably come into play whether explicit or implicit. The PSC derives its authority and power pursuant to the police powers of the state, as delegated to it by the state legislature, so a need determination, whether for an investor owned utility or a municipal utility subsumes questions of good faith and honesty. The application under consideration is for a municipal utility, so the PSC accords certain deference because of presumptions about public knowledge and participation in the decision making process that led to the contract underlying the application.

The relevant Florida statutes say nothing about the extent to which ratepayers who own a municipal electric utility must be involved in making policy decisions to approve a large generator. Nothing in the relevant Florida Statutes explicitly requires that the Commission consider whether ratepayers knew of and supported a project awaiting Commission approval on a Need Application, or even whether they knew of and were willing to pay the higher utility bills the project would entail.

But the Commission has wide discretion, and the Petitioners themselves have made the question of what citizens/ratepayers knew and when they knew it a critical component of the arguments they advance to support the application before you in this case. It is a very important subject they urge the Commission to consider.

Intervenors also believe it is an important subject since a municipal utility is a public asset and one that ratepayers pay for and depend upon. Municipal elected officials have a duty under Florida law to ensure that a municipal utility is not used as a merchant facility by which the ratepayers can be levied against in order to support non-utility endeavors. And the trustees of a municipal utility have a duty to protect the fiscal integrity of the utility for service to the assigned area rather than leverage the asset in a risky venture that may compromise the utility's ability to make accommodations to future exigencies or even place it in financial jeopardy.

While the Petitioners in this case have repeatedly claimed that the public and ratepayers were fully informed about the financial impacts of GREC, *they have offered no evidence to support this claim*. Indeed, their own exhibits demonstrate a pattern that actually excluded the public at the most critical points of decision making. Additionally, this exclusion was utilized to maneuver the city into a contract for new capacity that is unneeded, potentially very costly to ratepayers, and could consume resources that would be better used for newer technology, conservation and increased demand side management (DSM) techniques.

Although it has been suggested that Intervenors seek to challenge otherwise legitimate negotiations between GRU and American Renewables, in fact, Intervenors believe the evidence shows that GRU, on behalf of the city, accepted a *binding proposal (firm bid)* from American Renewables' predecessor Nacogdoches Power, and a year later, for unknown reasons, substituted

another agreement *for the very same services* but at an exorbitantly higher cost. This action discredits whatever merits the GREC project may represent. At the least, it suggests an indifference to the public purse in that ratepayers are largely a captive audience and are the true owners of the utility. Although Petitioners have made vaunted claims of economic and social benefits flowing from this project, it nevertheless has the hallmarks of a predatory corporate effort to undermine and take advantage of a small utility. The lack of public participation in a meaningful way at critical points in the process should cause the Commission to withhold its usual deference to municipal utilities and use some healthy skepticism when evaluating this application.

Intervener's focus on this issue is not tangential to the questions before the Commission. Integrity of process is every bit as important as methodical analysis within a particular framework. Intervener asserts that all the statutory issues the Commission must address hinge upon the credibility and legitimacy of Petitioners' contract. If the underlying foundation for GREC, the PPA, has been perverted in some respect, and the public interest subverted thereby, then the legal predicate of the application of need is suspect and possibly void.

The architecture of the advancement of GREC should expose the underlying contradiction at its core. Although wrapped up in ribbons of green, this project is not designed to improve the environment or shore up the assets of GRU, but to capitalize on the availability of subsidies in a classic carpetbagger wager that will make a few people richer while the owners of the plundered, resource, the ratepayers, will be left to pay the bill.

The thrust of this project is not protection of the environment. American Renewables has never built anything, but skipped town as soon as the ink is dry, having sold to the highest

bidder. There is nothing wrong with that. Much of commerce thrives because there are hustlers quick to move, put together a deal, and move on to the next town. But somehow the very people who should be alert to protecting the public interest have identified with the corporate interest, to the detriment of the ratepayers and their community. This is exemplified by the fact that the same firm has been representing GRU, a publicly owned utility, GREC and American Renewables, both private entities driven by a profit motive, at the same time, on the same case. The fusion of identities was under way before the need application was filed. Unfortunately, the prospect of a 100 MW new and shiny toy that is promised to shower money can make even well-intentioned public officials swollen with pride and self-importance, occluding their sense of public duty.

The local *raison d'être* for supporting GREC is to promote consumption of electric power in order to increase revenue flows into the coffers of municipal government. Increased rates for expensive power will increase the real dollars taken in by the 10% utility tax, as well as the transfer from GRU to the city budget. Further additional monies will flow because the ratepayers have to reimburse GREC for its property taxes. GREC pays the city, the ratepayers pay GRU, which pays back GREC. GREC and the city get to keep their money, while the ratepayers lose theirs. According to GRU, this covert tax is a pleasure to pay because of all the worthwhile causes it will sustain. But taxpayers were supposed to be afforded some protection by virtue of special taxing districts, such as for the library and schools. Ratepayers do not begrudge supporting these institutions, but they are entitled to the limits established in the law so that the citizenry is not overburdened.

Never open to public discussion was how the original *binding proposal, firm bid*, of Three Hundred Million Dollars (\$300 million) morphed into Five Hundred Million Dollars (\$500

million) in less than a year and before even a spade was purchased to break ground. This increased cost has been factored into the levy on ratepayers that must be paid for thirty years. If done without reference to fairness, the increased costs are essentially a swindle perpetrated on the ratepayers and would warrant a denial of the application and voiding the PPA altogether.

The Myth of Public Participation

Petitioners' Need Application asserts a high level of public participation.

This public participation was ongoing through May 2009, at which point the PPA with GREC LLC was approved unanimously by the City Commission. To date, there have been more than 43 community workshops and formal presentations to policymakers, including the GEAC, the City Commission's Regional Utilities Committee (RUC), the Alachua County Board of County Commissioners, and 27 televised City Commission meetings dedicated to Gainesville's long-term energy supply strategy. In addition, there have been several dozen less formal meetings with civic groups throughout the community. Table 8-1 provides a timeline of significant milestones in the process described previously.

See Document No. 09700-09, Need for Power Application, Section 8.2, pdf page 64. The Table with timeline is at pdf page 65.

Mayor Hanrahan made numerous references to a high level of public participation in her testimony. "This multiyear planning process was conducted in the public eye with well over a dozen City Commission meetings, workshops, and public forums conducted on the subject." (TR, Prefiled Testimony, pdf page 62, lines 13-15). "Our staff have projected that the GREC will reduce GRU's customers' costs in the long term. There may be some moderate short term cost increases during the early years of the project. These potential short term increases were presented to the City Commission and public during the City Commission meetings *leading up to the approval* of the GREC LLC PPA." (TR, pdf page 63, lines 3-7; emphasis added.) Several city commissioners testified similarly at the December 2009 Hearing and at the May 2010 Supplemental Hearing, and no doubt in good faith. However, the city commissioners were, we

are told, frequently privy to private consultations with GRU, and so could easily have lost sight of the fact that neither the “negotiations” nor GREC were discussed in public.

It is admittedly true that there have been many meetings discussing the city’s future energy needs that included the public, but only *one* such meeting could have focused on GREC because the contract had already been signed by GRU before the project was disclosed to the public. GREC was a *fait accompli* before the public could even conceive of questions to ask.

An examination of Petitioners’ own time line of critical decisions confirms that there were no workshops to provide citizens information about GREC or its predecessor project. There were two city commission meetings that discussed the original Nacogdoches proposal (in April 28 and May 12, 2008), and only *one* city commission meeting that considered GREC: the May 7, 2009, meeting, a full year later, wherein GRU announced having signed a contract and informed the public that the terms were changed from the proposal previously approved by the commission a year ago. There were no public meetings “leading up to the approval of GREC” that discussed short-term or long-term increases, or even benefits, of GREC. (See Exh 86, 03742-10_part5.pdf, pdf page 1301, items # 32, 33, and 35 respectively.)

Petitioners’ time line, and the minutes of each of the three critical meetings confirms that American Renewables and GREC were *first* mentioned at the meeting of May 7, 2009, and only then was any information about the costs of GREC supplied. Even so, the information was confusing at best. (See 00473-10 Exhibits.pdf, pps. 162-201, pdf pps. 195-198;the exhibit is a power point presentation made by Petitioner’s witness Ed Regan at the May 7, 2009, meeting.) With no knowledge of the foundation for the calculations in the exhibit, no one could possibly evaluate the merit and credibility of the purported risks and effects on ratepayers’ bills. Nothing in the exhibits show the actual charges for power, the assessment for reimbursing GREC for

property taxes, the likely increase in the amount paid for the 10% utility tax, or how much will be charged simply to pay fixed costs to reimburse GREC for construction costs, O&M, etc..

Furthermore, the information provided failed utterly to account for the most critical change of all: the enormous increase in the capital cost of the plant.

The Nacogdoches proposal accepted by city commissioners on May 12, 2008, was for a twenty year PPA to build a 100 MW woody biomass generator on public land that would cost less than Three Hundred Million Dollars (\$300, 000,000) with a buy-out option after ten (10) years, with **“final prices fixed in the proposal.”** (See Exh 85, 03742-10_part5.pdf, pdf pages 1260 and 1261; this exhibit is a power point presentation made by Petitioners’ witness Ed Regan, Assistant Manager for GRU, dated April 28, 2008) Petitioner’s timeline does not show any subsequent public meetings regarding a biomass plant until nearly a year later on April 16, 2009 (Exh 86, Timeline, item#34), during which the commission approved a forest stewardship plan pertaining to the use of woody biomass for GREC.

Then on May 7, 2009 (Exh 86, item # 35), GRU told the commission that a contract had been signed with American Renewables (the same company as Nacogdoches Power, but with a different name) and some terms had changed from the proposal approved a year earlier in May 2008. The contract changes included an onerous buy-out option (which is confidential; see Section 27 of PPA), available only after thirty years (versus the ten years in the proposal) and a contract term of thirty years versus twenty years in the proposal. (See 00473-10 Exhibits.pdf, pps 162-201, pps. 166 & 175. This exhibit is a power point presentation made by Petitioner’s witness Ed Regan at the May 7, 2009 meeting.)

However, the most significant difference, *the additional Two Hundred Million Dollars* (\$200, 000, 000), bringing the cost to Five Hundred Million Dollars (\$500,000,000), was never explicitly stated. Instead, several slides were provided with minutiae about increased costs per MW or kW, and unspecified assertions about “unprecedented” increases in steel and construction costs from January to June 2008, but no information about such costs since that timeframe. In this crucial meeting, the GREC project was disclosed for the first time in the *afternoon* session, not in the evening session which is more heavily attended and more likely to be seen on television by interested citizens home from work. The \$500 million price tag was only revealed in a newspaper article the next day, citing GRU staff as the source of information. (See 03742-10_part5.pdf, pps 311-312).

The same presentation made a lot of assertions about the benefits of the contract, but most of these would have also been a consequence of the first proposal since that included a 100 MW woody biomass generator, so it too would have been eligible for tax credits, would have created jobs, and would have reduced the city’s carbon footprint, etc. It also would have been \$200 million dollars cheaper.

Subsequent to that meeting there have been no discussions or opportunities for the public to scrutinize the terms of the contract, as Petitioners’ timeline shows, and Petitioners have offered no evidence to demonstrate otherwise. Nor has the public had any opportunity to receive more information beyond what was provided in the newspaper article of May 8, 2009, and in the heavily redacted contract. The redacted contract even redacted titles from the Table of Contents. (See Document No. 10821-09, filed October 23, 2009. The Table of Contents is on pdf pages 2-6.) A less redacted version became available to the public when the PSC posted a copy on January 14, 2010 (Document No. 00367-10). But facts critical to actually comprehending the

contract remain withheld under a claim of confidentiality for protection of allegedly proprietary information. See for instance Section 3.3 and 3.4, Production Tax Credit and Ad Valorem Taxes, redacted in the GREC document, only partially redacted in the PSC version; and Section 27, Purchaser's Option to Purchase Facility, pdf pps. 39-41. Then compare the terms revealed in the unredacted copy.

The GREC project under consideration before the PSC differs profoundly from the predecessor project proposed by Nacogdoches in cost and duration, and there are many critical details about payments, the conditions under which GRU may acquire GREC at the end of the first 30 years, taxes, and the terms of the fifty year lease (seemingly incompatible with the thirty year contract), among other things, none of which were ever before the public before the contract had been signed. The public/ ratepayers were given little information and afforded no meaningful way to express an opinion and possibly lobby their elected representatives.

We need no further evidence that the critical facts of the contract (the costs GRU must pay, the way GRU will be billed for these costs, the reasons for increasing the capital cost at the last minute, details related to GREC's corporate tax rate, onerous buyout provisions, or the GREC property taxes to be reimbursed by ratepayers) were withheld from the public than the fact that the Petitioners have successfully withheld them from the public during these PSC proceedings.

It strains credulity that the city commission could have been so cavalier about not providing the ratepayers and citizens of Gainesville with any opportunity to question the wisdom or necessity of such a significantly changed project the cost of which will encumber ratepayers for at least 30 years. It adds insult to injury that the Petitioners preen about having encouraging

public participation when they maneuvered to exclude the public until a contract was signed and the public was powerless to do anything about it.

Manifestly Unjust Increase in Costs without Substantiation or Justification

Market Changes: Elusive Steel and Construction Costs

As noted above, the financial terms of the GREC project are significantly different from the Nacogdoches proposal approved by the city commission in May 2008. The original cost had been stated as less than \$300 million, while the GREC project will be about \$500 million, *although the nature of the project has not changed.* GRU has entered into a PPA with GREC which will build a 100 MW generator using the same technology (a fluidized bubbling bed with SNCR/Baghouse) and using woody biomass as fuel. (See Exh 85, 03742-10part5.pdf, pdf page 1258, regarding the Nacogdoches proposal, and compare with Document No. 00367-10, Redacted PPA, pdf page 56, section 1.1 & 1.2.)

The initial explanations for the enormous increase in costs was provided by GRU in its May 7, 2009, presentation to the city commission when it announced that a contract had been signed with American Renewables. In a series of power point slides, Petitioners' witness Regan explained there had been "market changes" (See 00473-10 Exhibits.pdf, pps 162-201, p163 & 168). Then he explained that "unprecedented events in the power industry in 2008" had occurred (p173) including that "construction materials prices skyrocketed", and "equipment and construction cost rose" (page 173).

The only specific item identified as rising in cost was steel (p174). The presentation included one entire slide devoted to steel prices: "Steel Prices Increased 37% from January 2008 to June 2008"; "More Than 75% Of The Price Increase Occurred From March To June";

Construction Companies Have Reported Increases Of 30% -100% For Steel Products”.

Interestingly, no information was provided regarding steel or construction costs as of *May 2009* when GRU was making this presentation.

The foregoing was offered as justifying the increase in the contract cost from the original \$300 million to \$500 million, but additional information casts considerable doubt on the logic of GRU’s position. Interveners submitted evidence that showed data from both the U. S. Department of Labor, Bureau of Labor Statistics, and from the McGraw-Hill ENR (Engineering News Record), both of which provide highly regarded indices for costs of all kinds, including those affecting construction. (Exh. 90, 03742-10_part5.pdf, pdf pgs 1315-1318.) See in Exh. 90, pdf page 1316, the BLS Series Id. WPU1017, Group metals and metal products, Steel mill products, and the Producer Price Index (PPI) over the course of several years from 2000 to February 2010, for each month within those years. The numbers are not substitutes for dollars, but rather a percentage value relative to a base year. For our purposes, one need only know that there is a correlation between high PPI numbers and high costs, and similarly for low PPI numbers and lower costs. Petitioners have also acknowledged the status of these indices (See 09369-10Exh92.pdf, pgs 31-32)

Two graphs on the same page illustrate the rise and fall of steel mill products between December 2007 and February 2010. Our attention should be focused on the period between April 2008, when the Nacogdoches binding proposal was submitted, and May 2009 when the GREC contract was announced with its additional \$200 million price tag. The charts show clearly that, as GRU stated, steel prices did rise in early 2008. But the charts also show that steel prices plunged after August 2008, and in May 2009 were lower than in May 2008 when the Nacogdoches binding proposal was approved by the city commission.

The Nacogdoches proposal was received in April 2008, when steel prices were rising. So it stands to reason that Nacogdoches would have placed a bid that reflected such prices in order not to risk a commitment to a bankrupting proposal. The PPI was 209.7 in April 2008, whereas it was 153 in May 2009, appreciably lower. In fairness, one can say that the April 2008 PPI may not yet have been published, so Nacogdoches might have relied upon February or March numbers. As the chart shows, the February 2008 PPI was 186.6, and the March 2008 PPI was 196.9, still higher than the May 2009 PPI of 153, or the April 2009 PPI of 157, or the March 2009 PPI of 167.3.

Given the foregoing, it is difficult to credit GRU's assertion that the huge increase in the contract price for GREC was necessitated by an increase in steel costs.

Petitioners' witness Regan did insist at the May 3, 2010, Hearing that he had been referring to finished steel products. However, the BLS index introduced by Interveners is not for raw steel but a commodities index for steel products.

Witness Regan then suggested the inclusion of the slide on steel (STR-page 174) had been a scrivener's error either for using it or for not including information about steel prices subsequent to June 2008. That is an odd explanation for someone who has used the same power point presentation more than once, including before this Commission at the December 2009 Hearing where it was submitted into evidence.

The GRU presentation contained in 00473-10 Exhibits.pdf, pps 162-193, pps 166 & 175, and previously referenced above, contained general comments about construction costs also increasing dramatically (pdf pgs 168, 173, and 174). Interveners entered as an exhibit data and charts showing the McGraw-Hill ENR Building Cost Index for the Atlanta (Georgia) region

(Exh 90, pdf pages 1317-1318). The index is used as a reference for construction in the Southeastern United States and therefore is appropriate for Florida. The index favors Petitioners' position only slightly as it shows a rise in costs from April 2008 to April 2009 of 2.4%. However, there is still a lot of distance between 2.4% and a \$200 million increase to a \$300 million contract.

Despite interrogatories from Intervener Stahmer about steel costs, Petitioners did not provide any specific information by which to document GRU's claims about the need to increase the contract price. Petitioners' respondent, Regan, actually asserted that "it was never stated the revised costs for GREC were attributed to steel commodity prices." (Exh 92, pdf page 31-32). In that same response, Regan stated: "If one were to examine the U.S. Bureau of Labor Statistics, Producer Price Indexes, WPU114 series for general purpose machinery and equipment (major cost factors in power plants) the index will be seen to uniformly increase over the time in question." But that kind of equipment is steel commodities. Unfortunately, Petitioners did not submit an exhibit of the WPU114 series, perhaps because Regan's response does not claim that the WPU114 series was actually a factor in the increase of the contract price. One can easily access the information at the Department of Labor's website, and find that the PPI for that category did increase from April 2008 (189.3) to April 2009 (199.1). However, that is not a large enough difference to account for the additional \$200 million added to what had been a binding proposal.

Interveners, and fellow ratepayers are left wondering about all the mystery. If there is a legitimate reason for a \$200 million increase in the contract price for what had been promoted as a binding proposal, surely some documentation can be provided? And it would seem a totally appropriate inquiry by the people who will be saddled by the consequences.

Binding Proposal or Invitation to Talk?

Another tactic used by Petitioners has been to argue that the Nacogdoches proposal accepted in May 2008 was not truly a firm bid or binding. However, this assertion clashes with a bounty of written documentation, including documents originating with Petitioners.

Petitioners' Need Application refers to the Nacogdoches bid as a "binding proposal". Petitioners state: "The nine proposals received were shortlisted and the bidders were asked to submit *binding proposals*." (Document No. 09700-09, pdf p. 71.) In Table 8-3, the title of the far right column states: "Binding Proposals for Biomass Plant (Responses Received April 11, 2008." (at pdf p.63.) The Gainesville City Commission meeting Minutes for January 23, 2008, state:

The City Commission authorize the General Manager or her designee to invite the three top-ranked respondents to RFP 2007-135 to each submit a *binding proposal* for a biomass-fueled generation facility....(03969-10Exh92.pdf, p. 463.)

The Minutes for the March 24, 2008, commission meeting:

Evaluation of Biomass-Fueled Generation Facility Proposals (B) Staff is seeking approval for the factor weights to be applied in order to evaluate the *binding proposals* from the three finalists due April 11, 2008 in response to GRU's Request for Proposals for a Biomass-Fueled Generation Facility.(03969-10Exh92.pdf, p.514.)

The Minutes of City Commission meetings for April 28, 2008, and May 12, 2008, refer to:

Evaluation of Biomass-Fueled Generation Facility Proposals (B)Staff submits its evaluation of the *binding proposals* received from the three top-ranked respondents pursuant to GRU's Request for Proposals for a Biomass-Fueled Generation Facility for City Commission review. (Exh 92, at p547, and ps. 555-556 respectively).

A presentation, dated April 28, 2008, by GRU comparing the proposals refers to the Nacogdoches proposal as a PPA having a price that is "**Fixed in proposal**", in the category of "Plan to Set Final Prices". The other two bidders reference "Handy-Whitman construction index

from proposal to notice to proceed” (Covanta Energy) and “Handy-Whitman index for EPC component from PPA to notice to proceed” (Sterling Planet). Total cost listed for Nacogdoches was “>\$300,000,000”. Total cost for Covanta was” \$267,500,000”, and for Sterling Planet, “>\$70,000,000.” (See Exh 85, 03742-10_part5.pdf, ps 1249, 1257, 1260, and 1261.)

On May 7, 2009, the City Commission meeting Minutes state:

Evaluation of Biomass-Fueled Generation Facility Proposals (B):

On May 12, 2008 the City Commission authorized the General Manager to negotiate and execute a purchased power agreement (PPA) for the output of a nominally 100 mega-watt (MW) net power plant, fueled with biomass and located on the Deerhaven Power Plant site. Negotiations have been successfully concluded, but because of *adjustments* to the initial proposal to reflect changing fuel prices, demand for electricity, and power plant construction costs, the General Manager has decided to advise the City Commission of these negotiated changes, their economic implications and to submit the executed PPA to the Commission for final approval.

Exh 92, p.584[emphasis added].

Contrary to the testimony of Mr. Regan, nothing in the above description suggests that the contracted for services have changed from what they were in 2008. “ First of all, we restructured all the pricing elements to our benefit.” (STR- p97). GRU has yet to explain how increasing the contract costs by \$200 million inures to “our” benefit. Perhaps I misapprehend who is included in “our”. The following exchange is Intervener Stahmer asking Mr. Regan questions (STR-88-89):

Q: And was the Nacogdoches power plant, as seems to be indicated here, going to be about \$300 million, as the proposal had been described that evening?

A. As the person who prepared this particular slide, I do not believe that we obtained that number from Nacogdoches, nor did we obtain a number from Sterling Planet, *but we just estimated something* by looking at our sources of information for the purposes of estimating property taxes. I

don't believe this is a number provided to us. *We have never actually gotten a firm number on what this plant will cost to build.*

Q. But as I understood it, so correct me if I'm, But as I understood it, so correct me if I'm wrong, what was being discussed during those meetings of April 28th and May 12th were the *firm bid proposals* from these companies.

A. *Right*, but they were not bids for us to self-build the units. These three were all bids to provide us with power purchase agreements, and that's why they're summarized in this manner.

Intervenors still find it puzzling how a binding proposal that is also acknowledged to be a “firm bid” resolves into a summary dollar amount dreamed up by a bureaucrat who has asserted to his mentors the benefits to be derived from the \$300,000,000 “fixed in proposal” project he promoted in a fifty-five page document, promising to follow through on their choice, but deciding that it would be in everyone’s benefit to increase the price by another \$200,000,000. In short, Mr Regan’s testimony is not credible. For whatever reason, the parties decided to go for more, and have declined to provide any substantiation for their over-extended reach.

Granted it may be the responsibility of the city commissioners who are also the utility’s trustees to take the initiative and re-establish reason in their realm, but it is equally appropriate for ratepayers to petition for redress.

It has already been demonstrated that Petitioners have not pursued the GREC project as openly as they aver, and their rationales do not stand up to scrutiny. The quixotic claims about making multi-million dollar contracts on behalf of a public entity without paying attention to the minor details about a couple of hundred mill cannot be harmonized with serious professionals

unless their profession has been misidentified. And such behavior should reveal to the Commission parties who are not to be granted deference.

RESPECTFULLY submitted this 14^h day of May, 2010.

s/ Paula H. Stahmer, *pro se*

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CERTIFICATE OF SERVICE

I, Paula H. Stahmer, hereby certify that a true and complete copy of the foregoing has been served on the following via electronic mail, United States Mail*, or by hand delivery+ on March 16th, 2010:

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