

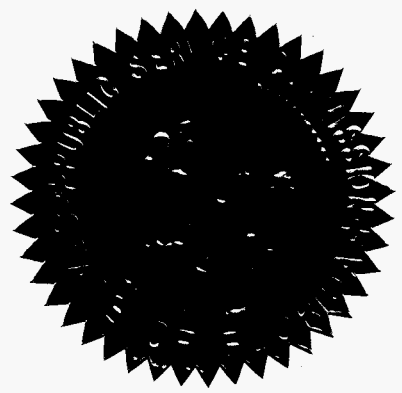
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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: SPECIAL AGENDA

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT
COMMISSIONER BEN A. "STEVE" STEVENS III

DATE: Thursday, May 27, 2010

TIME: Commenced at 11:00 a.m.
Concluded at 1:48 p.m.

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

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

DOCUMENT NUMBER - DATE

04567 JUN-22

FPSC-COMMISSION CLERK

P R O C E E D I N G S

1
2 **CHAIRMAN ARGENZIANO:** We'll call our special
3 agenda to order. Good morning. And, Commissioners and
4 participants, today it is limited to staff and
5 Commissioners only, of course. And we'll start with our
6 preliminary matters and move forward.

7 **MR. SAYLER:** Good morning, Madam Chairman. My
8 name is --

9 **CHAIRMAN ARGENZIANO:** I was going to look over
10 there. I forgot you were over here.

11 **MR. SAYLER:** Good morning, Madam Chairman. My
12 name is Erik Sayler with Commission legal staff.

13 For the preliminary matter this morning, we
14 have an emergency motion to reopen the record and take
15 official recognition of the new EPA rule as it relates
16 to the prevention of significant deterioration in Title
17 V, Greenhouse Gas Tailoring Rule.

18 Staff -- both of the intervenors filed a
19 motion on Monday, they filed an amended motion on
20 Tuesday, the utility responded Wednesday morning, and
21 nobody has requested oral arguments and staff is not
22 recommending that oral arguments be granted at this
23 time.

24 Staff's recommendation on the motion is to
25 deny for the following reasons: One, the notice or the

1 motion for taking official recognition is untimely and
2 improper at this juncture of this proceeding,
3 potentially prejudicial to the utility if notice was
4 taken at this time, and, quite frankly, it's not
5 relevant to this proceeding, if we were to get to the
6 merits of the rule.

7 As far as the motion for reopening the record,
8 it doesn't satisfy the requirements for reopening the
9 record, which are, essentially, a change in
10 circumstances or some new evidence. And, therefore,
11 staff recommends that we deny their motion.

12 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you, Madam Chairman.
14 I just want to speak on the pending motion in two
15 regards. First, I'll address the request for the
16 Commission to take official recognition. Again, I think
17 the request wasn't timely; however, I do disagree with
18 staff that the document in question is highly relevant,
19 although it is speculative at this point, to the extent
20 that the proposed rule is not yet final.

21 You know, I'd like to look specifically at the
22 statutory requirements that enable the Commission to
23 consider matters which may be judicially noticed, but in
24 this case it would be official recognition, an
25 administrative law function. The recommendation speaks

1 to Florida Statute Section 90.202. If you look at (3),
2 contents of the Federal Register, it's my understanding
3 in talking with staff yesterday that the proposed rule
4 is pending publication in the Federal Register. But
5 moreover, looking at Subsection 5, Official Actions of
6 the Legislative, Executive, and Judicial Departments of
7 the United States and/or any state, territory, or
8 jurisdiction of the United States, it would seem to me
9 that promulgating a rule under delegated authority
10 through the executive branch that the EPA has taken some
11 form of official action. It's not yet final, but I
12 think that that could be used as a basis for discussion
13 as to why the Commission may want to take the step of
14 granting official recognition to the documents
15 requested.

16 As to the issue of reopening the record, I am
17 not in favor of reopening the record. To the extent
18 that it would be prejudicial to the parties, the motion
19 was untimely, and, again, it is still speculative. I
20 believe that the staff recommendation addresses
21 environmental regulation sufficiently as to warrant not
22 reopening the record. And I would think that that would
23 be my position in terms of granting official recognition
24 for the documents, subject to further discussion at
25 bench, denying the motion to reopen the record for a

1 limited purpose, and move forward to making a decision
2 on the merits today here at bench.

3 Thank you.

4 **COMMISSIONER EDGAR:** Madam Chair.

5 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

6 **COMMISSIONER EDGAR:** I'm sorry, I had a very
7 difficult time hearing. Did you say that there was a
8 condition, that under a certain condition you would be
9 interested in taking official notice? Again, I was
10 really having difficulty hearing you.

11 **COMMISSIONER SKOP:** Thank you, Madam Chair.

12 I'll just restate what I previously stated.
13 To the extent that staff, on the issue of official
14 recognition, has denied or recommended the denial of
15 taking official recognition of the proposed EPA rule,
16 again, I recognize that the request was untimely. I do
17 disagree, however, with the staff characterization that
18 the document in question is not relevant. In fact, it
19 is highly relevant, although it's not in the evidentiary
20 record.

21 The proposed rule is directly on point.
22 However, it is speculative at this point because it's
23 not a final rule. It's still subject to being
24 protested. So in terms of granting official
25 recognition, I believe staff relied on Florida Statute

1 Section 90.202, Subparagraph 3, which provides matters
2 which may be judicially noted, which is permissive
3 recognition by the Commission. And in this case, since
4 it is an administrative law matter the proper term
5 instead of judicial notice it would be official
6 recognition.

7 It is my understanding in talking to staff,
8 and, again, I'm not so sure that they have all of this
9 fully definitized, but the proposed rule, I think, is
10 pending publication in the Federal Register which means
11 the next issue, I think, of the Federal Register it may
12 come out. Again, I would like to get some more clarity
13 on that. But that, you know, is one of the criteria,
14 but if you look at Criteria 5 it says official actions
15 of the Legislative, Executive, and Judicial departments
16 of the United States and of any state, territory, or
17 jurisdiction in the United States. I believe that the
18 EPA exercising its rulemaking authority as properly
19 delegated is, you know, taking official action when it
20 promulgates a rule. And I think that that would
21 provide, in light of 5, a basis should the Commission
22 choose to do so of taking official recognition of that
23 document.

24 Again, the motion is untimely, but the
25 document is highly relevant, but the rule is speculative

1 at this point to the extent that ultimately it may be
2 amended years from now or it may be protested. I can't
3 say one way or another. But, again, I think it's worthy
4 of discussion as to whether the Commission should take
5 official recognition on the merits of the request.

6 With respect to the motion to reopen the
7 record, I am not in favor of granting that motion. We
8 have prepared an evidentiary record as the basis for a
9 decision, and, you know, reopening the record to discuss
10 the proposed rule is tantamount to speculative at best.
11 And, again, looking at the staff recommendation, it
12 clearly identifies the changes in the environmental
13 regulations which may or may not occur, and that's the
14 substance of the staff recommendation that we will get
15 to later.

16 So, in summary, I would potentially be in
17 favor of granting official recognition of the document
18 noting that it is untimely, but relevant and still
19 speculative. I would not be in favor of granting the
20 motion to reopen the record, and I look forward to
21 moving forward and deciding the case on the merits
22 before us today.

23 Thank you.

24 **CHAIRMAN ARGENZIANO:** Go back to Commissioner
25 Edgar and then Commissioner Klement.

1 **COMMISSIONER EDGAR:** Thank you.

2 And thank you for that further elaboration for
3 my benefit. So when I thought I heard you say earlier
4 that you, perhaps, had an interest in this Commission
5 taking official recognition conditioned upon something,
6 that was a mishearing on my part, because I did not hear
7 conditioned upon, is that correct?

8 **COMMISSIONER SKOP:** Yes. It's not conditioned
9 upon anything. I think it's at the sole discretion of
10 the Commission as to the taking of permissive official
11 recognition pursuant to the statutory requirements. And
12 arguably this comes within the scope of those statutory
13 requirements, assuming how stringently or liberally the
14 requirements would be construed.

15 Previously, as the hearing officer, I denied
16 official recognition on the basis that it did not meet
17 statutory requirements, but this one is not as clear
18 cut, which is why I think it is appropriate for the
19 Commission as a whole to consider the request,
20 notwithstanding the fact that the request is untimely in
21 light of the relevance and the statutory requirements
22 which would allow the Commission to take official
23 recognition of the document. I don't feel that it's
24 necessarily prejudicial to the parties by taking
25 official recognition, but, again, I will leave that to

1 the bench. Thank you.

2 **COMMISSIONER EDGAR:** Okay. So when you said
3 that you believe that the proposed or the noticed EPA
4 regulation is, in your words, highly relevant at this
5 time, are you telling us that it is your opinion that
6 the proposed regulation is highly relevant to our
7 requirements and deliberations vis-a-vis issuing or
8 denying a need determination, or highly relevant should
9 this proposed project move forward to the next steps in
10 the additional permitting and citing process?

11 **COMMISSIONER SKOP:** Without getting into the
12 merits of the discussion, again, the relevance stems to
13 the proposed EPA rule as it pertains to accounting for
14 the greenhouse gas emissions from a biomass plant, and
15 under the proposed rule that the EPA, I think, has
16 promulgated, and correct me if I'm wrong, staff, because
17 I have had limited time to review this, but it is my
18 understanding that biomass combustion will not be
19 exempted from greenhouse gas requirements under the
20 proposed rule.

21 **MR. ELLIS:** That would be correct.

22 **COMMISSIONER SKOP:** Thank you.

23 **COMMISSIONER EDGAR:** I'm going to try again,
24 just because I didn't hear an answer to my question.

25 **COMMISSIONER SKOP:** Well, I'm getting --

1 **COMMISSIONER EDGAR:** When you say it is highly
2 little relevant and, therefore, you are proposing that
3 in this proceeding today that we take official
4 recognition because you believe the document or the
5 regulation as proposed is highly relevant, what I'm
6 trying to understand is do you believe that that highly
7 relevant, in your opinion, is part of our deliberations
8 and decision today?

9 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you, Madam Chair.

11 Commissioner Edgar, I don't know how to answer
12 your question other than, you know, I have reviewed the
13 pleading, I've reviewed the relevant pages of the
14 proposed rule. It does seem to be directly on point to
15 some substance of the staff -- directly on point to the
16 substance embodied within the staff recommendation.
17 However, at this point the rule is still not final
18 subject to being amended years from now, so it's
19 speculative. So, again, taking official recognition is
20 within the purview of the Commission, should it choose
21 to do so pursuant to statutory requirements. And, you
22 know, I think that, you know, hopefully that explains my
23 position. I think each of us as individual
24 Commissioners have to look at the pleadings and make our
25 own decisions.

1 **COMMISSIONER EDGAR:** I still am unclear as to
2 the meaning of the term highly relevant that you have
3 used a couple of different times. Madam Chair, thank
4 you, and I would like to hear from the others, and then
5 I may have some questions for staff.

6 **CHAIRMAN ARGENZIANO:** Certainly. Commissioner
7 Klement.

8 **COMMISSIONER KLEMENT:** Thank you, Madam Chair.
9 I, also, Commissioner Skop, are not clear on what your
10 intent is in making this -- to grant the motion, to
11 propose granting the motion to take official action but
12 not be part of the official record. I don't understand
13 what -- how that would affect today's discussion of the
14 merits of the case. If it can't be part of the official
15 record, what's the point of discussing it, or
16 recognizing it?

17 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

18 **COMMISSIONER SKOP:** Thank you, Madam Chair.

19 Commissioner Klement, I guess to your question
20 as far as reopening the record, that would be the third
21 time that this record has been reopened. Obviously the
22 uncertainty regarding future or pending environmental
23 regulation is well documented and well known within the
24 existing staff recommendation. I think that my thought
25 behind the Commission perhaps taking official

1 recognition of the document in question is that the
2 petition specifically referenced and cited to two pages
3 within the EPA rule that specifically address how the
4 emissions from biomass plants may be regulated to the
5 extent that they may or may not be exempt, but in the
6 proposed rule they are not exempt from some of the
7 requirements. And so it would seem to me, and, you
8 know, taking official recognition is not in itself a bad
9 thing, it is just the Commission saying we have been
10 asked to do something. We are aware of facts known to
11 us that the EPA has promulgated a rule which at some
12 point will be published in the Federal Register, so I
13 don't think it's harmful to take official recognition of
14 the document.

15 I think the document does have relevance to
16 the need determination as a whole, but the untimeliness
17 of the petition is what leads me not to reopen the
18 record, whereas taking official recognition is at the
19 complete discretion of the bench, and I don't feel to be
20 prejudicial or harmful to the proceedings as a whole
21 here. And I do have, I think, a way of addressing the
22 concerns not related to this, but within the scope of
23 discussing the staff recommendation as to whether the
24 Commission approves the need determination. You know, I
25 will have some comments in relation to matters that I

1 have previously stated on the record during our last
2 bench discussion. Hopefully that clarifies.

3 **COMMISSIONER KLEMENT:** Thank you.

4 What I hear you saying is that you want it
5 officially acknowledged that we recognize this request
6 by the intervenor, but still go ahead with consideration
7 of the merits of the case.

8 **COMMISSIONER SKOP:** Absolutely. I think
9 recognizing this document, you know, allows the
10 Commission to at least take notice that we are aware of
11 it, although it was untimely filed. The concern as I
12 understood the petition is that this rule, I think, was
13 issued after the last evidentiary hearing. I don't have
14 the date, but I think from memory it was May 13th or
15 14th. I was right. Paragraph 3 of the petition on Page
16 2 states that on or about May 13th or May 14th, the EPA
17 announced its newly enacted rule. So, again, whether we
18 take official recognition or not, either way it doesn't
19 hurt the corpus of the proceeding before us here today.

20 **COMMISSIONER KLEMENT:** Okay. Madam Chair, one
21 more. I would just like to point out in regard to the
22 request that much of the GREC's case for the fiscal
23 feasibility of this project is based on the possibility
24 of legislation coming forward for greenhouse gas
25 emission, cap and trade, or some other thing. So it's

1 almost predicated upon future actions by some governing
2 body, the Congress perhaps.

3 **CHAIRMAN ARGENZIANO:** Thank you, Commissioner
4 Klement.

5 Commissioner Stevens.

6 **COMMISSIONER STEVENS:** Thank you, Madam Chair.

7 I'm not exactly clear where Commissioner Skop
8 was going, but after reading staff's recommendation and
9 them spending a little time with me this morning, I'm in
10 favor of staff's recommendation that we deny the request
11 in their first recommendation, and in the second
12 recommendation deny the request to reopen the record.
13 That's where I am, and then we can move on with the
14 other issues.

15 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Thank you, Madam Chairman.

17 And to Commissioner Stevens' point, you know,
18 I certainly respect that. I think that what was a
19 concern to me and plead in the pleading for official
20 recognition was Page 420 of the EPA document. And
21 basically it really did not take a position to
22 exemptions for biomass combustion or emission, so I
23 think that without getting into the merits, you know,
24 assumptions were made in the case that will come before
25 us later. And, again, this does have some bearing,

1 although it's not final, on some of the assumptions,
2 underlying assumptions.

3 **COMMISSIONER EDGAR:** I'm sorry, there is a
4 case that is going to come -- a different case that you
5 are saying this impacts? I'm not understanding.

6 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

7 **COMMISSIONER SKOP:** And, again, Madam Chair, I
8 don't know how to respond. I mean, I'm just trying to
9 articulate the pleadings. Obviously I have read them
10 thoroughly, and I'm trying to adjudicate based on the
11 legal merits of the pleadings before us. And so it,
12 again, seems to me that, yes, the request for official
13 recognition was untimely, the subject matter that is
14 being requested to be recognized is relevant, but at
15 this point it is speculative. So, again, my position is
16 certainly we're five individual Commissioners, but I
17 would be in favor of granting the request for official
18 recognition, but denying the request to reopen the
19 record. Thank you.

20 **COMMISSIONER EDGAR:** A question for staff.

21 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

22 **COMMISSIONER EDGAR:** Thank you.

23 It has been a number of years since I've
24 worked on these types of projects and need
25 determinations in the later stages, in fact prior to my

1 being here. So, to staff, realizing that if this
2 Commission were to by majority vote approve the granting
3 of the need request today, there would be other steps in
4 the process, and that's what I want to make sure I'm
5 saying right, and then ask you to elaborate on. There
6 would be a requirement whether or not for DEP to still
7 look at other permitting requirements, including air
8 emissions and the relative necessary requirements under
9 both federal law, and state law, and local law, and then
10 that action and/or recommendation would go forward to
11 the Governor and Cabinet by virtue of the Power Plant
12 Siting Act sitting as the Power Plant Siting Board, and
13 then they in that capacity would have the opportunity
14 and the responsibility to look at all before making
15 their decision. Is that accurate, and if it would be
16 helpful to elaborate on any of that or clarify, please
17 do.

18 **MR. SAYLER:** Yes, Commissioner Edgar, you're
19 correct. If the Commission approves it today, it will
20 go before the DEP for application for their air permit,
21 and if they receive their air permit prior to
22 January 2nd, 2011, under the grandfathering provisions
23 within the EPA rule, which the intervenors are asking us
24 to take official recognition of, they would be
25 grandfathered in under the rule. I gained this

1 information through looking at the rule, but also having
2 several conversations with Howard Hoffman, who is the
3 attorney with the General Counsel's Office of the EPA
4 who worked on this rule, and he explained to me
5 explicitly that there are grandfathering provisions that
6 if they hit all of their targets and get their air
7 permits on time, they will be grandfathered in under the
8 rule and this rule would not apply to them.

9 I also had another conversation with Juan
10 Santiago who worked on the rule on the staff side, and
11 he also explained to me that, yes, they would come in
12 under the grandfathering provisions. However, he also
13 provided a further nuance, which is if later on during a
14 number of years down the road they do some sort of
15 change to their permit, they maybe have an upgrade or
16 something along that line, they would be required to --
17 they would then come under the jurisdiction of the rule.

18 The rule just requires them to do some sort of
19 reporting requirement under the rule. However, the
20 effect of delay at this juncture would, in effect, make
21 them subject to the rule, whereas they have the
22 possibility of being grandfathered in under the rule if
23 they can get the air permit on time.

24 With regard to the effect of taking official
25 recognition, my understanding, and I would turn to my,

1 Assistant General Counsel, or Deputy General Counsel if
2 I make a misstatement, but the effect of taking official
3 recognition is to, in a sense, put it into evidence,
4 because then the parties can then rely upon it for
5 appellate purposes or things of that nature. And I
6 would also say that, yes, this rule is highly relevant
7 to the next proceeding before the EPA, but then the EPA
8 or the DEP would then have to make that determination
9 and go from there.

10 **COMMISSIONER EDGAR:** Thank you. Maybe another
11 question, depending. If, and I do say if, we were to
12 take the action today to grant the request for official
13 recognition in lieu of judicial notice as Commissioner
14 Skop has suggested, how does that impact the evidence in
15 this record, realizing that the parties would have not
16 had the opportunity to question witnesses, nor would the
17 staff have had time during the normal and supplemental
18 hearing process that brought us to today?

19 **MR. SAYLER:** Commissioner Edgar, it is my
20 understanding that if the Commission were to take
21 official recognition of it, it would have a minimal
22 impact on staff's recommendation, but I would have to
23 turn to Phillip Ellis to speak to that. But, here
24 again, we are getting more to the merits.

25 **COMMISSIONER EDGAR:** And that's getting more

1 and more speculative, I think, probably, so I'll leave
2 it at that unless, Ms. Helton, there is something that
3 you need to --

4 **MS. HELTON:** I think it would confuse the
5 record a little bit if we were to take official
6 recognition today, because I'm not sure what we would
7 be -- what your role would be in using that information.
8 And it also recognizes due process concerns for me. I
9 mean, I think Chapter 120, when you look at what it says
10 about taking official recognition, I think it's pretty
11 clear that when official recognition is requested, the
12 parties shall be notified and given an opportunity to
13 examine and contest the material.

14 Well, here the record has been closed. GRU or
15 GREC has not been given an opportunity to contest the
16 material before you in the course of the evidentiary
17 proceeding.

18 **COMMISSIONER EDGAR:** Thank you.

19 I do, Commissioners, have some concerns under
20 due process. Due process under an orderly process
21 recognizing, of course, as we all know, that a second
22 bite at the apple was granted for a variety of reasons.
23 And I also do believe that realizing the steps that this
24 project is in the process, and that there are sister
25 state and federal agencies who, I believe, this noticed

1 rule falls more within their purview and authority to
2 review and analyze and reach decisions. I am
3 comfortable with the staff recommendation with all of
4 that said, but I am glad to have had the opportunity to
5 think it through and talk about it.

6 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you, Madam Chair.

8 Two questions to staff, to the extent that I
9 think some comments were made. Is staff suggesting that
10 the petitioners intentionally misrepresented the
11 pleading to the extent that this is not relevant at this
12 stage of the proceeding?

13 **MR. SAYLER:** No, Commissioner Skop, I do not
14 believe that the petitioners intentionally
15 misrepresented. It is over a 500-page document that was
16 recently published, and it is quite voluminous and has
17 many interplays and ins and outs. And for that reason
18 is the reason why I called the EPA directly to find out
19 how this -- potentially if it would affect this
20 proceeding, and I was assured by two different persons
21 that so long as the facility received its air permit
22 timely, then the rule would not effect.

23 However, the intervenors are quite correct
24 that biomass is not excluded from this rule, and the EPA
25 spent about 20 pages elaborating the pros and cons and

1 essentially stated that they will reevaluate whether
2 they would regulate biomass under the carbon emissions
3 at a future date. And in my conversation with one of
4 the scientists with the EPA he said that they have
5 another practice group currently working on it, and they
6 decided not to include it in the rule at this juncture
7 because it would just continue to make this rule even
8 more unwieldy and cumbersome.

9 **COMMISSIONER SKOP:** Okay.

10 In taking the step of speaking with the EPA,
11 did you memorialize their comments either via affidavit
12 or through a deposition?

13 **MR. SAYLER:** No, I didn't, other than I made
14 some written comments in a notepad, and I have a
15 voicemail from Howard Hoffman stating that GRU/GREC, if
16 they received their permit timely, would then be exempt
17 from the rule. However, that is something that is just
18 saved in my in-box, and I will leave it at that.

19 **COMMISSIONER SKOP:** And I think when you
20 previously were addressing Commissioner Edgar's comments
21 you stated that they possibly may be exempt from the
22 rule. You don't know that for certainty, do you?

23 **MR. SAYLER:** That is correct. Well, as it was
24 put to me, if they get their required air permit from
25 DEP timely, before January 2nd, 2011, they will be

1 exempt. If they don't get their air permit by that
2 time, then they would be subject to the reporting
3 requirements of the rule, and also any further future
4 regulation, however the EPA decides to regulate biomass,
5 if they decide to regulate biomass, and that in itself
6 is speculative, yes, sir.

7 **COMMISSIONER SKOP:** Okay. And then just one
8 final question, and then, Commissioners, I'm ready to
9 move on, however the Commission decides, because I think
10 that the issue before us today can be adjudicated and my
11 concerns could be addressed via another mechanism. But
12 with respect to a question from the bench, I think staff
13 indicated that this document or this proposed rule would
14 be highly relevant to the next proceeding. To the
15 extent that the relevance is in play as it appears to
16 the Commission's discretion to take official recognition
17 of a document that obviously exists out there that is
18 known to this Commission, it has been provided in a
19 pleading and responded to by the petitioners. Does not
20 the financial viability of this project turn in large
21 part on whether biomass emissions are exempted under
22 greenhouse gas rules?

23 **MR. SAYLER:** For all biomass projects in
24 general, yes, sir. For this particular one, it's
25 whether or not they get their grandfathering.

1 **COMMISSIONER SKOP:** All right. Thank you.

2 **CHAIRMAN ARGENZIANO:** Commissioner.

3 **COMMISSIONER KLEMENT:** Thank you.

4 To Commissioner Edgar's last point about the
5 issue of air quality emissions, however we characterize
6 it, is really in the jurisdiction of other state and
7 federal agencies rather than ours. That is what I was
8 given to understand during the gathering of the record
9 in hearings. Am I correct here, Mr. Sayler?

10 **MR. SAYLER:** Yes, Commissioner Klement.

11 **CHAIRMAN ARGENZIANO:** Are you finished,
12 Commissioner Klement?

13 Commissioner Skop.

14 **COMMISSIONER SKOP:** And I think the corollary
15 point, Commissioner Klement, is the extent that, yes,
16 greenhouse gases are, in fact, regulated outside of the
17 state by federal agencies. But in terms of the
18 financial viability of the project, as we will get into
19 in the staff recommendation, there are key assumptions
20 made regarding how environmental regulations will affect
21 the financial success of this project. And the document
22 here where they are not exempting greenhouse emissions
23 then becomes relevant, which is why I'm thinking, you
24 know, official recognition may be warranted.

25 **CHAIRMAN ARGENZIANO:** Commissioner Stevens.

1 **COMMISSIONER STEVENS:** If the Commission is
2 ready, I'll be glad to make a motion to accept.

3 **CHAIRMAN ARGENZIANO:** Right before you do
4 that, I just want to -- my comment is my concern. I
5 have several concerns, but what my main concern is is
6 due process. And I heard Ms. Helton talk about that a
7 little bit, but to me that's what -- whether I agree
8 with the relevancy, and I do have a real problem with
9 the economic uncertainties, and I think it is relevant
10 to a certain degree, but my main concern is the due
11 process issue. And everything else could be perfect or
12 it could be that it should be taken into consideration,
13 but if there is a due process issue, could you just --
14 once again, talk to me about that issue as far as due
15 process.

16 **MS. HELTON:** The way I think about due process
17 is, you know, notice and an opportunity to be heard.
18 Here GREC/GRU did not have notice that the intervenors
19 wanted to have you take official recognition of this
20 document until after the record had closed. I think
21 they filed it on Monday, so Monday of the week that you
22 were going to be making your deliberations and deciding
23 the matter. So the notice is late, the record is
24 closed, they haven't had -- GRU hasn't had any
25 opportunity to cross-examine anybody about it, to test,

1 you know, where the speculativeness, if any, of it, to
2 brief you on whether they think you should take it into
3 account in making your decision. I think it raises true
4 concerns, in my mind, about how you are supposed to use
5 this information if you do put it into the record. So
6 that is why I am concerned about GRU's due process if
7 you were to take official recognition of this
8 information.

9 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you.

11 To Ms. Helton, is there a difference between
12 reopening the record and taking official recognition
13 just as a ministerial act?

14 **MS. HELTON:** Well, I think that in the normal
15 course of matters, you don't have to worry about whether
16 you reopen the record or not when you take official
17 recognition, because the record is not yet closed. You
18 typically don't -- or I have never seen us take official
19 recognition of anything when the record is closed, so I
20 think that it kind of goes hand-in-hand here. If you
21 were to take official recognition, I don't know why you
22 would do that without opening up the record and putting
23 it in there.

24 And that is another issue, also. I think
25 opening up the record is a big deal, and to do it at

1 this late date when I'm not sure -- I hear a lot of
2 discussion about the speculativeness of the information
3 that's at issue, notwithstanding whether it's relevant
4 or not, and so I just -- I haven't -- my gut tells me
5 that it's not the appropriate thing to do today.

6 **CHAIRMAN ARGENZIANO:** May I just enter this
7 one second, because I don't want to lose train of
8 thought, because I'm trying to really follow this
9 through. If it is late to open the record, is it
10 because of the rule that was promulgated -- was that on
11 the 15th?

12 **COMMISSIONER SKOP:** The 13th after the
13 hearing.

14 **CHAIRMAN ARGENZIANO:** Does that somehow play
15 into, you know, that it was a fairly recent decision, or
16 rulemaking I should say.

17 **MS. HELTON:** But it's my understanding, Madam
18 Chairman, and let me give this disclaimer, I'm probably
19 the person in the room that knows the least about what
20 is in the rule. The rule was originally noticed, and
21 what they call a NOPRA was issued in October, so the
22 concept of the rule has been around since the fall.

23 I guess it is the language, the 500 pages of
24 language that wasn't actually codified until just
25 recently and was identified that it would be published

1 in the Federal Register. But even the act of publishing
2 it in the Federal Register, even if you consider that to
3 be an official act of the EPA, that rule is still
4 subject to change. There's 60 days for affected persons
5 to take issue with the language of the rule, the
6 requirements of the rule. So even by publishing that in
7 the Federal Register, we don't know what the language
8 will be and the requirements will be at the end of the
9 day.

10 **CHAIRMAN ARGENZIANO:** And I understand that,
11 but doesn't that work the other way, also? It may not
12 change at all.

13 **MS. HELTON:** It may not change at all, and I
14 think that's the point, we don't know. But even if it
15 doesn't change at all, as I understand it, assuming all
16 works well, which I'm sure GRU is hoping that it does
17 and they get their air permit in time, then by the
18 language of the rule, or the language of the -- I'm not
19 sure if you call it a rule -- the draft rule at this
20 time, it doesn't apply to them. They are grandfathered
21 in. It does not apply to them is my understanding.

22 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

23 **COMMISSIONER SKOP:** Thank you. Again, the
24 ever changing realm of environmental regulations is
25 something that, you know, is a question at any given

1 point in time. However, you know, the assumptions in
2 the underlying need determination are predicated in
3 large part on what happens with those regulations. In
4 fact, if some of those regulations do not come forward,
5 then certain things don't materialize without getting
6 deeply into the case.

7 To Ms. Helton, you mentioned reopening the
8 record is typically not done, but we did it in this
9 case, did we not?

10 **MS. HELTON:** Yes.

11 **COMMISSIONER SKOP:** Okay. And by merely
12 taking official recognition of a rule that was
13 promulgated and issued subsequent to the last
14 evidentiary hearing, is that not making the Commission
15 aware of all the facts that are out there as they
16 develop? I mean, the staff recommendation is what it
17 is. We are not changing that. We are reopening the
18 record, but what harm can possibly come from recognizing
19 a promulgated rule?

20 **MS. HELTON:** The harm to me is what it says
21 about the process. The harm to me is the due process
22 rights of GRU have been potentially damaged because they
23 did not have an opportunity to brief you on the
24 relevance to the rule that you want to take official
25 recognition of.

1 **COMMISSIONER SKOP:** I'm not going to debate it
2 extensively, I mean, I just think it's at the will, the
3 discretion of the Commission whether they want to
4 recognize a document for potentially what the
5 promulgated rule may mean, you know, as it does not
6 relate to the substance of the decision here before us,
7 but I see no harm. Again, the record has been reopened
8 and that's unusual in itself. The petitioner has got a
9 second bite at the apple. We are here today. I'm
10 prepared to make a decision on the merits; but, again, I
11 do think there is some consideration that can be given
12 to recognizing a promulgated rule.

13 I do recognize that there was a notice of
14 proposed rule, but one could argue consistent with the
15 statutory requirements under Florida Statute 90.202(5)
16 that that was not yet an official action. When you
17 issue a rule, that's an official action, at least to me.
18 It can be construed that way, but, anyway, I'll just
19 leave it at that and we can vote this out.

20 **MR. KISER:** Madam Chairman.

21 **CHAIRMAN ARGENZIANO:** Yes, Mr. Kiser.

22 **MR. KISER:** Let me comment on just a couple of
23 thing when it regards the rules of evidence. As I was
24 taught in law school by one of the country's foremost
25 authorities on evidence, Mason Ladd, when we came to

1 this whole idea about what role do the rules of evidence
2 play in the overall scheme of our legal system, the
3 reason that the rules of evidence are what they are is
4 based upon the time honored practice of recognizing
5 things that you can rely on. Things that you can -- you
6 know, like the sun coming up every day and the moon
7 coming out at night and those sort of things. And that
8 the rules of evidence are set to grab those things that
9 people can usually rely on and base trust on. And that
10 is why when you have the hearsay rule there is, like, 26
11 exceptions. For example, that when a person is dying
12 and they make comments, it's an exemption to the hearsay
13 rule because people believe that when someone is dying
14 they're probably going to be pretty honest with what
15 they say.

16 Well, if you take a look at this particular
17 rule, and this is kind of what we are arguing about
18 right now over a pretty fine line, but what's a telling
19 thing to me and why the staff is putting so much
20 emphasis on due process is because as you examine
21 Florida Statute 90.201, for example, which we really
22 haven't talked about, the title of that is "Matters
23 which must be Judicially Noticed". And they list there
24 three things, and what they are telling you is that when
25 it comes to these three things these are pretty solid

1 things, and as a matter of providing due process a court
2 or a judicial body has to take recognition of these
3 items.

4 Then when you move to the next section, 2002,
5 it's titled "Matters to which may be Judicially
6 Noticed," and it goes on to say and it has a list of a
7 number of items that it is in your discretion. They are
8 not as solid of items that you can rely on as that first
9 group. It's a different category, and it's your
10 discretion whether or not you want to rely on.

11 And then when you go to Section 90.203,
12 "Compulsory Judicial Notice Upon Request," it says a
13 court shall take judicial notice of any matter in 90.202
14 when a party requests it, and -- and then goes on to
15 state when both sides have had plenty of time to review
16 it, and the whole proof of it can be tested, and you
17 have a chance to look at it. And Item 2 furnishes the
18 court with sufficient information to enable it to take
19 judicial notice. That right there says then you can --
20 you can also, if a party requests it, you can do it
21 provided those issues have been met. And the very point
22 that Ms. Helton has been making is those haven't been
23 met, and it's so significant that the statute
24 specifically cites those examples as to when you must do
25 it.

1 So what I would suggest to you, and why staff
2 is leaning so heavily on the proper handling of due
3 process is because this information doesn't rise to the
4 level that other items do. And that's why you have
5 discretion. And the fact that the parties haven't been
6 given time, the fact that it is speculative in nature is
7 what gives this body total discretion to say we're going
8 to include it and we're not. And I would suggest to you
9 that that is why we are emphasizing the due process
10 angle so firmly.

11 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you, Madam Chairman.

13 And to our General Counsel, to that point, the
14 petitioners responded to the intervenors' request in
15 this case, did they not?

16 **MR. KISER:** Yes.

17 **COMMISSIONER SKOP:** Okay. So is that not
18 having the opportunity to respond?

19 **MR. KISER:** I would say it was in name only,
20 but in terms of having real time to respond, et cetera,
21 no, in my opinion that doesn't meet the test.

22 **COMMISSIONER SKOP:** Thank you.

23 **CHAIRMAN ARGENZIANO:** Commissioners, do we
24 have a motion, or do you want to move forward? Any
25 other discussion?

1 Commissioner Klement? Commissioner Stevens?

2 **COMMISSIONER KLEMENT:** I don't have any.

3 **COMMISSIONER STEVENS:** Are you ready for a
4 motion?

5 **CHAIRMAN ARGENZIANO:** Yes.

6 **COMMISSIONER STEVENS:** I move that we accept
7 staff's recommendation to deny the request to take
8 official notice and to deny the request to reopen the
9 record.

10 **COMMISSIONER EDGAR:** Second.

11 **CHAIRMAN ARGENZIANO:** We have a second. Any
12 discussion on that? We are done with discussion.

13 All those in favor say aye.

14 (Vote taken.)

15 **CHAIRMAN ARGENZIANO:** Opposed?

16 Okay. That's adopted. Now we will move on.

17 **MR. ELLIS:** Good morning, Commissioners. My
18 name is Phillip Ellis with Commission staff. With me
19 today is Erik Sayler with the Commission's General
20 Counsel, as well as other legal and technical staff.

21 The item before you today is a determination
22 of need for the Gainesville Renewable Energy Center, or
23 GREC project, a 100-megawatt biomass plant in Alachua
24 County. The Commission previously heard this item at
25 the February 9th Agenda Conference, but GRU requested

1 the opportunity to file additional testimony to address
2 several concerns raised by the Commissioners. A
3 supplemental hearing was held on May 3rd. The main
4 topics addressed in the supplemental hearing were the
5 Commission's role regarding a need determination for a
6 municipal utility, risk mitigation measures, and fuel
7 availability and sustainability.

8 As discussed in Issue 7, the Commission's role
9 is to weigh the statutory criteria established in
10 Section 403.519, Florida Statutes, and render a
11 determination on the project as a whole. In this
12 instance, the utility involved is a municipality which
13 the Commission does not have rate-setting authority
14 over. Therefore, the Gainesville City Commission is
15 ultimately responsible for all rate impacts associated
16 with this project. Staff would note if this were an IOU
17 a recommendation might be different.

18 As discussed in Issues 2 and 4, the need for
19 the GREC project is based on a strategic consideration,
20 fuel diversity, not a conventional reserve margin
21 reliability analysis. As such, the GREC project is a
22 hedge and is more geared towards lessening the future
23 volatility of rates than overall cost savings.

24 Based on updated assumptions, the estimated
25 rate impact in 2014 for the GREC project ranges from \$3

1 to \$13 per month for an average residential customer.
2 This represents an improvement over the original
3 hearing. GRU during the hearing discussed possible
4 actions to mitigate risk including resale of existing
5 assets, long-term fuel contracting, and other measures.
6 If the projections presented at the hearing do not
7 materialize, then staff would expect GRU and the City of
8 Gainesville to respond accordingly in order to minimize
9 any adverse rate impacts.

10 Another item discussed at the supplemental
11 hearing was fuel availability and fuel sustainability.
12 The record in this proceeding contains multiple studies
13 which show there is an adequate supply of woody biomass
14 available to support the GREC project. While no
15 contracts have been signed, there are letters of intent
16 and GREC LLC continues to negotiate with suppliers. The
17 contracts also affords GRU with multiple protections
18 relating to potential higher fuel costs or lack of
19 availability of fuel.

20 In summary, after considering all of the
21 evidence contained in the record, staff continues to
22 recommend approval of the need for the GREC biomass
23 facility because the project should enhance the overall
24 reliability of the GRU system and can replace older less
25 efficient generation, satisfy a need for GRU to improve

1 its fuel diversity and supply reliability, promote the
2 development of renewable generation in Florida, and
3 become the most cost-effective alternative if pending
4 legislation regarding CO2 emissions is enacted.

5 Staff is available for any questions you may
6 have.

7 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

8 **COMMISSIONER SKOP:** Thank you, Madam Chair.

9 I just wanted to come out and say that I do
10 have a few questions, but I am in favor of the staff
11 recommendation. I would like some language placed in
12 the final order which I will get to later, but at the
13 appropriate time I would like to be recognized for a
14 motion regarding the staff recommendation. But two
15 questions to staff: With respect to the financial
16 viability of the project, this financial analysis that
17 was done, my first question is if there is no greenhouse
18 gas emissions legislation, the revised analysis shows a
19 negative \$56 million net present value over the life of
20 the project, is that correct, and can you explain that a
21 little bit?

22 **MR. ELLIS:** That would be correct. There are
23 two scenarios that staff looked at the
24 cost-effectiveness, the base case under current
25 environmental regulations and a regulated CO2 case.

1 Under the base case there are two scenarios; first,
2 assuming a full resale for the first ten years at
3 contract value, which assumes a \$41 million savings over
4 the 30-year life of the project. That is a net present
5 value. However, staff quotes the \$56 million market
6 price, which is based on the assumption that they would
7 be able to only receive market rates for the capacity
8 and energy.

9 **COMMISSIONER SKOP:** Okay. And to that
10 specific point, if biomass emissions, you know, do not
11 fall within greenhouse gas rules in terms of being
12 favorably treated, then the benefits that staff has
13 identified as a result of favorable carbon legislation
14 would not accrue to this project, is that correct?

15 **MR. ELLIS:** That would be correct. We used
16 the Waxman-Markey Bill, specifically, or rather GRU used
17 the Waxman-Markey bill in their analysis of the
18 cumulative present worth savings, and that results in
19 the \$448 million number.

20 **COMMISSIONER SKOP:** Okay. And then just one
21 final question in that regard. With respect to the
22 56 million in light of no greenhouse gas regulation and
23 the \$448 million, assuming conservative assumptions if
24 greenhouse gas legislation were enacted that favored
25 biomass, which is still uncertain at this point. Did

1 those numbers reflect the value of what happens if the
2 plant does not begin construction in time to capture the
3 benefit of the convertible investment tax credit? I
4 mean, do these numbers recognize that the rates will go
5 up if that convertible investment tax credit is not
6 captured?

7 **MR. ELLIS:** Not in this instance. There is
8 also a third case, but beyond full contract value and
9 market value there is also a delay case, which I believe
10 assumes market value. The total cumulative present
11 worth cost of that scenario over 30 years would be
12 approximately 92 million at market rate.

13 **COMMISSIONER SKOP:** Okay. And so with respect
14 to potential ratepayer impact under the two scenarios,
15 can you just briefly discuss what that might be?

16 **MR. ELLIS:** Under a delay scenario, in 2015
17 they assumed a one-year delay. At market price for the
18 contract, the rate impact would be \$13.29, and the full
19 contract if they would just be able to resell at full
20 contract value, the impact would be \$7.59.

21 **COMMISSIONER SKOP:** Okay. Thank you.

22 Madam Chair, with respect to my request to
23 make a motion at the appropriate time, I would like to
24 pass out a handout of some language I would like to be
25 expressly included in the final -- Commission's final

1 order that addresses risk management, and I'll explain
2 that at the appropriate time and yield to my colleagues.
3 Thank you.

4 **CHAIRMAN ARGENZIANO:** Thank you.

5 **COMMISSIONER EDGAR:** Madam Chairman, are we
6 going to -- I haven't even read this yet, but I will, of
7 course, here in a moment. Are we going to discuss this
8 now or are we --

9 **CHAIRMAN ARGENZIANO:** I think we should move
10 on to other questions, and then we can come back. As a
11 matter of fact, what we should do is take a few minutes
12 so that we can digest what this is, and then we will
13 take a few minute break and then come back to do this.

14 **COMMISSIONER EDGAR:** Thank you.

15 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Thank you, Madam Chair.
17 And to that point, again, I'm in favor of approving the
18 staff recommendation; however, I would like this
19 language to be considered to be expressly included in
20 our final order because I think it pertains to risk
21 management issues that need to be expressly addressed
22 that are not fully developed within the staff
23 recommendation.

24 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
25 Stevens.

1 **COMMISSIONER STEVENS:** I'm not -- I'm not
2 ready to go on all of staff's recommendations, so can we
3 take each issue one by one, please.

4 **CHAIRMAN ARGENZIANO:** I was just going to say
5 that. I think we would probably want to go
6 issue-by-issue, and if staff would start. Of course, we
7 have already taken up Issue 1. That is not on the
8 table. It's 2 to 7. So, staff. Thank you.

9 **COMMISSIONER EDGAR:** While we are doing it,
10 could we get additional copies of this to the staff over
11 to our left? I would appreciate that.

12 **CHAIRMAN ARGENZIANO:** To all of our staff,
13 please. Thank you.

14 **COMMISSIONER EDGAR:** And to the right.

15 **MS. HELTON:** Ms. Brubaker went to make some
16 copies.

17 **CHAIRMAN ARGENZIANO:** Okay. Thank you. And
18 on Issue 2?

19 **MR. ELLIS:** Issue 2 is the need for the power
20 plant based on electrical system reliability and
21 integrity, and in this instance, GRU does not have a
22 strict reserve margin need for capacity until
23 approximately 2023 when the Deerhaven 1 unit is retired;
24 however, the facility can improve their system by adding
25 additional baseload generation. The GRU system does

1 have a large amount of peaking -- combustion turbine
2 peaking units that they are retiring over the term of
3 the contract as well as slightly before, so it can
4 provide additional baseload capacity during outages,
5 especially the Deerhaven 2 unit which represents about
6 30 percent of GRU's capacity and about 50 percent of the
7 city's load.

8 **CHAIRMAN ARGENZIANO:** Commissioners, questions
9 on Issue 2? Okay. We'll move on to Issue 3.

10 **MR. ELLIS:** Issue 3, which begins on Page 12
11 of staff's recommendation, is the need for adequate
12 electricity at a reasonable cost, and this is highly
13 related to Issue 6, which discusses both the rate impact
14 as well as the cumulative present worth value of the
15 project over time.

16 In this instance, the cumulative -- the
17 economics of the project are somewhat uncertain based
18 upon carbon legislation. If the current environmental
19 laws and regulations continue, it does represent a
20 negative \$56 million loss net present value to GRU.
21 However, if specifically the Waxman-Markey legislation
22 which includes both carbon regulation and a RPS is
23 passed, they could benefit up to \$448 million net
24 present value.

25 **CHAIRMAN ARGENZIANO:** Commissioners? No

1 questions? Okay. We'll move on.

2 Issue 4.

3 **MR. ELLIS:** Issue 4 of staff's recommendation
4 is on Page 17, and it's the need for fuel diversity and
5 supply reliability. This is really the primary driver
6 of the GREC project. The GRU system is heavily
7 dependent upon coal and will continue to be so into the
8 future. They are currently projecting that by 2014 when
9 the facility would come on-line they would rely
10 73 percent upon coal which is burned only at a single
11 unit on the GRU system, Deerhaven 2. With the addition
12 of the GREC project they could reduce that to
13 approximately 51 percent and have a very large amount of
14 renewable energy on their system.

15 In addition to reducing coal and natural gas
16 usage, it reduces their CO2 emissions with the
17 assumption that biomass is considered carbon neutral. I
18 believe during the testimony it was stated that the
19 biomass emissions, assuming land vegetation, but
20 including diesel used for gathering fuel, et cetera, was
21 approximately 4 to 5 percent. I could be mistaken with
22 that number, but a very low percentage of a conventional
23 coal unit by comparison.

24 Also, they suggested in terms of supply
25 reliability that it would provide for them additional

1 modes of transport for fuel. Currently they are
2 dependent upon rail for coal for the Deerhaven Unit and
3 for a single pipeline for natural gas. So any
4 disruption either in the single rail line or the single
5 pipeline could result in them having insufficient fuel.
6 So this would provide an additional surface mode of
7 transportation using tractor-trailer trucks to provide
8 fuel for the GRU.

9 **CHAIRMAN ARGENZIANO:** Commissioner Stevens.

10 **COMMISSIONER STEVENS:** Have they had any
11 issues providing reliable service?

12 **MR. ELLIS:** Not at this time in terms of
13 meeting their capacity needs, but it's a question
14 somewhat of economics. The Deerhaven 2 unit has had a
15 few instances where it was off-line for some periods of
16 time. In 2008, I believe, they were completing an
17 emissions upgrade -- or 2006. But there was an
18 emissions upgrade of the coal unit, and during that
19 period of time they rely upon purchased power and
20 relatively inefficient natural gas units. So it's a
21 question of cost.

22 Replacement power for the project tends to
23 cost more than the coal itself, so they would like an
24 additional source of native generation that they would
25 be able to rely upon. In fact, they have several units

1 in 2008 that they ran at less than 1/8th of one percent.
2 I believe about 50 megawatts of combustion turbine
3 peaking, because they are using a contract they
4 currently have with Progress Energy for lower cost
5 baseload generation. So they are seeking additional
6 native supplies instead of having to rely upon purchased
7 power contracts for more economic fuel.

8 **COMMISSIONER STEVENS:** Thank you, Madam Chair.

9 **CHAIRMAN ARGENZIANO:** Any other questions,
10 Commissioners? Okay. We'll move on to Issue 5.

11 **MR. ELLIS:** Issue 5 on Page 21 of staff's
12 recommendation is whether there are any renewable energy
13 sources or technologies or conservation measures
14 reasonably available to GRU which might mitigate the
15 need for the project. This project is itself considered
16 a renewable under Florida Statutes and is one of many
17 projects that GRU is engaged in. They also, I believe,
18 have purchased power agreements with landfill gas as
19 well as a notable solar feed-in tariff.

20 As for conservation measures, they, as of I
21 believe 2006, have adopted the total resource cost test
22 for their energy conservation and been heavily engaged
23 in that area. As for whether these would be able to
24 mitigate the facility since their concern is fuel
25 diversity and relying so heavily upon coal, I don't

1 believe conservation in this instance would be able to
2 significantly change the fuel types available for power
3 generation. And, as for the renewable aspect, it is a
4 renewable.

5 **CHAIRMAN ARGENZIANO:** Commissioners. Okay.
6 Issue 6.

7 **MR. ELLIS:** Issue 6 is whether the GREC
8 project is the most cost-effective alternative, and it's
9 also related to the previous Issue 3. In the
10 supplemental hearing they discussed a variety of updates
11 that we had to the initial numbers that resulted in the
12 negative 56 million and the positive 448 million
13 depending upon which scenario occurs in terms of carbon
14 regulation and in terms of RPS. There is some
15 uncertainty as to which those may be.

16 Overall, I believe, Witness Regan stated that
17 one of the advantages of this project is not necessarily
18 that they are going for the least cost, but the most
19 price certainty. That they view price stability as
20 being an advantage. Overall the project acts as a
21 carbon hedge.

22 In most legislation that has recently come
23 before Congress, biomass is considered carbon neutral
24 and this project also would be considered renewable and
25 possibly be able to sell renewable energy credits based

1 on any federal or state RPS that could develop over the
2 30-year life. So overall they are hoping for the
3 environmental attributes of the project to be able to
4 contribute economically and make up for the system.

5 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you, Madam Chair.

7 And to that point, staff had characterized the
8 pending state of regulation. If regulation were to
9 change, that would have differing financial impact on
10 the project, is that correct?

11 **MR. ELLIS:** Most definitely.

12 **COMMISSIONER SKOP:** Okay. And then with
13 respect to the staff analysis, they indicated that if
14 this project were brought forward as a petition by an
15 investor-owned utility that staff may have a different
16 view, or I forgot what the words are. Can you clarify
17 those for me?

18 **MR. ELLIS:** That would be correct. The
19 recommendation may be different in that we do not have
20 rate-setting authority over a municipality, such as GRU,
21 and with an IOU we have a greater set of authority.
22 This specifically is a purchased power agreement, and
23 traditionally what has been recommended has been up to
24 avoided cost for the utility, and above that the
25 shareholders would take on that portion, and that would

1 be considered the purchase of the environmental
2 attributes of the facility. And it would be up to the
3 shareholders to either profit from that or potentially
4 have a loss depending upon whether or not the power was
5 economical at the time.

6 **COMMISSIONER SKOP:** Okay. So under the
7 existing state of environmental regulation and
8 Commission precedent, that if an IOU, investor-owned
9 utility were to bring this petition before the
10 Commission most likely it would be denied, is that
11 correct?

12 **MR. ELLIS:** I don't necessarily know if it
13 would be denied, it would merely have a different price
14 controls. We have different authority over them, so the
15 price above avoided cost would be directed toward the
16 shareholders. In this instance, the citizens of
17 Gainesville are the shareholders of the utility
18 effectively, so I'm not entirely certain of that.

19 **COMMISSIONER SKOP:** Has the Commission ever,
20 to your knowledge, approved a power purchase agreement
21 above avoided cost for an investor-owned utility? I'd
22 prefer Mr. Ballinger to respond, please.

23 **MR. BALLINGER:** Not that I'm aware of.

24 **COMMISSIONER SKOP:** Thank you.

25 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

1 **COMMISSIONER EDGAR:** I think Commissioner Skop
2 and I are kind of looking at the same language. I was
3 going to ask and am still going to ask a few comments
4 and questions about the last few sentences at the end of
5 the conclusion on Page 39.

6 The first is the statement, the last sentence
7 at the end of the next to the last paragraph, again, on
8 Page 39 that states, "If projections presented at the
9 hearing do not materialize, then staff would expect GRU
10 and the City of Gainesville to respond accordingly in
11 order to minimize any adverse impacts." I think, I
12 hope, and believe that it almost goes without saying
13 that we would expect any public entity to do whatever
14 they could to minimize adverse impacts in general, so
15 I'm wondering what is the more specific meaning, intent,
16 or message in that statement?

17 **MR. BALLINGER:** If I may, Commissioner. That
18 was more to clarify since it's a municipality, the
19 Commission will not have a second review of this as we
20 would with an investor-owned utility. Let's say an
21 investor-owned utility was going to build a renewable
22 facility like this that was above avoided cost. They
23 would have to come back in later for cost-recovery to
24 put in base rates and the Commission would have an
25 opportunity to review those costs to see did they act

1 prudently as circumstances changed. We do not have that
2 authority with GRU, and that is why we are just
3 suggesting that they continue to monitor that as their
4 IOU counterparts do.

5 **CHAIRMAN ARGENZIANO:** I have a question first.
6 Commissioner Skop.

7 **COMMISSIONER EDGAR:** Go ahead.

8 **CHAIRMAN ARGENZIANO:** No, no. If you're not
9 finished, we'll wait. I'm next, and then you go after
10 me.

11 **COMMISSIONER EDGAR:** All right. I still --
12 and I do understand what you are saying, and I think we
13 even have talked about this once or twice, or probably
14 more in staff briefings, you and I and others. I,
15 again, am just not sure what the actual meaning, weight,
16 value, authority, et cetera, of that particular
17 statement is in the context of this order for this case.
18 But I'm going to go on from that because we may have
19 further discussion that might help clarify.

20 In the next paragraph right below that there
21 is this discussion which was just touched on about some
22 of the referencing, I believe, some of the differences
23 in our authority over an investor-owned utility versus
24 our authority under statute for a municipal, and that is
25 a point that I think is very germane. It certainly is

1 in my thinking, and we have discussed and I think the
2 staff did an excellent job of helping to analyze and
3 think through those issues after the first hearing, and
4 then additionally after the supplemental.

5 But with that, the statement that staff notes
6 that if the petitioner were an IOU our recommendation
7 may have been different, again, it seems somewhat
8 gratuitous to me to put in what may be a final order,
9 and so that is why I'm asking and want to understand. I
10 would think that any order or action of this Commission,
11 I believe, is very specific to the record that is before
12 us which is, therefore, always going to be unique and
13 specific. And certainly it is helpful to look at past
14 actions and other relevant things, but yet every
15 decision is unique to the unique record. And so what is
16 the purpose of this last statement that our
17 recommendation may be different on a project that may
18 come at some point in time that we have no information
19 about?

20 **MR. BALLINGER:** Okay. We were trying to
21 distinguish this to make it very clear that this is a
22 municipality and that's what makes it different, as
23 opposed to an IOU. The statute, the need statutes don't
24 make that distinction. The 403.519, the criteria you
25 must evaluate do not make that distinction. It's other

1 statutes that make that distinction, and that is why we
2 thought it was important to make that clarity in this
3 order. In can be in the order or not in the order, that
4 doesn't matter. We wanted to make it clear to you all
5 that that is the distinction.

6 **COMMISSIONER EDGAR:** It seems a tad gratuitous
7 to me, but I will try to not beat it to death. And I
8 may have an additional comment, but I would like to hear
9 what you all have to say. Thank you.

10 **CHAIRMAN ARGENZIANO:** Thank you.

11 Because that is an area -- because the rates
12 and the costs are not something that we regulate or can
13 regulate in the future, and because it's clear -- I
14 mean, you have made it clear and it's clear in the
15 statute that we do not regulate them, but because of
16 that, when I look at the need determination language and
17 the criteria, I, as a Commissioner, need to look at, I
18 mean, in just two of those, and I'm going to go through
19 some of them later when we get to the end of the
20 hearing, but two of them that really stick out in my
21 mind concerning this issue is the need for adequate
22 electricity at a reasonable cost, and then whether the
23 proposed plant is the most cost-efficient alternative
24 available.

25 I can't get that answer, and because of the

1 fact that we wouldn't be looking at this later on, and,
2 of course, it is up to the City Commission then at that
3 point, and to ultimately be responsible to its citizens,
4 but I think it's incumbent upon me, I think, now to
5 really -- not now, but in this order speaking at this
6 issue at this time, looking at the statute that says
7 these are the criteria we will look at. And I'm kind of
8 like going like this, because there are criteria that
9 are in the statute that this project clearly falls
10 under.

11 But the one that sticks out the most is this
12 issue for me, because it says whether the proposed plant
13 is the most cost-effective alternative available, and it
14 could go either way. So I am sitting here with a great
15 big unknown. And, as I say, there is other criteria in
16 there that fit very nicely in this project, but with
17 that one I'm having the hardest time. And I think that
18 you are pointing it out at that point on Page 39 just
19 says, hey, be aware that you don't have this down the
20 road, it belongs to the City Commission, and rightfully
21 so. But because of that, I think it strengthens that
22 language -- part of that language in that need
23 determination that I have to look at.

24 It makes me have to say, well, I can't get the
25 answer to that, so perhaps I need to be -- it needs to

1 be clearer, the answer, and I don't see a clear answer
2 as to if it is the most cost-effective. And the reason
3 to needs to be clearer to me is because down the road we
4 have no say to that, and I just don't know how that
5 fits.

6 You know, when you look at the other criteria
7 that's there it says, you know, that the conservation
8 measures, the renewable energy sources, I mean, that's
9 nice, and that goes along with the plant, but I feel
10 like because we don't regulate rates down the road that
11 it's more important to make sure I have some idea of
12 whether this plant is the most cost-effective
13 alternative. And I guess even your recommendation is
14 saying is we just don't know that, is that correct?

15 **MR. BALLINGER:** Yes, ma'am. I think staff
16 said there is a great deal of uncertainty in the
17 economics of this at this time.

18 **CHAIRMAN ARGENZIANO:** And it could be that it
19 is the most cost-effective, depending on what happens in
20 the future, and then, again, it could be just the
21 opposite.

22 **MR. BALLINGER:** Yes.

23 **CHAIRMAN ARGENZIANO:** But for me today to look
24 at each criteria, I'm looking and I'm checking off the
25 ones that apply, but I can't check this one off and that

1 is concerning to me.

2 All right. Thank you.

3 Commissioner Skop.

4 **COMMISSIONER SKOP:** Thank you, Madam Chair.

5 And to your point, and then I will go to
6 Commissioner Edgar's point that she raised. Again, I
7 think Mr. Ballinger is certainly right that there is a
8 lot of uncertainty associated with the
9 cost-effectiveness of this project and that the success
10 or failure of the proposed generating unit will not be
11 determined for many year hereafter. So, again, there is
12 some risk that is being taken here on behalf of the
13 ratepayers by GRU.

14 That being said, you know, GRU is not an
15 investor-owned utility. We have no jurisdiction over
16 the rates as has been mentioned. So, you know, in
17 balancing the interest of the need determination under
18 the statute versus acquiescing to local rule, what's
19 best for the community, you know, I don't know if that
20 tips the scales one way or not.

21 But I think Commissioner Edgar raised an
22 excellent point on Page 39 to the extent that
23 projections presented at the hearing do not materialize,
24 then staff would expect GRU and the City of Gainesville
25 to respond accordingly or minimize any adverse rate

1 impacts.

2 I think the issue with that is once this need
3 determination is granted, it is out of our hands and the
4 cost is already incurred. There's no going back,
5 because this is a power purchase agreement, and the City
6 has committed, or GRU has committed on behalf of its
7 ratepayers to purchase 100 percent of that power at the
8 contractual rate under a long-term contract. So that is
9 a sunk cost. How do you mitigate that cost? You sell
10 excess power, you sell excess generation, you do other
11 things that get to the gist of why I think it's so
12 important to put this express language in the order
13 should the Commission approve the petition before us.

14 But I do want to distinguish one point which
15 actually, I think, Mr. Ballinger, you caused me to think
16 there, which is a good thing. Typically, the Commission
17 does not approve a need determination for a power
18 purchase agreement, is that correct? Because I remember
19 we had a Gulf case awhile back, and I think that was
20 pretty much a PAA item. We just approve it, and once
21 it's approved it's deemed to be a prudently incurred
22 cost. Is that generally correct?

23 **MR. BALLINGER:** We have had a handful of joint
24 petitions where it's a power plant and a purchased power
25 agreement, some with IOUs. One I can think of is one

1 with FPL and Cypress Energy. It was a purchase power
2 agreement and a new power plant at the same time. There
3 was actually two dockets, one for the need determination
4 and one for approval of the contract for cost-recovery.
5 So it's not uncommon that we can have this, but in GRU's
6 case we are not approving cost-recovery of the contract
7 because they are a municipal.

8 **COMMISSIONER SKOP:** Right. But typically in a
9 need determination that is brought before us by an
10 investor-owned utility, it's typically the utility
11 itself building the project subject to prudence review
12 and cost recovery based upon, you know, whether it was
13 feasible to proceed. And here because of the nature,
14 once this Commission grants approval, then basically
15 it's out of our hands and it's in the lap of GRU and the
16 City of Gainesville in terms of the success or failure
17 of the project.

18 **MR. BALLINGER:** Yes, sir.

19 **COMMISSIONER SKOP:** All right. Thank you.

20 **CHAIRMAN ARGENZIANO:** Commissioners?

21 Commissioner Klement? No? Okay.

22 Should we take -- how about we take a
23 ten-minute break. I haven't even read this yet, and
24 then we will move on to Issue 7. Take a ten-minute
25 break. Thank you.

1 (Recess.)

2 **CHAIRMAN ARGENZIANO:** Maybe we should just go
3 ahead and start and go on to Issue 7 and wait for the
4 copies to come down. So if -- staff, if you're ready,
5 we can jump right into Issue 7. Thank you.

6 **MR. ELLIS:** Issue 7 is based on the resolution
7 of the foregoing issues. Should the Commission grant
8 the petition to determine the need for the proposed
9 Gainesville Renewable Energy Center? And staff
10 recommends approval of the project based upon the
11 strategic need of fuel diversity specifically.

12 In addition to that, however, it does have
13 other characteristics that improve GRU's system with the
14 addition of baseload generation. It also shows
15 potential for savings and functions as a carbon hedge
16 against potential future carbon or renewable energy
17 regulation.

18 **CHAIRMAN ARGENZIANO:** Commissioners?

19 Okay. It looks like Commissioner Stevens.

20 **COMMISSIONER STEVENS:** Since we've gone
21 through these issues and the testimony from the
22 witnesses, and looking at *Florida Statute 403*, and like
23 you, Madam Chair, working through the requirements that
24 we need to look at for the determination of need, I
25 think that this is a very high risk project that we're

1 getting into. And with that risk, even though there's
2 some hedging here and there, I'm not sure this is
3 cost-effective, we're not told that it's cost-effective,
4 I don't know if it's providing electricity at a
5 reasonable cost. It does have fuel diversity, but I
6 don't think the capacity is required. And so I'll
7 listen to discussions from other Commissioners, but I'm
8 kind of having a hard time with the project.

9 **CHAIRMAN ARGENZIANO:** Thank you, Commissioner
10 Stevens.

11 **COMMISSIONER STEVENS:** Thank you.

12 **CHAIRMAN ARGENZIANO:** Commissioner Klement.

13 **COMMISSIONER KLEMENT:** Thank you, Madam Chair.

14 I have studied this long and carefully myself.
15 I think I'm satisfied that it meets enough of the
16 requirements for need to feel favorably toward the
17 project. I think that it has the, satisfied the need
18 for reliability and integrity which are spelled out, the
19 need for generating at a reasonable cost, for fuel
20 diversity and supply reliability. And though the need,
21 the margin, 15 percent margin need is not identified
22 until 2023, true, we should consider the long lead time
23 for plant approval. And when you do consider that, as
24 we heard in the hearing earlier this month, that window
25 isn't as broad as it looks from '10 to '23. It closes

1 quite a bit.

2 And I think it's prudent to consider the
3 longer range needs of this utility and of Florida's
4 commitment to, to renewables. We, we want to promote
5 renewables, we say, and every time they come up, we have
6 to consider the cost to the ratepayer, of course. But
7 in this case it is not our job to consider the cost to
8 the ratepayer beyond what the statute says. It's the
9 Commission of Gainesville, City Commission, which serves
10 as the board of directors of that utility.

11 So as someone mentioned on the staff, I think,
12 that the citizens, the ratepayers are the shareholders
13 of that utility, and it's up to that board of
14 commissioners/directors to set the rates that their,
15 their ratepayers can accept. And if they are very
16 unhappy with them, then they'll take action at the next
17 election. It is not our responsibility to make that
18 decision.

19 I think this is an ideal time -- opportunity
20 for us to approve a renewable project. Certainly there
21 are questions about it, and Commissioner Skop's points
22 in his addendum that he's passed out are well-taken. I
23 don't have a problem adding them to the record. I think
24 the actual record itself, the staff recommendations take
25 into account those points in one form or another

1 throughout the recommendation. So -- but I don't have a
2 problem adding those points. I just think that this is
3 a real opportunity for us to make a statement about a
4 commitment to renewables that we have the authority to
5 do.

6 **CHAIRMAN ARGENZIANO:** Thank you.

7 Commissioners? Okay. Thank you.

8 My comments are basically what I said before.
9 While I love renewables, I think it's my personal
10 opinion -- that I'm not looking at my personal opinion
11 here. What I'm sticking to -- because there are so many
12 good things about this, this plant and then there are
13 things in the statute that I can't get fine answers to.
14 So I'm not making a determination on the merits of the
15 plant as far as renewables or what the rates will be in
16 the future because we don't regulate the rates.

17 What I'm looking at strictly is what I'm being
18 asked at the statute, at the statutory, by the statutory
19 language, and under the exclusive forum for
20 determination of need.

21 Well, number one, staff says there is no
22 current need. It will enhance the reliability, which is
23 something to take into consideration when you look
24 overall. But the statute doesn't say that to me. It
25 doesn't say does this enhance? It says the need and it

1 talks about the reliability of the system. So even that
2 I could say, okay, we can, we can get that in the mix
3 here.

4 But -- so to your points, which are
5 well-taken, I commend the, the moving forward of
6 renewables. We need to be doing that because there seem
7 to be so many roadblocks. My problem is, as I've said
8 before, as I read the statutes -- and if the Legislature
9 wants to change them, that's up to them. But they've
10 charged me as a Commissioner and the rest of us, take it
11 the way you read it, with making sure that I shall,
12 shall take into account these criteria. It doesn't say
13 some, it says these. And if it said you can pick and
14 choose, well, then I could do that easily because there
15 are a lot of things that I said before I could check off
16 and say they apply, but not all of them.

17 I can't find an answer to is this plant the
18 most cost-effective alternative available? And then I
19 can't answer -- will it meet -- or the need for adequate
20 electricity at a reasonable cost. Well, I can't
21 determine that because I don't know whether it's the
22 most cost-effective alternative available to me.

23 So given that, I have no -- I can't express
24 any, any unsatisfaction about trying to move forward
25 with alternatives and biomass. You know, I'm a

1 supporter, I believe in -- going to move forward with
2 these plants. I just look at the statute and I'm taking
3 it as a strict reading of the statute that I cannot --
4 as it says, shall take into account and it gives me a
5 list. I can't answer a couple of those, and that's the
6 problem I have.

7 **COMMISSIONER KLEMENT:** Madam Chair.

8 **CHAIRMAN ARGENZIANO:** Commissioner Klement,
9 yes.

10 **COMMISSIONER KLEMENT:** What, what section are
11 you referring to in making that judgment?

12 **CHAIRMAN ARGENZIANO:** 403.519.

13 **COMMISSIONER KLEMENT:** Okay. But what about
14 Section 366.92(1), "Aim of the Legislature to promote
15 the development of renewable energy, diversify the types
16 of fuel and generating plants, lessen the dependence on
17 natural gas and fuel oil, minimize the volatility of
18 fuel costs and minimize costs to utilities on their
19 customers?" Aren't we required to consider that
20 statute?

21 **CHAIRMAN ARGENZIANO:** Of course you are in its
22 proper forum, I guess, before us. I can't neglect to
23 look at 403.519 because, after all, what's in front of
24 me right now is a determination for need. So I'm
25 definitely going to look at that statute as being what

1 is the criteria I use for this that's in front of me
2 today? And in other cases that we've had, I agree, you
3 know, and I agree with the policy of the Legislature,
4 and that could change at any time, you know. But I
5 can't neglect 403.519 either.

6 **COMMISSIONER KLEMENT:** Madam Chair.

7 **CHAIRMAN ARGENZIANO:** Yes, please.

8 **COMMISSIONER KLEMENT:** May I ask the legal
9 staff, didn't we hear in the hearings, I don't have the
10 record in front of me, I think an assertion by
11 Gainesville that if the, if the case met one of the
12 requirements of the statute that the Chairman refers to,
13 that it can be approved, the need is there? Is that
14 true? Is my memory serving me?

15 **MR. SAYLER:** Commissioner Klement, case law
16 requires that the Commission consider each and every one
17 of the statutory criteria and make a finding on it. How
18 the Commission weighs each and every one of the
19 statutory requirements is up to the Commission itself.

20 There have been times in the past, and it's
21 cited in our recommendation, where a determination of
22 need was granted when there wasn't a strict need for
23 reliability such as during the old days of the oil
24 embargo where the Commission approved authorization of
25 coal plants and then later on natural gas-fired plants

1 for reasons other than a strict reliability need.
2 However, that was in that time and place. And so, yes,
3 there have been times when -- I will turn it over to
4 Mr. Ballinger if he has further comment there.

5 **MR. BALLINGER:** Just one more thing, and it
6 goes really to earlier Commissioner Edgar asked about
7 the process of certification, that the need is one step
8 in a three-step process. We are the sole forum for
9 determination of need; that is correct. And our order,
10 along with the DEP's order, recommended order on air
11 permits, will go before the Governor and Cabinet to
12 weigh the environmental impact versus the perceived need
13 for the project and make the final certification.

14 So your need can be couched in terms of needed
15 for either fuel diversity or needed for a variety of
16 reasons, not -- and your order, your full order will go
17 before the Governor and Cabinet. So does -- do you, do
18 you have to have a yes on each one of those criteria? I
19 don't believe so. But the Commission is required to
20 consider each one and make, as Mr. Sayler said, make a
21 finding on that.

22 **CHAIRMAN ARGENZIANO:** That's -- I want to be
23 very careful because what you just said was a little,
24 little bit -- I'm not sure I agree with that. The
25 statute says to me that I shall take into account and

1 then it lists criteria, and I have to take those into
2 account.

3 **MR. BALLINGER:** Correct.

4 **CHAIRMAN ARGENZIANO:** I could love the
5 project, but if I'm strictly doing what I think is my
6 job and adhering to the statute, then I take the
7 criteria one by one, and I can't say that I can answer
8 two of those. So it's, it's my opinion, someone else
9 may be able to answer that for themselves, but even
10 staff's recommendations do not answer all the criteria.

11 **MR. BALLINGER:** You're exactly right. And if
12 it gives you pause because those two you can't get
13 answers to, you're fully within your right to deny the
14 need. That's fine.

15 **CHAIRMAN ARGENZIANO:** Truthfully if it was
16 that I could look at individual ones and say, well,
17 there is this section here or this, or three of these
18 really have a checkmark, then it would be real easy for
19 me to do.

20 **COMMISSIONER KLEMENT:** May I ask Mr. Saylor --

21 **CHAIRMAN ARGENZIANO:** Please.

22 **COMMISSIONER KLEMENT:** -- does it say they
23 must, that the Commission must, must, that it must meet
24 all of those?

25 **MR. SAYLER:** No, Commissioner Klement. The

1 statute doesn't require an affirmative yes on each of
2 the criteria. It can be a balancing and a weighing
3 test. There have been times when the Commission, like
4 when the coal plants were approved in the '80s --

5 **CHAIRMAN ARGENZIANO:** I'm sorry.

6 **COMMISSIONER KLEMENT:** So, Madam --

7 **CHAIRMAN ARGENZIANO:** But, again, that's
8 confusing because what I'm saying is the statute says --
9 it doesn't say an affirmative. It says you shall take
10 into account. That's a very different thing we're
11 saying. I'm not saying that it says you have to say yes
12 or no. You shall take into account. And by my personal
13 accounting and reading what the statute's criteria are,
14 I can't get an answer to two of those things, so I can't
15 account for those.

16 **COMMISSIONER KLEMENT:** Okay. Well, I can --
17 that's, that's -- I can take those things into account
18 and come out with a positive view toward it.

19 **CHAIRMAN ARGENZIANO:** And I appreciate that.
20 If you could tell me what they are or how you found that
21 it is cost-effective, that may help me in making a
22 different decision for most of it.

23 **COMMISSIONER KLEMENT:** Well, if I may, if I
24 may use the math that came from the -- I forget what
25 point it is -- oh, it's in Issue, both Issues 3 and 6,

1 they pointed, the staff recommendations pointed out a
2 cost risk of \$56 million under the worst-case scenario
3 regarding environmental regulations, fuel costs and so
4 forth. But they pointed out a \$448 million savings over
5 the life of the project under the best-case scenario
6 where they do have wholesale sales of their excess
7 capacity where they are required to meet certain
8 emission standards and penalties for not doing so.

9 And I would just ask the Commissioners, if you
10 have -- if you face this fork in the road and you have
11 to take one of them, you have a 50, roughly, let's just
12 round it up and say a \$50 loss or the potential for a
13 \$500 gain, which fork seems most reasonable? To me, the
14 right fork where you have the potential to save \$500 or
15 in this case 500, almost \$500 million for the
16 ratepayers.

17 **CHAIRMAN ARGENZIANO:** And I understand that
18 and I read that and even have it highlighted. But if
19 you read in there, the first line that says there is
20 considerable uncertainty, and then it goes on to say the
21 project could. There's no certainty there. Could --
22 there's many, many scenarios that can play out, so I
23 can't count on those numbers. I don't know what the
24 numbers will ultimately be because I don't know what the
25 language is ultimately going to turn out to be. That's

1 where I have uncertainty, and that's why said staff said
2 is considerable uncertainty. I do understand what
3 you're saying. If it was clear to me, trust me, it
4 would be real easy for me.

5 **COMMISSIONER KLEMENT:** Madam Chair, what in
6 life is certain? I was certain I was going to be
7 confirmed.

8 **CHAIRMAN ARGENZIANO:** There are certain
9 things, and I know that some day I'll be dead and I know
10 that I'm going to pay taxes, so. But I understand.

11 Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you. Thank you,
13 Madam Chairman.

14 And a couple of questions for staff. But to
15 Commissioner Klement's point that he just raised on the
16 financial sensitivity analysis, whether it be positive
17 or negative, if there is no environmental regulation or
18 if the environmental regulation that may or may not be
19 enacted is unfavorable to biomass, it should be readily
20 apparent that if these environmental regulations change
21 substantially affecting the underlying assumptions, that
22 this project is not going to be positive for ratepayers.
23 You know, there's analysis that does not consider the
24 effect of not meeting the deadline for convertible
25 investment tax credits, which I think takes it down to

1 \$92 million negative net present value for the
2 ratepayers.

3 So, yes, there are, you know, tradeoffs and
4 risks associated with everything, and I do agree with
5 your position because I will be supporting the project.
6 But my reasons align more with what I'm hearing from
7 Commissioner -- I mean, Chairman Argenziano and
8 Commissioner Stevens to the extent that why would you
9 assume the risk if you have no need for additional
10 generation? And I think that your point is well-taken
11 about the time frame for siting a power plant. But, you
12 know, I think that that was within the record evidence a
13 little bit misstated because typically, you know, you
14 have a large IOU like Florida Power & Light can put up a
15 large four-on-one combined cycle plant within three
16 years, four years of the granting of a need
17 determination.

18 So even if this project were to be denied, I
19 have no doubt that GRU could be well positioned to put
20 in a combined cycle plant way before 2023 ever got here.
21 But I think that the points you raise are relevant. I
22 think that, you know, the success or failure of the
23 proposed project is not going to be determined for many
24 years, and there's a lot of key assumptions that are not
25 known, not yet definitized and, you know, essentially it

1 involves substantial risk that GRU is taking on behalf
2 of its ratepayers. Whether that risk pays off or not is
3 still speculative at best, and I think that's the
4 consternation that my colleagues are probably facing in
5 terms of looking at, you know, what are the statutory
6 criteria, noting that we don't regulate rates, but
7 noting that we had a hand in this approval process?

8 And I think that's the notion of why I feel
9 that having this express language in a separate risk
10 management section is so important because to some
11 regard it identifies these risks. And, yes, they are
12 explained within the staff recommendation, but the staff
13 recommendation doesn't really homogenize them into one
14 concise statement of here's the risk, plain and simple.
15 It's kind of dispersed and a little, you know, it's
16 stated but it's not stated with here's some major things
17 that you need to be accountable for subject to the
18 granting of approval, and in a way it shifts the burden
19 back to GRU and the City to be accountable to executing
20 this project so that it's executed successfully to the
21 benefit instead of the detriment of its ratepayers. So
22 I think that your points that you made were, were very
23 well taken.

24 To the point that you also made about the
25 statutory provisions and the discussion that you engaged

1 in with the Chairman, under 403.519, *Florida Statutes*,
2 it lists the specific statutory provisions that the
3 Commission shall consider when granting a determination
4 of need, and that's a specific statute directly on
5 point. And so the question I had for our legal staff, I
6 know that Commissioner Klement mentioned the general
7 provision that was broad about supporting renewables,
8 but in terms of what's controlling upon the Commission,
9 I would think that this specific statute would control
10 in this instance over a more general statute. Would
11 that be correct, Mr. Saylor or Ms. Brown?

12 **MR. SAYLER:** Excuse me. I was conferring with
13 my staff. Ms. Brown?

14 **COMMISSIONER SKOP:** Ms. Brown, per the
15 question.

16 **MS. BROWN:** Commissioner, 403.519 also says
17 the Commission shall take into account any other matters
18 within their jurisdiction they deem relevant under the
19 circumstances.

20 **COMMISSIONER SKOP:** Okay. So that does
21 provide --

22 **MS. BROWN:** That goes back to 366, and thus
23 incorporates that section into the more specific
24 statute.

25 **COMMISSIONER SKOP:** By, by generic reference

1 then within the provisions of the language.

2 **MS. BROWN:** Yes.

3 **COMMISSIONER SKOP:** Okay. All right. Great.

4 And then just finally too, there's been a lot
5 of discussion about the siting board and how the
6 Commission has sole determination of need. I have not
7 been able to locate it, but I think that perhaps there
8 may be a change and it may be in relation to
9 transmission siting. But usually it's a three-step
10 process where it's the PSC, the DEP, and then the
11 Governor and the Cabinet sitting as a siting board.

12 I seem to remember somewhere, although it's
13 not ready reference, that there is a provision now that
14 allows the process to be a two-step process if it's not
15 contested where the DEP has final authority after the
16 Commission approval, and I wonder if staff is aware of
17 that and what --

18 **MR. BALLINGER:** Yes. That was enacted a year
19 or two ago. And basically if there is a stipulation at
20 the land use hearing through the DEP side, the ALJ can
21 remand it back to the Secretary of DEP to issue the
22 final determination of need. That actually was done
23 with the Seminole coal plant. It got to that state,
24 went back to the DEP, and things of that nature.

25 **COMMISSIONER SKOP:** Okay. And, Madam Chair, I

1 have no additional questions. At the appropriate time
2 I'm willing to discuss the proposed language.

3 **COMMISSIONER KLEMENT:** Madam Chair? Madam
4 Chair?

5 **CHAIRMAN ARGENZIANO:** Commissioner Klement,
6 yes.

7 **COMMISSIONER KLEMENT:** To Commissioner Skop's
8 remarks early in his last exchange, there is a
9 1,000-page bill in Congress now that I believe has
10 bipartisan sponsorship, Republicans and Democrats, to,
11 to begin -- I don't know what's in it because I haven't
12 had the time to read those 1,000 pages, but it is a
13 beginning for emission regulation. I think we would be
14 imprudent if we didn't consider the almost certainty
15 that that's going to happen sooner or later.

16 Look out in the Gulf of Mexico. How many --
17 how much more damage do we need to see before people in
18 this country start getting the message about oil? And
19 that's not even considering the, the ill will that is
20 generated in the Mideast toward us where we get a good
21 chunk of our oil.

22 So I think we, in prudence, we should be
23 looking ahead for some of these eventualities, and
24 Gainesville has sought to do that. We should support
25 them.

1 **CHAIRMAN ARGENZIANO:** I'm going to just say,
2 Commissioner Skop, before we go there, that I'd love --
3 you could look at all the environmental, all the Middle
4 East, they don't really like us, all that stuff, but
5 that's not what's before me today. So I'm trying very
6 hard to keep that separate so that I don't have those
7 things muddy my decision or change -- or move me away
8 from what I'm statutorily supposed to do.

9 **COMMISSIONER KLEMENT:** But did, excuse me, did
10 you hear Ms. Brown say that we could include Section
11 366.92?

12 **CHAIRMAN ARGENZIANO:** But what I didn't hear
13 her say is that we can, can change what it says, "Shall
14 take into account." While you're going to look at those
15 other things, I mean, it's very clear by what's right in
16 403.519 that renewables and that that is to be included.
17 But it doesn't -- and, Ms. Brown, you didn't say that I
18 shall, can only take into account certain things, not
19 all of them, did you?

20 **MS. BROWN:** No, I didn't say that. But I'm
21 not sure I have the same interpretation of take into
22 account that you do.

23 **CHAIRMAN ARGENZIANO:** Well, see, that's where,
24 that's where it's up to me. You didn't make your case
25 to me. That's what this is all about. You didn't make

1 a basis for me to come to your conclusion. I'm coming
2 to mine in reading the statutes and reading them for
3 years, I look at take into account means exactly what it
4 says to me, as I have to take all of these into account.
5 And what it really comes down to is not who's correct,
6 it's my opinion on what was brought before me, and you
7 didn't make your case. You didn't win that case for me.
8 So -- and that's not with disrespect; that's just
9 telling you how it is.

10 Commissioner Skop.

11 **COMMISSIONER SKOP:** Thank you, Madam Chair.

12 And just to Commissioner Klement's comments,
13 which, you know, I do respect the views of my
14 colleagues. In this instance, I think that you're
15 right, Commissioner, that GRU should be commended for
16 being forward-looking. I think in this case though the,
17 you know, ultimate success or failure of the project and
18 the economic impact on the ratepayers is something that
19 cannot be ignored, and which I think is causing the
20 consternation under the statutory provisions that I'm
21 hearing Commissioner Stevens and Chairman Argenziano
22 state about being the most cost-effective option. I
23 really can't get there.

24 I think what distinguishes this from an IOU is
25 the fact that GRU is a municipal, a municipality,

1 municipal electric provider and we don't regulate its
2 rates. But certainly if the project does not meet all
3 of its project assumptions, rates can go up
4 substantially. I think staff mentioned \$13.00 a month.
5 That's huge. But, again, that's outside of my
6 jurisdiction.

7 The other more important point of how I would
8 distinguish this from an investor-owned utility is that,
9 you know, local rule. You have a municipal government
10 wanting to do something, and, you know, the risk/reward
11 lies in the lap of GRU and the City of Gainesville as to
12 whether their assumptions pan out in the long-term. And
13 there's opportunity cost, there's a lot of benefit that
14 might be accrued, there's a lot of opportunity cost.

15 But if I were similarly faced with the
16 situation at the local level, I would consider the
17 course of action to be imprudent based on the project
18 risk. I think the, looking at what the City and GRU
19 wants to do, again, I think that my concerns are
20 addressed within the risk management section.

21 From a personal perspective, I think that
22 bringing this project forward at this stage was very
23 premature to the extent that not all of the power
24 purchase agreements were fully definitized. I mean,
25 that would have made a huge difference to me. I'm still

1 supporting this, but, again, I'm looking at that as a
2 tremendous red flag that should have been locked up
3 before petitioning the Commission for approval.

4 Likewise, a plan for selling excess capacity; likewise,
5 having fuel contracts in place; likewise, looking at,
6 you know, making a judgment call or maybe having
7 stopgaps if, if environmental regulations change
8 suddenly not to favor biomass, as has been assumed and
9 is a major assumption in the underlying economics of
10 this project.

11 So, again, I think, Commissioner Klement, you
12 raised some excellent points. I think we should move
13 forward. The difference on this one is it is a power
14 purchase agreement, it is with a municipality, but to
15 otherwise approve this for an investor-owned utility
16 would violate Commission precedent in terms of avoided
17 cost and basically be a prudency determination that all
18 future costs were approved.

19 So I think that that's -- to Commissioner
20 Edgar's point, she raises a good one, is how do you
21 discern the differences in viewing an investor-owned
22 utility under the statutory need determination
23 requirements versus how a municipal government might be
24 treated, and how do you balance the respectfulness of
25 deference to local rule versus regulation of rates? And

1 I don't regulate GRU's rates. If they want to take that
2 decision, that's theirs to take subject to our approval.
3 But at the end of the day the success or failure lies
4 squarely in the hands of GRU, the City of Gainesville
5 and GRU ratepayers. Thank you.

6 **COMMISSIONER KLEMENT:** Madam Chair?

7 Good point, Commissioner Skop. And I think
8 that Commissioner Edgar's reference on Page, at the
9 bottom of Page 39 earlier is a basically cover your rear
10 for precedent that might be cited by an IOU, and that,
11 to me that's prudent also. This is a different case.
12 It's a municipal. It's not the investor-owned. And
13 they are put on notice by that paragraph that this is a
14 separate consideration. It has, it has its own separate
15 conditions and it, it's pretty clear. I won't ask, I
16 won't put staff on the spot by asking them if that's
17 what they meant, but that's what I read.

18 **COMMISSIONER SKOP:** Thank you, Madam Chair,
19 and thank you, Commissioner Klement. I think that point
20 is well-taken.

21 With respect to an investor-owned utility
22 though, I think in all likelihood an investor-owned
23 utility would not take the regulatory risk of
24 petitioning the Commission for this type of project,
25 given the existing underlying reserve margins, the lack

1 of definitization of contracts and such. I think that
2 it would have been more appropriately packaged and more
3 commensurate with need for additional baseload capacity
4 within a Ten-Year Site Plan. I don't think it would be
5 that far out. And, Mr. Ballinger, if you want to maybe
6 briefly expound upon that.

7 **MR. BALLINGER:** I can't speculate what IOUs
8 would bring before us. They may have a similar project
9 out there in the wings. What we've seen before have
10 been ones that have been more in line timing with
11 reliability needs.

12 **COMMISSIONER SKOP:** Thank you.

13 Any other questions from the bench?

14 **COMMISSIONER KLEMENT:** Yes. While I wanted to
15 say that, to your last point, Commissioner, that the
16 IOUs operate under a different set of expectations and
17 rules than the municipals, so probably they wouldn't,
18 but it's because different statutes apply, different
19 rules.

20 **COMMISSIONER SKOP:** And I think, Commissioner
21 Klement, that, again, your points I can't dispute
22 because they're very insightful ones, very good ones. I
23 just think that in this case, in the, in the, in the
24 desire to be forward-looking, which, again, I can't
25 commend GRU enough. I think that perhaps some of the

1 more important financial risks are not fully appreciated
2 in terms of the possible scenarios. I mean, if we were
3 to do a sensitivity analysis and look at the various
4 scenarios as we've done or the Commission has done in
5 various need determination projects, I'm not so sure
6 that the picture would be, you know, as rosy.

7 I mean, I think that with respect to the
8 pending federal legislation regarding the regulation of
9 greenhouse gases, I don't, I don't think there's a high
10 degree of certainty that that legislation will be
11 enacted. It's still to be seen, but, again, that's the
12 speculative part. If it is, then this project looks a
13 lot better a lot quicker. But if it doesn't, there's
14 still some risk on the table in different regards. And
15 I think that the, the clause on Page 39 of the staff
16 recommendation does set some expectations for
17 investor-owned utilities. But I'm pretty confident
18 noting, you know, how the mind-set works that I'm not
19 sure that, that this would be the right project at the
20 right time and, given the lack of definitization, that
21 an IOU would vigorously pursue.

22 But, again, with the City being
23 forward-looking, trying to capture the convertible
24 investment tax credits before they expire, I recognize
25 that it's not always possible to lock things up as

1 quickly as they'd like to be. And I think that's where
2 the management and mitigation of the underlying risk
3 associated with the proposed generating unit is
4 something that lies squarely in the hands of GRU's
5 management and the City of Gainesville sitting as the
6 board of directors -- or the City Commission sitting as
7 the board of directors of GRU. Because there is some,
8 some risk there. But, again, I am in full support of
9 granting approval of the project. Thank you.

10 Commissioner Edgar.

11 **COMMISSIONER EDGAR:** Thank you. Thank you.

12 A couple of comments, and I appreciate all the
13 discussion, as always, very much. I have a couple of
14 different thoughts and I will try to be somewhat
15 concise.

16 First of all, when there is a project that is
17 by its nature multiyear for construction, to get to
18 operation with a multiyear, multistep siting and
19 permitting process at different levels of government,
20 capital intensive, it is I think by nature of that
21 perhaps difficult to have a real-life scenario where
22 every single criteria is met by a slam dunk.

23 And the reason I say that is because by nature
24 of that multistep, long-term time frame, there are going
25 to be projections. Those projections over time will

1 need to be adjusted, cost of capital will change, local,
2 you know, local -- many, many, many things can change
3 over the nature of the planning and decision-making
4 process. And I think that the statute recognizes that
5 by virtue of the language that says that here are
6 criteria that should be taken into account, balanced,
7 but the statute, by my reading, does not say that any
8 one of those, any one of those enumerated criteria are
9 the, should be, is the penultimate criteria to be the
10 one thing that makes the decision. And if indeed
11 cost-effectiveness or need or reliability were to be the
12 one penultimate under the statute criteria, then I think
13 the statute would say that. In my reading it does not.

14 I also recall quite clearly back in, and I
15 think it was 2005, but right around there when the
16 Legislature added language to the statute specifically
17 referring to fuel diversity as a factor that should be
18 considered. And my memory of those discussions in a
19 variety of forums, but certainly at legislative
20 committee and also internal with the Governor's Office
21 staff when that bill was being reviewed for signature or
22 potential signature as it ultimately was, was to be able
23 to give this Commission some greater discretion to
24 elaborate and expand on that factor of
25 cost-effectiveness. Now I -- so those are some general

1 comments.

2 For me specifically, I do believe, and I've
3 said this many, many times and am, of course, only
4 speaking for myself as one Commissioner, but that fuel
5 diversity and a diverse fuel portfolio is something that
6 is very important for this state and it is something
7 that we need all of our individual utilities to look at
8 for their own footprint, their own customer base and
9 those that they work with, but also that we need to look
10 at more regionally and at a statewide level as well.
11 And for that reason, that factor of fuel diversity in
12 the entirety of the information that we have in the
13 record on this project is quite persuasive to me.

14 Just as I have had a concern that for some of
15 our other utilities in this state a strong reliance on
16 natural gas puts us somewhat at risk, I also believe
17 that a strong reliance on any one fuel source, in this
18 instance coal, is not the most optimum situation for a
19 utility to be in for its customers and for future growth
20 and all other certain and uncertainties that are ahead
21 of us.

22 I also said at our last discussion point, not
23 the supplemental hearing, but the Agenda Conference when
24 we were discussing this item previously, that I did have
25 a lot of questions in my mind then and I still do,

1 although I have, I believe that the discussion has been
2 helpful to me about what our role is under the statute,
3 realizing that this is a municipal proposed project and
4 the different statutes that, and authorities that we
5 have moving forward versus an IOU where our authorities
6 are perhaps more clear.

7 The discussion on that point has been very,
8 very, very helpful to me over these past weeks, and I
9 thank staff for that in particular for talking about
10 that issue with me numerous times and helping to lay
11 some of it out.

12 I think that the role of this Commission under
13 the need determination statute is clear. It is a
14 responsibility that I take very, very, very seriously.
15 But part and parcel with that, I do believe that it is
16 appropriate to give deference to a local government that
17 is obviously closer to the people that they serve and
18 that they are elected by and stand for reelection
19 before.

20 And from the record that we have, both the
21 sworn testimony and the public testimony that we had at
22 at least three different occasions, it is clear to me
23 that in this instance this local government did
24 certainly what was needed and what should be done and
25 probably went even above and beyond perhaps to try to

1 communicate clearly with their residents and citizens
2 and ratepayers, current customers, future potential
3 customers, and to try to do the best that they could to
4 weigh all factors, the desires of the community, the
5 financial situation of the community, the need for the
6 future. And I think that from my standpoint that does
7 need to be considered and to be given some deference,
8 along with all of the other factors in the statute that
9 we are asked to take into account.

10 Commissioner Skop, I thank you for the
11 additional language that you have given some thought to.
12 I fully admit when, occasionally when you're going to
13 pass something out that I haven't seen before, I catch
14 my breath. But in this instance I do think it is
15 helpful, and I am sincere when I say thank you for that.

16 When we get to the point of discussing this
17 more specific proposed language, I do have one or two
18 suggested maybe edits that I, I assert to you I mean
19 completely as friendly in keeping with what I think it
20 is that you're, you're trying to accomplish. Thank you.

21 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
22 Stevens?

23 So we have completed Issue 7. Commissioner
24 Skop, did you want to -- before we make a motion, I want
25 to collect my thoughts and give my final, my final

1 comments that I have now sat and looked at a few
2 different things, and have not change my mind, but I
3 just wanted to add a few comments to that. So before we
4 go into a motion mode, is there any other discussion?

5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you, Madam Chairman.

7 And I just wanted to take the opportunity to
8 read and discuss the proposed language that I would
9 request in my forthcoming motion be embodied
10 specifically within the Commission's final order and
11 open to, to friendly amendments. I think staff has had
12 an opportunity to propose some changes to the language,
13 and I'll read the language and seek staff input and that
14 from the bench as to if the language is acceptable. I'm
15 hopeful that the Commission will adopt the language as a
16 whole to expressly state it in the order because I think
17 it does again clearly articulate some, but not all, of
18 the existing risks, the major risks, the red flags that
19 need to be addressed here by GRU. But if the Commission
20 does not adopt it, I'll be putting it into a concurring
21 opinion because I feel it's that important.

22 But just generally stated, it would be a
23 separate section in the Commission's final order
24 entitled Risk Management, and it would basically state,
25 "There is considerable uncertainty about the economics

1 of the proposed biomass project. Additionally, the
2 Florida Public Service Commission does not regulate GRU
3 electric rates. Furthermore, many of the financial,
4 contractual, and environmental regulation aspects
5 associated with the proposed biomass generating unit
6 were not yet fully known or definitized at the time this
7 case was decided.

8 "Based on the above, it is incumbent upon GRU
9 and the City of Gainesville to mitigate the substantial
10 risk associated with the proposed biomass generating
11 unit by considering, but not limited to, the following:"

12 The first bullet. "The need to sell excess
13 generation capacity from the proposed biomass unit at
14 the contractual rate to mitigate ratepayer impact."

15 Second bullet. "The need to continue to sell
16 excess generating capacity associated with GRU's
17 existing generating units on the wholesale market or
18 through power purchase agreements to further mitigate
19 ratepayer impact."

20 Third bullet. "The need to contractually
21 source a long-term fuel supply for the proposed biomass
22 generating unit at favorable pricing to mitigate
23 ratepayer impact."

24 And final bullet. "The need to continue to
25 evaluate the financial viability of the proposed biomass

1 generating unit in relation to pending environmental
2 regulations to mitigate ratepayer impact."

3 Mr. Ballinger, do you have any comments?

4 **CHAIRMAN ARGENZIANO:** Before we go there, can
5 I ask you a question, and maybe I'm not fully
6 understanding. I understand what you're trying to do,
7 but maybe -- as we went, as Commissioner Edgar had
8 mentioned before about the deference to local
9 government, which I totally agree on, that's why I'm not
10 basing my decision on what rates could possibly be
11 because that's not up to us and that's not what I'm
12 looking at. But aren't you -- I understand what you're
13 trying to do as far as liability, but aren't you now
14 micromanaging what they are going to do in the future
15 beyond what we have regulatory authority to do? And
16 forgive me if I'm wrong. I'm just trying to really
17 understand what you're telling them they need to do.

18 **COMMISSIONER SKOP:** No, not at all, Madam
19 Chairman. I think that these risks are identified
20 throughout the staff recommendation, but the
21 recommendation does not homogenize them to consolidate
22 them into a very articulate statement as to what happens
23 if, if some unknowns or some contractual things are not
24 definitized. Specifically, again, there is excess
25 generation from the biomass unit that will be sold

1 during the first ten years of its in-service life.

2 **CHAIRMAN ARGENZIANO:** But are you telling
3 them -- I mean, they don't -- we don't regulate them.

4 **COMMISSIONER SKOP:** I don't, I don't regulate
5 them.

6 **CHAIRMAN ARGENZIANO:** So are you telling them
7 -- is this just, is this just a statement?

8 **COMMISSIONER SKOP:** This is a statement and
9 the Commission's final order to identify these are
10 significant areas of risk that need to be mitigated, and
11 it's incumbent upon GRU and the City of Gainesville to
12 do that. Because, again, we're being asked to sign off
13 on pretty much a blank check with a lot of things that
14 aren't yet fully known or definitized, and that's a
15 little bit of a leap and I think it provides, you know,
16 some -- I think it's prudent for the Commission to
17 articulate these risks in light of giving deference to
18 local rule and the desires of local government, as
19 Commissioner Edgar and myself have, have referenced.
20 They want to go do something, and so long as we clearly
21 and transparently state the risks and clearly the City
22 acknowledges that it has a duty and GRU has a duty, then
23 that's fine.

24 **CHAIRMAN ARGENZIANO:** Sorry. But what does it
25 really mean? I mean, you can't mandate them to do --

1 you just said that there are many things, and I'm really
2 trying to get to the meat of what you're trying to do.
3 I don't know what it really does in the long run.
4 You're telling them, look, you should recognize these
5 things, and on the other hand you're saying there's a
6 lot of things missing and it's a big leap, as you say.
7 So I'm not sure what this really does. Does it just say
8 we're aware that things are missing and -- I'm not sure.

9 **COMMISSIONER SKOP:** I think it clearly
10 articulates the inherent --

11 **CHAIRMAN ARGENZIANO:** Well, obviously it's not
12 clearly enough because I didn't get it. I don't know
13 what it really does in the long run. Are you -- it's
14 not a mandate. You're basically saying these are things
15 we see.

16 **COMMISSIONER SKOP:** It's in, it's in the final
17 order. It clearly articulates some of the inherent
18 underlying risk that is not yet definitized associated
19 with this project, which is, as you stated previously in
20 bench discussions and Commissioner Stevens also, there
21 are a lot of red flags with this project. Some of those
22 concerns have been mitigated, some have not. So it
23 provides, you know, just transparency in the final
24 order: Hey, here's the areas of concern that you still
25 need to address, it's back in your lap, you've got

1 approval, but don't say we didn't tell you so, here's
2 the things. Because, again, if this were an IOU, I
3 wouldn't be having the discussion at this point.

4 **MR. KISER:** Madam Chairman?

5 **CHAIRMAN ARGENZIANO:** Yes.

6 **MR. KISER:** Commissioner Skop, would it be
7 fair to characterize your suggestions here as, number
8 one, comfort language and, number two, a possible guide
9 for the ratepayers in Gainesville that should some of
10 these economic things happen that are not good for them,
11 that they will at least have some guide and can likewise
12 remind the Commission at that appropriate time that
13 these are things that were recognized at the time this
14 decision was made, and they certainly hope the City
15 would take them under consideration in trying to deal
16 with whatever economic circumstances have presented some
17 problems?

18 **COMMISSIONER SKOP:** I think that's one way to
19 look at it, Mr. Kiser. I think that, again, it's
20 incumbent upon the Commission to clearly articulate in
21 its final order areas of concern, and these remain my
22 areas of concern. I am willing to approve the staff
23 recommendation. But my intent would be to do so subject
24 to the requirement that this express language be
25 included in the Commission's final order, subject to

1 having consensus, which I hope the Commission will do
2 because I think this language is very important.

3 **CHAIRMAN ARGENZIANO:** And thank you, thank
4 you, Mr. Kiser, for that. I understand that, and I
5 think what it does is actually makes my point of not
6 having the information I need that shall account, or
7 shall take into account, and that's what I was getting
8 at I guess. It's a comfort language for those who feel
9 uncomfortable with not getting all the information they
10 need -- me, speaking for me.

11 And I'll just make my final comments now. And
12 while I understand the want and the desire to do that, I
13 think it just bolsters what I'm saying about not having
14 the information on everything that it says I shall take
15 into account on -- in the statute. And while I
16 respectfully disagree with Commissioner Edgar, I think
17 the statute reads very clearly, and I'm going to read it
18 and then read a few things that come out of staff's
19 recommendation as to why. And, again, I'm sticking
20 straight, straight with what I see is what my statutory,
21 statutory mandate is to me.

22 I'm going to read part of the statute,
23 403.519, exclusive forum for determination of need, (3).
24 "The Commission shall be the sole forum for the
25 determination of this matter, which accordingly shall

1 not be raised in any other forum or in the review of
2 proceedings in such other forum. In making its
3 determination, the Commission shall take into account
4 the need for electric system reliability and integrity,
5 the need for adequate electricity at a reasonable cost,
6 the need for fuel diversity and supply reliability,
7 whether the proposed plant is the most cost-efficient
8 alternative available, and whether renewable energy
9 sources and technologies, as well as conservation
10 measures, are utilized to the extent reasonably
11 available. The Commission shall also expressly consider
12 the conservation measures taken by or reasonably
13 available to the applicant or its members which might
14 mitigate the need for the proposed plant and other
15 matters within its jurisdiction which it deems
16 relevant."

17 To complete the, that section, "The
18 Commission's determination of need for an electrical
19 power plant shall create a presumption of public need
20 and necessity and shall serve as the Commission's report
21 required by 403.507."

22 And the reason I read that is because I cannot
23 see an exception. It says, "Take into account, shall
24 take into account all the criteria," and that is up to
25 each individual looking at it as to what the criteria

1 has or has been presented and if it, if it -- it doesn't
2 say that I don't have to take into account certain
3 provisions. It says, I shall take into account.

4 And then from your own personal perspective
5 from whatever basis that you come to or whatever
6 conclusion you come to, you look, you look into each one
7 of those, and I have. And the problem I have with them,
8 as I said before, and I'll go back to staff's words and
9 we'll go to -- let me get to the right place. On Issue
10 2, Page 8, Issue 2, the question, "Is there a need for
11 the Gainesville Renewable Energy Center, taking into
12 account the need for electric system reliability and
13 integrity as this criterion is used in Section 403.519,"
14 the statute for determination of need?

15 And the recommendation says, "GRU's load
16 forecast indicates that GRU does not have a reliability
17 need for additional capacity until 2023."

18 Then you go to Page 12, Issue 3, "Is there a
19 need for the Gainesville Renewable Energy Center, taking
20 into account the need for adequate electricity at a
21 reasonable cost, as this criterion is used in Section
22 403.519," the need determination section?

23 The recommendation, first line, "There is
24 considerable uncertainty about the economics of this
25 project." And I didn't read that in total. I'm just

1 making the point there. I've read the rest of it.

2 Issue -- I'm sorry. Let me go to the right
3 one. Page -- going again to Page 24, Issue 6, "Is the
4 Gainesville Renewable Energy Center the most
5 cost-effective alternative available, as this criterion
6 is used in Section 403.519?" Again, the need
7 determination section that I have to rely upon. The
8 recommendation says once again there is considerable
9 uncertainty about the economics of this project.

10 So with that said -- and as I said before, in
11 no way am I saying that there aren't many things of
12 great value and merit to this case, but what I'm looking
13 at is what the statute tells me. And it says I shall
14 take into account all of these criteria. I have. I
15 didn't exclude one and say it's better than -- at least
16 we're reducing coal or -- I didn't do that. I looked at
17 all the pluses and minuses and asked have I taken
18 everything into account.

19 And according to what I read and shall take
20 into account and then what staff has said, especially
21 what I just read, it doesn't take, it doesn't answer
22 those questions for me. And without the answers to
23 those questions, I feel -- I do not feel that I can
24 support the project because I don't have answers to
25 those very important questions. Not to say that the,

1 that the plant or the proposal is not a good one, that
2 it doesn't have many things that are very -- right in
3 there with policy goals and the statutes if I wasn't
4 looking at a need determination and looking into taking
5 into account all those things, it would be very easy for
6 me. But strictly sticking to what the need
7 determination, or the determination of need statute,
8 403.519, asks me to take into account, I just can't come
9 up with the answers to a few of those very important
10 questions. That's all I'm saying. Thank you.

11 And, Commissioner Klement, did you have a
12 comment or did you --

13 **COMMISSIONER KLEMENT:** Well, yes, Madam Chair.
14 It seems to me we've -- I've heard the, where everybody,
15 where every Commissioner is on this, and perhaps we
16 could get to the point of a motion and a vote.

17 **CHAIRMAN ARGENZIANO:** I think we, I think
18 we're about there. I think when every Commissioner is
19 done with what they have to say.

20 Commissioner Edgar.

21 **COMMISSIONER EDGAR:** Thank you. And I think
22 we're about there too and I don't mean to slow us down.

23 **CHAIRMAN ARGENZIANO:** No. No. Go right
24 ahead.

25 **COMMISSIONER EDGAR:** But I did -- thank you --

1 mention a few minutes or so earlier that with the
2 handout that Commissioner Skop had provided to us, I did
3 want to, if I could -- and, again, I mean this as
4 friendly, a friendly amendment suggestion in keeping, I
5 believe, with the intent.

6 A suggestion, Commissioner Skop and others,
7 would be in the first sentence, the beginning of the
8 first sentence under risk management to change the
9 wording slightly but not the intent so that the first
10 sentence would read, "As with most power generation
11 projects, there are uncertainties about the economics of
12 the proposed biomass project." Nothing more on that
13 paragraph.

14 Then the second paragraph, that first
15 sentence, I would slightly change words in the middle,
16 and so it would read this way: "Based on the above, it
17 is incumbent upon GRU and the City of Gainesville to
18 mitigate ratepayer impact associated with the proposed
19 biomass," and then carry on as is. In other words, I
20 would delete the words "the substantial risk" and input,
21 input instead "ratepayer impact." And then that would
22 allow for the four bullet points, no substantive change
23 at all, but the words "to mitigate ratepayer impact" at
24 the end of each of the four bullets could be removed
25 because it's put in the beginning and therefore does

1 apply to each of those four bullets. I think that's a
2 little more concise. And I, again, mean it as friendly
3 suggestions and I think carry through the intent, as I
4 understand it.

5 **COMMISSIONER SKOP:** Madam Chair.

6 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you, Madam Chair.

8 And thank you, Commissioner Edgar, I do
9 appreciate the friendly amendments. They are friendly,
10 they're well-taken. I have no problem with either of
11 those.

12 The first sentence again was an attempt, I
13 think, from staff to incorporate their idea. But I
14 think that there's a way to say it a little bit more
15 concisely. And I think, you know, some of the
16 suggestions that you offered are appropriate, changing
17 "the substantial risk" to "mitigate ratepayer impact"
18 I'm fine with. I thought that was a, perhaps a better
19 way of saying that. And then deleting the "to mitigate"
20 on each of the respective bullets at the end, I think
21 I'm fine with that.

22 So in making a motion, I would adopt the
23 written copy as amended by your suggestions. And,
24 staff, do y'all have all that? Or we could probably --

25 **MS. BROWN:** If Commissioner Edgar could read

1 the first sentence once more.

2 **COMMISSIONER EDGAR:** Sure. I'd be glad to.
3 And what I'm doing is changing just the beginning of the
4 sentence so that the new sentence to be, as I'm
5 proposing would read, "As with most power generation
6 projects, there are uncertainties about the economics of
7 the proposed biomass project." And, again, I think, I
8 think that pretty much says the same, same thing in
9 words that I think work for me a little better.

10 **MS. BROWN:** We got it. Thanks.

11 **CHAIRMAN ARGENZIANO:** I'm going to take a
12 five-minute break.

13 (Recess taken.)

14 Okay. We're back. Commissioner Skop, did you
15 just hand out -- this is now the revision, the third
16 revision?

17 **COMMISSIONER SKOP:** Yes. This is the as
18 amended per Commissioner Edgar's motion, I mean,
19 suggestions. I'm sorry. So I think it should reflect
20 Commissioner Edgar's comments that were adopted.

21 **COMMISSIONER EDGAR:** Commissioner Skop, thank
22 you for doing that so quickly, and, yes, it does.

23 **COMMISSIONER SKOP:** Okay. All right. Thank
24 you.

25 **CHAIRMAN ARGENZIANO:** Okay. So we are --

1 let's see, we finished on Issue 7, didn't we? So we are
2 now ready to move on. Commissioners, let me move to --
3 hang on one second. Okay. And, Commissioners, how do
4 you want to take -- did you want to vote issue by issue
5 or the whole block?

6 **COMMISSIONER STEVENS:** (Inaudible. Microphone
7 off.)

8 **CHAIRMAN ARGENZIANO:** Okay. Well, then we are
9 on Issue 8.

10 **MR. SAYLER:** Issue 8 is the close the docket
11 issue.

12 **CHAIRMAN ARGENZIANO:** Uh-huh. Okay.

13 **MR. SAYLER:** And --

14 **CHAIRMAN ARGENZIANO:** Well, then do we --
15 Commissioners?

16 **MR. SAYLER:** Fairly straightforward.

17 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

18 **COMMISSIONER SKOP:** Thank you, Madam Chair.

19 If that's the remaining issues --

20 **CHAIRMAN ARGENZIANO:** That's it.

21 **COMMISSIONER SKOP:** -- I'm prepared to make a
22 motion. Okay.

23 **CHAIRMAN ARGENZIANO:** Okay. Do we, do we have
24 to adopt this as amended?

25 **COMMISSIONER SKOP:** It will be embodied within

1 my motion.

2 **CHAIRMAN ARGENZIANO:** Okay. In your motion?

3 Okay.

4 **COMMISSIONER SKOP:** Yes, ma'am. Okay. If
5 there are no further questions, Madam Chair, may I be
6 recognized for a motion?

7 **CHAIRMAN ARGENZIANO:** Any other questions?

8 Okay. Commissioner Skop?

9 **COMMISSIONER SKOP:** Thank you, Madam Chair.
10 With respect to the disposition of the need
11 determination before the Commission, I would move to
12 approve the staff recommendation for the remaining
13 issues, Issues 2 through 8, with the specific
14 requirement that the express language provided in the
15 as-amended handout be incorporated within the final
16 order.

17 **CHAIRMAN ARGENZIANO:** Any discussion?

18 **COMMISSIONER EDGAR:** Second.

19 **CHAIRMAN ARGENZIANO:** Commissioner, excuse me,
20 is there any discussion? Commissioner Stevens, I
21 noticed your hand up.

22 **COMMISSIONER STEVENS:** Are we adopting -- are
23 you saying we're adopting all of staff's
24 recommendations?

25 **CHAIRMAN ARGENZIANO:** Would you repeat your --

1 **COMMISSIONER SKOP:** Yes. Let me repeat the
2 motion. With respect to the disposition of the need
3 determination before the Commission, I would move to
4 approve the remaining staff -- I'd move to approve the
5 staff recommendation for the remaining issues, Issues
6 2 through 8, with the specific requirement that the
7 express language provided in the as-amended handout be
8 incorporated within the Commission's final order.

9 **CHAIRMAN ARGENZIANO:** Commissioner Stevens?

10 **COMMISSIONER STEVENS:** So, so then we're
11 allowing the construction of the facility?

12 **COMMISSIONER SKOP:** Yes.

13 **CHAIRMAN ARGENZIANO:** He's approved -- he's
14 made a motion to approve all of staff's recommendations
15 from 2 to 8 and including the amended version that we've
16 been talking about, which I have discussion on.

17 **COMMISSIONER EDGAR:** And I did offer a second.
18 I don't know if that was heard. And my understanding of
19 the motion that -- and therefore my second -- is that
20 the result of that, if it were to carry by a majority,
21 would be that this Commission would approve or grant the
22 need determination request and that then this project
23 would move forward through the next remaining permitting
24 and certification steps that it would need to go through
25 before it was ultimately approved by the State of

1 Florida.

2 **COMMISSIONER STEVENS:** Okay. Well, I --

3 **CHAIRMAN ARGENZIANO:** Discussion on the
4 motion.

5 **COMMISSIONER STEVENS:** Thank you.

6 **CHAIRMAN ARGENZIANO:** And discussion on the
7 amended version that Commissioner Skop has handed out.
8 My, my only concern with this is that it identifies
9 deficiencies that have given me angst about this to
10 begin with that I didn't get the answers to the things I
11 need to account for, and I don't, I'm not sure that it's
12 comfort language. And I'm a little worried that it
13 could be allowing in the future deficiencies and that's
14 my concern with it. So I, I won't be in approval of
15 that. But with that said, any other comments? Any
16 other discussion? We have a second on the table.

17 All those in favor, say aye.

18 **COMMISSIONER SKOP:** Aye.

19 **COMMISSIONER KLEMENT:** Aye.

20 **COMMISSIONER EDGAR:** Aye.

21 **CHAIRMAN ARGENZIANO:** Opposed? Aye.

22 **COMMISSIONER STEVENS:** Aye.

23 **CHAIRMAN ARGENZIANO:** The motion is passed and
24 we are -- let's see. Any other final remaining events,
25 critical dates and things that we need to do?

1 **MR. SAYLER:** Yes, Madam Chairman. Erik Sayler
2 for Commission staff. Just some housekeeping measures.
3 Staff understands that one of GRU's, GREC's pending
4 confidentiality requests regarding the Haddad memos
5 which were discussed extensively at the hearing but yet
6 not, are not part of the record, that confidentiality
7 request has become moot because GRU has subsequently
8 turned that over in a public records request in
9 Gainesville.

10 **CHAIRMAN ARGENZIANO:** Okay.

11 **MR. SAYLER:** As for the remaining pending
12 confidentiality requests, staff requests, staff will
13 review and determine whether there's a need to retain
14 the confidential documents. If not, staff will return
15 those documents to GRU, GREC.

16 Remaining critical dates. The Commission
17 order -- the vote is effective today. The Commission
18 order will go out before June 21st. I will work very
19 hard to get it all incorporated and out in a timely
20 manner, incorporating the language as amended. And then
21 after that it'll go on to DEP and the Governor and
22 Cabinet, dates unknown.

23 **CHAIRMAN ARGENZIANO:** Okay. Any other
24 questions?

25 Commissioner Skop.

1 **COMMISSIONER SKOP:** Yes, Madam Chairman. And
2 this is perfunctory, but just to be clear and so there's
3 no misunderstanding, that the motion that I made that
4 was approved by the majority of the Commission would
5 incorporate this language verbatim in the final order.

6 **MR. SAYLER:** Verbatim. Absolutely. And if I
7 can get the electronic file from your aide later, I will
8 make sure that is verbatim in a separate section.

9 **CHAIRMAN ARGENZIANO:** We'll get that to you.

10 **COMMISSIONER SKOP:** Thank you.

11 **CHAIRMAN ARGENZIANO:** Okay. Any other
12 questions? Okay. With that, we're adjourned. Thank
13 you very much.

14 (Special Agenda concluded at 1:48 p.m.)

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
 COUNTY OF LEON)

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.

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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 2nd day of June, 2010.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
 :
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 2nd day of June,
2010.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734