

Appendix I
Proposed Conditions of Certification

**STATE OF FLORIDA
DEPARTMENT
OF
ENVIRONMENTAL PROTECTION**



**Proposed
Conditions of Certification**

**Gainesville Renewable Energy Center, LLC
Gainesville Renewable Energy Center**

PA 09-55

July 12, 2010

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SECTION A: GENERAL CONDITIONS

I. SCOPE

A. Pursuant to the Florida Electrical Power Plant Siting Act (PPSA), Sections 403.501-518, Florida Statutes (F.S.), and Chapter 62-17, Florida Administrative Code (F.A.C.), this certification is issued to Gainesville Renewable Energy Center, LLC (GREC LLC) as owner/operator and licensee of the Gainesville Renewable Energy Center (GREC). Subject to the requirements contained in these conditions of certification (COC), GREC LLC is authorized to construct and operate a nominal net 100 megawatt (MW) woody biomass-fired electrical power plant consisting of a bubbling fluidized bed (BFB) boiler, conventional steam turbine generator, boiler stack, mechanical draft cooling tower, and other associated facilities, as described in the Application. These facilities will be located on a 131-acre leased area (Site) within the boundaries of Gainesville Regional Utilities' (GRU) certified Deerhaven Generating Station site in Gainesville, Alachua County, Florida. The UTM coordinates are: Zone 17, 365.010 km East, 3,293.825 km North, and the latitude/longitude is: 29°46'03" North/82°23'47" West (at the stack). The Department does not intend, solely by the incorporation of the general conditions contained herein, to require the retrofitting of existing certified facilities.

B. These COC, unless specifically amended or modified, are binding upon the licensee and shall apply to the construction, operation and maintenance of the certified facility. If a conflict should occur between the design criteria of the certified facility and the COC, the COC shall prevail unless amended or modified. If there is a conflict between any of these COC, the more specific condition shall govern.

C. Within 60 days after completion of construction of the certified facility/ies, the licensee shall provide to the Department: a survey map signed by a professional land surveyor, or acceptable equivalent documentation such as an official legal description, delineating the boundaries of the site as defined by Section 403.503(28), F.S., and an aerial photograph delineating the boundaries of the site. The survey and aerial photograph shall be incorporated herein as part of Attachment A. The licensee shall notify the Department of any change to the site boundary. The notification shall be accompanied by an updated land survey (or legal description) and aerial photograph delineating the new boundaries of the site for review by the Department. Absent the above description/delineation of the site, the Department will consider the perimeter fence line of the property on which the plant is located to be the boundaries of the site.

D. If the boundaries of the certified area are different than the boundaries of the site, the licensee shall comply with the requirements of this paragraph. Within 60 days after completion of construction of the certified facility/ies, including but not limited to transmission lines and natural gas pipelines, the licensee shall provide to the Department: a survey map signed by a professional land surveyor, or acceptable equivalent documentation such as an official legal description, delineating the boundaries of the certified area; and an aerial photograph delineating the boundaries of the certified area. For electrical generation plants, the boundaries of the certified area shall include both the certified "electrical power plant" as defined by Section 403.503(14), F.S. and its "associated facilities" as defined by Section 403.503(7), F.S. The survey and the aerial photograph shall be incorporated herein as part of Attachment A. Any proposed project requiring a change to the boundaries of the certified area shall be accompanied by an updated survey map or legal description and aerial photograph.

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E. Upon finalization of ROWs and/or easements (including all linear facilities), the licensee shall submit to the Department aerial photographs depicting the final ROWs/easements for incorporation herein as part of Attachment A. At the Department's request, a copy of any legal instrument used to acquire such property rights shall be provided to the Department, subject to any exemptions granted by the Department under Section 119.071, F.S.

F. The certified facility includes but is not limited to the following major associated facilities: baghouse, administrative building, warehouse, water (process and potable) and wastewater treatment systems, handling and storage facilities for BFB boiler bottom and fly ash, two emergency diesel engines, a switchyard, biomass fuel handling and storage facilities, scale house, parking areas, stormwater management basins, and linear facilities including roads, sanitary sewer and natural gas pipelines, and a 138 kV transmission line.

II. APPLICABLE RULES AND STATUTES

The construction and operation of the certified facility shall be in accordance with all applicable non-procedural provisions of Florida Statutes and Florida Administrative Codes, including, but not limited to, the non-procedural portions of the following regulations, except to the extent a variance, exception, exemption or other relief is granted in the final order of certification or in a subsequent modification to the COC or as otherwise provided under the Act:

Florida Statutes:

- Chapter 120 (Administrative Procedure Act)
- Chapter 163 (Intergovernmental Programs)
- Chapter 252 (Emergency Management)
- Chapter 253 (State Lands)
- Chapter 258 (State Parks & Preserves)
- Chapter 267 (Historical Resources)
- Chapter 373 (Water Resources)
- Chapter 376 (Pollutant Discharge Prevention and Removal)
- Chapter 379 (Fish and Wildlife Conservation)
- Chapter 380 (Land & Water Management)
- Chapter 403 (Environmental Control)
- Chapter 487 (Pesticide Regulation and Safety)
- Chapter 556 (Underground Facility Damage Prevention and Safety)

Florida Administrative Codes:

- 5I-2 (Open Burning)
- 18-2 (Management of Uplands Vested in the Board of Trustees)
- 18-14 (Administrative Fines for Damaging State Lands)
- 18-20 (Aquatic Preserves)
- 18-21 (Sovereign Submerged Lands Management)
- 62-4 (Permits)
- 62-17 (Electrical Power Plant Siting)
- 62-25 (Regulation of Stormwater Discharge)
- 62-40 (Water Resource Implementation Rule)
- 62-150 (Hazardous Substance Release Notification)
- 62-160 (Quality Assurance)
- 62-204 (Air Pollution Control-General Provisions)

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62-210 (Stationary Sources-General Requirements)
62-212 (Stationary Sources-Preconstruction Review)
62-213 (Operation Permits for Major Sources of Air Pollution)
62-214 (Requirements for Sources Subject to the Federal Acid Rain Program)
62-256 (Open Burning)
62-296 (Stationary Sources-Emission Standards)
62-297 (Stationary Sources-Emission Monitoring)
62-301 (Surface Waters of the State)
62-302 (Surface Water Quality Standards)
62-303 (Identification of Impaired Surface Waters)
62-304 (Total Maximum Daily Loads)
62-312 (Dredge and Fill Activities)
62-330 (Environmental Resource Permitting)
62-340 (Delineation of the Landward Extent of Wetlands and Surface Waters)
62-343 (Environmental Resource Permit Procedures)
62-345 (Uniform Mitigation Assessment Method)
62-346 (Environmental Resource Permitting in Northwest Florida)
62-520 (Groundwater Classes and Standards)
62-528 (Underground Injection Control)
62-531 (Water Well Contractor Licensing Requirements)
62-532 (Water Well Permitting and Construction Requirements)
62-550 (Drinking Water Standards, Monitoring and Reporting)
62-555 (Permitting, Construction, Operation, and Maintenance of Public Water Systems)
62-560 (Requirements for Public Water Systems That Are Out of Compliance)
62-600 (Domestic Wastewater Facilities)
62-601 (Domestic Wastewater Treatment Plant Monitoring)
62-604 (Collection Systems and Transmission Facilities)
62-610 (Reuse of Reclaimed Water and Land Application)
62-620 (Wastewater Facility and Activities Permitting)
62-621 (Generic Permits)
62-650 (Water Quality Based Effluent Limitations)
62-660 (Industrial Wastewater Facilities)
62-699 (Treatment Plant Classification and Staffing)
62-701 (Solid Waste Management Facilities)
62-702 (Solid Waste Combustor Ash Management)
62-730 (Hazardous Waste)
62-761 (Underground Storage Tank Systems)
62-762 (Aboveground Storage Tank Systems)
62-769 (Florida Petroleum Liability and Restoration Insurance Program)
62-770 (Petroleum Contamination Site Clean-Up Criteria)
62-780 (Contaminated Site Clean-Up Criteria)
62-807 (Natural Gas Transmission Pipeline)
62-814 (Electric and Magnetic Fields)
64E-6 (Standards for Onsite Sewage Treatment and Disposal Systems)

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For Facilities in the Suwannee River Water Management District:

40B-4 (Regulations)

40B-400 (Environmental Resource Permits)

ERP Applicant's Handbook

III. REVISIONS TO DEPARTMENT STATUTES AND RULES

A. The licensee shall comply with rules adopted by the Department subsequent to the issuance of this certification under the PPSA which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances, exceptions, exemptions, or other relief have been granted, subsequently adopted Department rules which prescribe new or stricter criteria shall operate as automatic modifications to this certification.

B. Upon written notification to the Department, any holder of a certification issued pursuant to the PPSA may choose to operate the certified facility in compliance with any rule subsequently adopted by the Department which prescribes criteria more lenient than the criteria required by the terms and conditions in this certification which are not site-specific.

[Section 403.511(5)(a), F.S.; subsection 62-4.160(10), F.A.C.]

IV. DEFINITIONS

Unless otherwise indicated herein, the meaning of terms used herein shall be governed by the applicable definitions contained in Chapters 373 and 403, F.S., and any regulation adopted pursuant thereto. In the event of any dispute over the meaning of a term used in these COC which is not defined in such statutes or regulations, such dispute shall be resolved by reference to the most relevant definitions contained in any other state or federal statute or regulation or, in the alternative by the use of the commonly accepted meaning as determined by the Department. As used herein, the following shall apply:

A. “Application” means the documents required by the Department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the Department for additional data and information. For purposes of this license, application shall also include any subsequent material changes to submitted information.

B. “Associated facilities” is defined by Section 403.503(7), F.S.

C. “Certified area” means the area within the site in which the certified facilities are located. For linear facilities this term shall mean the area encompassed by the boundaries of the certified easements and/or ROWs.

D. “Certified facility” or “certified facilities” means the certified electrical power generation facilities and all on- or off-site associated structures including but not limited to: steam generating units, transformers, substations, fuel and water storage tanks, air and water pollution control equipment, storm water control ponds and facilities, cooling towers, and related structures. This term shall also mean linear and associated facilities, including but not limited to: transmission lines, natural gas pipelines, and compressor stations.

E. “DCA” means the Florida Department of Community Affairs.

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- F. “DEP” or “Department” means the Florida Department of Environmental Protection.
- G. “DHR” means the Florida Department of State, Division of Historical Resources.
- H. “DOT” means the Florida Department of Transportation.
- I. “Emergency conditions” or “emergency reporting” means urgent circumstances involving potential adverse consequences to human life or property as a result of weather conditions or other calamity.
- J. “Feasible” means reasonably achievable considering a balance of land use impacts, environmental impacts, engineering constraints, and costs.
- K. “FWC” means the Florida Fish and Wildlife Conservation Commission.
- L. “Licensee” means an applicant that has obtained a certification order for the subject project.
- M. “NPDES permit” means a federal National Pollutant Discharge Permit System permit issued in accordance with the federal Clean Water Act.
- N. “PSD permit” means a federal Prevention of Significant Deterioration air emissions permit issued by DEP in accordance with the federal Clean Air Act.
- O. “NCFRPC” means the North Central Florida Regional Planning Council.
- P. “ROW” means right-of-way.
- Q. “Site” means any proposed location within which will be located an electrical power plant's generating facility and onsite support facilities, or an alteration or addition of electrical generating facilities and onsite support facilities resulting in an increase in generating capacity, including offshore sites within state jurisdiction.
- R. “Surface water management system” means a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, or any combination thereof. The terms “surface water management system” includes areas of dredging or filling, as those terms are defined in Sections 373.403(13) and (14), F.S.
- S. “SRWMD” means the Suwannee River Water Management District.
- T. “Title V permit” means a federal permit issued by DEP in accordance with Title V provisions of the federal Clean Air Act.

V. TRANSFERABILITY OF DEFINITIONS

Definitions in other chapters of the Department's rules may be used to clarify the meaning of terms used in these COC unless transfer of such definition would defeat the purpose or alter the intended effect of the provisions of these COC.

[Rule 62-4.021, F.A.C.]

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VI. FEDERAL PERMITS

The following permits have been or will be issued pursuant to federal programs and they are or will be applicable to the certified facility. The Department may consider a violation of any of these federal permits as a violation of this license.

A. Air

The provisions of the following paragraphs shall be conditions of this certification. The licensee shall comply with the substantive provisions and limitations set forth in both the Air Construction Permit [No. xxxxxx-xxx-AC (PSD-FL-XXX)] and the Title V Air Operation Permit (Number xxxxxxx-xxx-AV), when they are issued, and any future modification, amendment, or renewal thereto. Such provisions shall be fully enforceable as conditions of this certification. Any violation of such provisions shall be a violation of these COC.

1. Air Construction Permit(s)

Air Construction Permit [xxxxxx-xxx-AC (PSD-FL-xxx)] will be incorporated by reference herein as part of these COC and attached as Appendix I.

[Chapter 62-212, F.A.C.]

2. Title V Permit

The Title V Air Operation Permit (xxxxxxxx-xxx-AV) for the certified facility will be incorporated by reference herein as part of this certification and will be attached as Appendix II.

[Chapters 62-204, 62-210, 62-213, 62-214, 62-296, and 62-297, F.A.C.]

B. Water

1. The certified facility will be a Zero Liquid Discharge system and, therefore, no industrial wastewater discharges from the site are proposed or authorized.

2. Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP)

Any stormwater discharges associated with construction activities on the site shall be in accordance with all applicable provisions of Chapter 62-621, F.A.C. Prior to commencing construction activities on the site that:

- contribute to stormwater discharges to surface waters of the State or into a municipal separate storm sewer system (MS4); and
- disturb one or more acres of land (less than one acre if the activity is part of a larger common plan of development);

a Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP) must be obtained as applicable.

[Section 403.0885, F.S.; Rule 62-621.300, F.A.C.]

3. Multi-Sector Generic Permits (MSGP)

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Any stormwater discharges associated with industrial activity shall be in accordance with all applicable provisions of Chapter 62-621, F.A.C. For industrial activities at the site that result in a discharge of stormwater to surface waters of the State or into a municipal separate storm sewer system (MS4), and fall under any one of the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14), a MSGP for Stormwater Discharge Associated with Industrial Activity shall be obtained as applicable.

[Section 403.0885, F.S.; Rule 62-621.300, F.A.C.].C.

4. Discharge of Produced Ground Water

Prior to discharge of produced ground water from any non-contaminated site activity which discharges by a point source to surface waters of the State, as defined in Chapter 62-620, F.A.C., the Licensee must first obtain coverage under the Generic Permit for Discharge of Produced Ground Water From any Non-Contaminated Site Activity. Similarly, if the activity involves a point source discharge of ground water from a petroleum contaminated site, the Licensee must obtain coverage under the Generic Permit for discharge from petroleum contaminated sites. Before discharge of ground water can occur from such sites, analytical tests on samples of the proposed untreated discharge water shall be performed as required by Rule 62-621.300, F.A.C to determine if the activity can be covered by either permit.

If the activity cannot be covered by either generic permit, the Licensee shall apply for an individual wastewater permit at least ninety (90) days prior to the date discharge to surface waters of the State is expected. No discharge to surface water is permissible without an effective permit.

[Section 403.0885, F.S.; Rule 62-621.300, F.A.C.]

D. Other

For informational purposes, it should be noted that other federal permits may be required for the certified facility. The licensee shall be responsible for obtaining any necessary federal permits separately pursuant to applicable federal regulations.

VII. DESIGN AND PERFORMANCE CRITERIA

Certification, including these COC, is predicated upon preliminary designs, concepts, and performance criteria described in the site certification application (SCA) or in support of certification. Final engineering design will be consistent and in substantial compliance with the preliminary information described in the SCA and explained at the certification hearing (if any). Conformance to those criteria, unless specifically modified in accordance with Sections 403.516, 403.5315, 403.9418, F.S., and Rule 62-17.211, F.A.C., is binding upon the licensee in the design, construction, operation and maintenance of the certified facility. In any instance where a conflict occurs between the SCA's design criteria and the COC, the COC shall prevail.

[Sections 403.516, 403.5315, and 403.9418, F.S.; Rules 62-17.211, 62-17.680, and 62-807.610, F.A.C.]

VIII. NOTIFICATION

A. If, for any reason, the licensee does not comply with or will be unable to comply with any condition or limitation specified in this license, the licensee shall immediately provide the Department with the following information:

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1. A description of and cause of noncompliance; and
2. The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance. The Licensee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this certification.

[subsection 62-4.160(8), F.A.C.]

B. The licensee shall immediately notify the Department in writing of any previously submitted information concerning the certified facility that is later discovered to be inaccurate.

[subsection 62-4.160(15), F.A.C.]

IX. REPLACEMENT FOR RESTORATION OF SYSTEM INTEGRITY

A. Replacement of all or a portion of a transmission line(s) or natural gas pipeline certified under the TLSA or the NGPSA that is necessary to restore system integrity following an emergency as defined by Sections 252.34(6), (7) or (9), F.S., and requiring deviation from any condition of certification shall not be considered a modification pursuant to Section 403.5315, F.S. A verbal report of the emergency replacement for restoration of system integrity shall be made to the Department as soon as possible. Within 30 days after correction of the emergency condition requiring a replacement for system integrity, a report to the Department shall be made outlining the details of the emergency condition requiring the replacement and the steps taken for its relief. The report shall be a written description of all of the work performed and shall set forth any pollution control measures or mitigative measures which were utilized or are being utilized to prevent pollution of waters, harm to sensitive areas or alteration of archaeological or historical resources.

B. The Department will use its enforcement discretion when evaluating violations that result from operating the certified facility under emergency conditions. During and after the emergency conditions, the licensee must use due diligence to bring the facility back into compliance as soon as possible. In addition, the licensee must use its best efforts and best management practices to minimize adverse environmental impacts. The licensee shall notify the Siting Coordination Office (SCO) and the appropriate DEP District Office when the emergency condition has ended. Furthermore, the licensee must include all monitoring data, which would otherwise be required under normal operating circumstances, recorded during emergency conditions when submitting reports as required by these COC. Any exceedances and/or violations recorded during emergency conditions shall be reported as such, but the Department acknowledges that it intends to use its enforcement discretion during this timeframe. This acknowledgement by the Department does not constitute a waiver or variance from any requirements of any federal permit. Relief from any federal agency must be separately sought.

[Sections 252.34, 403.5315, and 403.9416, F.S.]

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X. CONSTRUCTION PRACTICES

A. Local Building Codes

For licenses issued under the PPSA any local government has the right to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

[Section 403.531(4), F.S.]

B. Particulate Matter

The licensee shall take reasonable precautions to control emissions of unconfined particulate matter in accordance with subparagraph 62-296.320(4)(c)1., F.A.C. The licensee shall take appropriate measures to stabilize those portions of the certified area that are disturbed by construction or operation of the certified facility that may cause release of particulate matter.

[Rule 62-296.320, F.A.C.]

C. Open Burning

Any open burning in connection with initial land clearing shall be in accordance with the non-procedural requirements of Chapters 62-256 and 5I-2, F.A.C. Prior to any burning of construction-generated material, such as initial land clearing debris that is allowed to be burned in accordance with Chapter 62-256, F.A.C., the licensee shall seek approval from the applicable DEP District Office, whose approval may be granted in conjunction with the approval of the Division of Forestry. Burning shall not occur if not approved by the Department or if the Division of Forestry has issued a ban on burning due to fire safety conditions or due to air pollution conditions. A copy of any submittals by licensee relating to open burning shall be submitted to the affected county in which open burning will take place as requested or required by that county, for informational purposes.

[Chapters 5I-2 and 62-256, F.A.C.]

D. Solid Wastes

Solid wastes resulting from construction shall be disposed of in accordance with the applicable non-procedural requirements of Chapter 62-701, F.A.C.

[Chapter 62-701, F.A.C.]

E. Flood Control Protection

The certified facilities shall be constructed in a manner that complies with any applicable non-procedural county flood protection requirements.

F. Vegetation

For any new construction, the licensee, in compliance with Section 163.3209, F.S., and to the extent feasible, will retain existing native (non-exotic) vegetation within the certified area and practice "best management practices." For areas located in any Florida Department of Transportation (DOT) ROW, Chapter 7 of the Florida DOT *Utility Accommodation Manual*, which can be accessed from the website address below, shall serve as guidelines for best management practices.

<http://www2.dot.state.fl.us/proceduraldocuments/procedures/bin/710020001/Chapter-7.pdf>

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[Section 163.3209, F.S.]

G. Underground Utilities

During design and prior to construction of any linear facility, the licensee shall contact Sunshine One Call and obtain a listing (design and construction tickets) of all the known existing underground utilities within the ROW or easement. The licensee shall provide the affected county and the SCO with a copy of the information received from Sunshine One Call. Licensee must follow all applicable portions of the Underground Facility Damage Prevention and Safety Act, Chapter 556, F.S.

[Chapter 556, F.S.]

H. Electric and Magnetic Fields

Any transmission lines that are associated facilities shall comply with the applicable requirements of Chapter 62-814, F.A.C.

[Chapter 62-814, F.A.C.]

I. Wells

Any existing wells in the path of construction that will no longer be used shall be abandoned by a licensed well contractor. All abandoned wells shall be filled and sealed in accordance with subsection 62-532.500(4), F.A.C., or with the rules of the authorizing agency.

[Rule 62-532.440 and subsection 62-532.500(4), F.A.C.]

J. Abandonment of Existing Septic or Storage Tanks

Any existing septic tanks that will no longer be used shall be abandoned in accordance with Rule 64E-6.011, F.A.C., unless these COC provide otherwise.

[Chapter 64E-6, F.A.C.]

Storage Tank systems shall be taken out-of-service and/or closed as necessary in accordance with Rules 62-761.800 and 62-762.801, F.A.C., as applicable.

[Chapters 62-761 and 62-762, F.A.C.]

XI. RIGHT OF ENTRY

A. Upon presentation of credentials or other documents as may be required by law, the licensee shall allow authorized representatives of the Department or other agencies with jurisdiction over a portion of the certified facility:

1. At reasonable times, to enter upon the certified facility in order to monitor activities within their respective jurisdictions for purposes of assessing compliance with this certification; or

2. During business hours, to enter the licensee's premises in which records are required to be kept under this certification; and to have access to and copy any records required to be kept under this certification.

B. When requested by the Department, on its own behalf or on behalf of another agency with regulatory jurisdiction, the licensee shall within 10 working days, or such longer period as may be mutually agreed upon by the Department and the licensee, furnish any

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information required by law, which is needed to determine compliance with this certification. If the licensee becomes aware that relevant facts were not submitted or were incorrect in the SCA or in any report to submitted to the Department or other agencies, such facts or information shall be promptly corrected and resubmitted.

[paragraph 62-4.160(7)(a) and subsection 62-4.160(15), F.A.C.]

XII. DISPUTE RESOLUTION

If a situation arises in which mutual agreement cannot be reached between the licensee, Department and another agency receiving a post-certification submittal or between the Department and the licensee regarding compliance with these COC, then the matter shall be immediately referred to the Division of Administrative Hearings (DOAH) for disposition in accordance with the provisions of Chapter 120, F.S. The licensee or Department may request DOAH to establish an expedited schedule for the processing of such a dispute.

[Sections 403.527, 403.531, and 120.57, F.S.]

XIII. SEVERABILITY

The provisions of this certification are severable, and if any provision of this certification or the application of any provision of this certification to any circumstance is held invalid, the remainder of the certification or the application of such provision to other circumstances shall not be affected thereby.

XIV. ENFORCEMENT

A. The terms, conditions, requirements, limitations and restrictions set forth in these COC are binding and enforceable pursuant to Sections 403.141, 403.161, 403.514, 403.727, and 403.859 through 403.861, F.S., as applicable. Any noncompliance by the licensee with these COC constitutes a violation of Chapter 403, F.S., and is grounds for enforcement action, license termination, license revocation, or license revision. The licensee is placed on notice that the Department may review this certification periodically and may initiate enforcement action for any violation of the COC. Abandonment of the certified facility will be considered grounds for enforcement action.

B. Consistent with the Florida Rules of Evidence and of Civil Procedure, all records, notes, monitoring data and other information relating to the construction or operation of the certified facility which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the certified facility and arising under the Florida Statutes or Department Rules.

[Sections 403.121, 403.131, 403.141, 403.151, 403.161, 403.514, 403.533, and 403.9419, F.S.; subsections 62-4.160(1) and 62-4.160(9), F.A.C.]

XV. REVOCATION OR SUSPENSION

The certification shall be final unless revised, revoked or suspended pursuant to law. This certification may be suspended or revoked pursuant to Sections 403.512, 403.532, and 403.9425, F.S., or for violations of any of these COC. This license is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this certification may constitute grounds for revocation and enforcement action by the Department.

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Any enforcement action, including suspension and revocation, shall only affect the portion(s) of the certified facility that are the cause of such action, and other portions of the certified facility shall remain unaffected by such action.

[Sections 403.512, 403.532, and 403.9425, F.S.; subsection 62-4.160(2), F.A.C.]

XVI. SAFETY

As provided in Sections 403.087(7) and 403.722(5), F.S., the issuance of this license does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This license is not a waiver of or approval of any other Department license/permit that may be required for other aspects of the certified facility which are not addressed in this license. This license does not relieve the licensee from liability for harm or injury to human health or welfare, animal, or plant life, or public or private property caused by the construction or operation of this certified facility, or from penalties therefore.

[subsections 62-4.160(3) and 62-4.160(5), F.A.C.]

XVII. HERBICIDES

For licenses issued under the TLSA and/or NGSPA herbicides applied at the site or in any ROW shall only be those registered by the U.S. Environmental Protection Agency and which have state approval. Herbicide application rates and concentrations will be in accordance with label directions and will be carried out by a licensed applicator, in compliance with all federal, state and local regulations. Herbicide applications shall be selectively applied to targeted vegetation. Broadcast application of herbicide shall not be used unless effects on non-targeted vegetation are minimized.

[Sections 403.061, 403.088, 487.031, and 487.041, F.S.]

XVIII. CIVIL AND CRIMINAL LIABILITY

A. This certification does not relieve the licensee from civil or criminal penalties for noncompliance with any COC, applicable rules or regulations of the Department, or any other state statutes or regulations which may apply.

B. This license is not a waiver of any other Department approval that may be required for other aspects of the certified facility under federally delegated or approved programs.

[Sections 403.141, 403.161, 403.511, 403.531, and 403.9416, F.S.]

XIX. PROPERTY RIGHTS

A. The issuance of this certification conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.

B. If any portion of the certified facility is located on sovereign submerged lands, state-owned uplands, or within an aquatic preserve, then the certified facility must comply with the applicable portions of Chapters 18-2, 18-20, and 18-21, F.A.C., and Chapters 253 and 258,

SECTION A: GENERAL CONDITIONS

F.S. If any portion of the certified facility is located on sovereign submerged lands, the licensee must submit section G of the Joint Application for Environmental Resource Permits to the Department prior to construction. If any portion of the certified facility is located on state-owned uplands, the licensee must submit an Upland Easement Application to the Department prior to construction.

C. If a portion of the certified facility is located on sovereign submerged lands or state-owned uplands owned by the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Article X, Section 11 of the Florida Constitution, then the proposed activity on such lands requires a proprietary authorization. Under such circumstances, the proposed activity is not exempt from the need to obtain a proprietary authorization. The Department has the responsibility to review and take action on requests for proprietary authorization in accordance with Rules 18-2.018 or 18-21.0051, F.A.C.

D. The licensee is hereby advised that Florida law states: “No person shall commence any excavation, construction, or other activity involving the use of sovereign or other state lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Department under Chapter 253, F.S., until such person has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement, or other form of consent authorizing the proposed use.” Pursuant to Chapter 18-14, F.A.C., if such work is done without consent, or if a person otherwise damages state land or products of state land, the Board of Trustees may levy administrative fines of up to \$10,000 per offense.

E. The terms, conditions, and provisions of any required lease or easement issued by the State shall be met. Any construction activity associated with the certified facility shall not commence on sovereign submerged lands or state owned uplands, title to which is held by the Board of Trustees of the Internal Improvement Trust Fund, until all required lease or easement documents have been executed to the satisfaction of the Department.

[Chapters 253 and 258, and Sections 403.511, 403.531, and 403.9416, F.S.; Chapter 3.1.1. of the B.O.R.; Chapters 18-2, 18-14, 18-21, 62-340, and subsections 62-343.900(1) and 62-4.160(4), F.A.C.; Upland Easement Application and Section G of the Environmental Resource Permit Application Form.]

XX. PROCEDURAL RIGHTS

No term or condition of this certification shall be interpreted to preclude the post-certification exercise by any party of whatever procedural rights it may have under Chapter 120, F.S., including those related to rule-making proceedings.

[Chapter 120, and Sections 403.511(5)(c), 403.531(5), and 403.9416(4), F.S.]

XXI. AGENCY ADDRESSES FOR POST-CERTIFICATION SUBMITTALS AND NOTICES

Where a condition requires post-certification submittals and/or notices to be sent to a specific agency, the following agency addresses shall be used unless the COC specify otherwise or unless the licensee and Department are notified in writing of an agency’s change in address for such submittals and notices:

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Florida Department of Environmental Protection
Siting Coordination Office, MS 48
3900 Commonwealth Blvd.
Tallahassee, FL 32399-3900

Florida Department of Environmental Protection
Northeast District Office
7825 Baymeadows Way, Suite B200
Jacksonville, FL 32256-7577

Florida Department of Community Affairs
Office of the Secretary
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Florida Fish & Wildlife Conservation Commission
Office of Policy and Stakeholder Coordination
620 South Meridian Street
Tallahassee, FL 32399-1600

Florida Department of Transportation
District Administration
605 Suwannee Street
Tallahassee, Florida 32399-0450

Florida Department of Agriculture and Consumer Services
Division of Forestry
3125 Conner Boulevard
Tallahassee, Florida 32399-1650

North Central Florida Regional Planning Council
Office of the Executive Director
2009 NW 67 Place, Suite A
Gainesville, FL 32653-1603

Suwannee River Water Management District
Office of General Counsel
9225 County Road 49
Live Oak, FL 32060

Florida Department of State
Division of Historical Resources
500 S. Bronough Street
Tallahassee, FL 32399-0250

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City of Gainesville
Office of General Counsel
Post Office Box 490, Sta. 46
Gainesville, FL 32601

[Section 403.511, 403.531, and 403.9416, F.S.]

XXII. PROCEDURES FOR POST-CERTIFICATION SUBMITTALS

A. Purpose of Submittals

COC which provide for the post-certification submittal of information to the Department or other agencies by the licensee are for the purpose of facilitating the agencies' monitoring of the effects arising from the location of the certified facility and the construction and maintenance of the certified facility. This monitoring is for the Department to assure, in consultation with other agencies with applicable regulatory jurisdiction, continued compliance with these COC, without further agency action.

B. Filings

All post-certification submittals by the licensee are to be filed with the SCO, the DEP District Office, and any other agency that is entitled to receive a submittal pursuant to these COC. Each submittal shall clearly identify the certified facility name, PA#, and the condition number/s (i.e. Section X, Condition XX.y.(z)) requiring the submittal. As required by Section 403.5113(2), F.S., each post-certification submittal will be reviewed by each agency with regulatory authority over the matters addressed in the submittal on an expedited and priority basis.

Within 90 days after certification, and within 90 days after any subsequent modification or certification, the licensee shall provide the Department a complete summary of those post-certification submittals that are identified in the COC where due-dates for the information required of the licensee are identified. A summary shall be provided as a separate document for each transmission line, if any. Such submittals shall include, but are not limited to, monitoring reports, management plans, wildlife surveys, etc. The summary shall be provided to the SCO and any affected agency or agency subunit to which the submittal is required to be provided, in a sortable spreadsheet, via CD and hard copy, in the format identified below or equivalent.

Condition Number	Requirement and Timeframe	Due Date	Name of Agency or Agency Subunit to whom the submittal is required to be provided

[subsection 62-17.191(3), F.A.C.]

SECTION A: GENERAL CONDITIONS

C. Completeness

The Department shall review each post-certification submittal for completeness. This review may include consultation with any other agency/ies receiving the post-certification submittal with regulatory jurisdiction over the matter addressed in the submittal. The Department's finding of completeness shall specify the area of the certified facility affected, and shall not delay further processing of the post-certification submittal for non-affected areas. If any portion of a post-certification submittal is found to be incomplete, the licensee shall be so notified. Failure to issue such a notice within 30 days after filing of the submittal shall constitute a finding of completeness. Subsequent findings of incompleteness, if any, shall address only the newly filed information.

[subparagraph 62-17.191(1)(c) 2, F.A.C.]

D. Interagency Meetings

The Department may conduct an interagency meeting with other agencies that received a post-certification submittal. The purpose of such an interagency meeting shall be for the agencies with regulatory jurisdiction over the matters addressed in the post-certification submittal to discuss whether compliance with the COC has been provided. Failure of the Department to conduct an interagency meeting or failure of any agency to attend an interagency meeting shall not be grounds for the Department to withhold a determination of compliance with these COC nor to delay the timeframes for review established by these COC. At the Department's request, the licensee shall conduct a field inspection with the agency representative in conjunction with the interagency meeting.

E. Determination of Compliance

The Department shall give written notification within 90 days, to the licensee and the other agency/ies to which the post-certification information was submitted of the Department's determination whether there is demonstration of compliance with the COC. If it is determined that compliance with these COC has not been provided, the licensee shall be notified with particularity of the deficiencies and possible corrective measures suggested. Failure to notify the licensee in writing within 90 days of receipt of a complete post-certification submittal shall constitute a determination of compliance.

F. Commencement of Construction

If the Department does not object within the time period specified in paragraph E. above, the licensee may begin construction pursuant to the terms of these COC and the subsequently submitted construction details.

G. Revisions to Design Previously Reviewed for Compliance

The licensee shall submit to Department, and/or applicable agencies, proposed revisions to post-certification submittals for review. Such submittals shall include the same type of information required for the original submittal and shall be submitted prior to construction/implementation.

H. Variation to Submittal Requirements

The Department, in consultation with the appropriate agencies that have regulatory authority over a matter to be addressed in a post-certification submittal, and the

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licensee may jointly agree to vary any of the post-certification submittal requirements, provided the information submitted is sufficient to provide reasonable assurances of compliance with these COC.

I. Disputes

Any agency that receives a post-certification submittal pursuant to these COC may dispute a determination that a submittal provides reasonable assurances of compliance with the COC made by the Department on matters within that agency's jurisdiction by following the procedures set forth in Chapter 120, F.S. The agency's statement disputing the Department's determination shall state with particularity the location to which the agency's dispute relates. Work in areas other than the location to which the agency's dispute relates will not be affected by the agency's dispute.

[Sections 120.569, 373.413, 373.416, 403.511, 403.531, and 403.9416, F.S.; Rules 62-17.191 and 62-17.205, F.A.C.]

XXIII. POST CERTIFICATION AMENDMENTS

If, subsequent to certification, the licensee proposes any material change to the SCA and revisions or amendments thereto, as certified, the licensee shall submit a written request for amendment and a description of the proposed change to the SCA to the Department. Within 30 days after the receipt of a complete request for an amendment, the Department shall determine whether the proposed change to the application requires a modification to the COC.

A. If the Department concludes that the change would not require a modification to the COC, the Department shall provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

B. If the Department concludes that the change would require a modification to the COC, the Department shall provide written notification to the licensee that the proposed change to the SCA requires a request for modification pursuant to Sections 403.516 and 403.5317, F.S.

[Section 403.5113, F.S.]

XXIV. MODIFICATION OF CERTIFICATION

A. Pursuant to Sections 403.516(1)(a), 403.5315(1), 403.9418(1)(a), 120.569(2)(n), F.S., and Rule 62-17.211, F.A.C., the Siting Board hereby delegates the authority to the Department to modify, after notice and receipt of no objection by a party or other substantially affected person, any COC which would not otherwise require approval by the Siting Board. In addition, the Department is delegated the authority to modify COC as follows:

The certification shall be modified to conform to subsequent DEP-issued amendments, modifications, or renewals of any separately issued Prevention of Significant Deterioration (PSD) permit, Title V Air Operation permit, Underground Injection Control (UIC) permit, or National Pollutant Discharge Elimination System (NPDES) permit for the certified facility. In the event of a conflict, the more stringent of the conditions of such permits or of these COC shall be controlling.

B. Any anticipated facility expansions, production increases, or process modifications which may result in new, different or increased discharge or emission of

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pollutants, change in fuel, or expansion in generating capacity must be reported by submission of an appropriate request for an amendment, modification, or certification.

C. Any anticipated facility change that results in a change to the boundaries of the certified area must be accompanied by a map or aerial photo showing the proposed new boundaries of the certified area. The Department may consider any such change to be a modification of the COC. Within 60 days after completion of construction of the new project the licensee shall provide: a survey map signed by a professional land surveyor, or acceptable equivalent documentation such as a legal description, delineating the boundaries of the certified area; and an aerial photograph delineating the new boundaries of the certified area. The survey and aerial photograph shall be incorporated herein as part of Attachment A.

D. The licensee may file a petition for modification with the Department, or the Department may initiate the modification upon its own initiative.

[Sections 120.569(2)(n), 403.511(5)(a), 403.516, 403.5315, and 403.9418, F.S.; Rule 62-17.211 and Chapter 62-343, F.A.C.]

XXV. INCORPORATION OF EXISTING STATE AND LOCAL PERMITS/LICENSES

The operation of the certified facility shall be in accordance with all applicable provisions of any state or local government regulation incorporated into these COCs. All state and locally issued permits are intended to be incorporated herein, such that the licensee shall comply with the substantive provisions and limitations set forth in those permits. The inadvertent omission of any state or locally issued permit from these COCs can be remedied by a modification of the COCs to include provisions from the state or locally issued permit.

At any time following certification, should the licensee become aware of any state or locally issued permit not included herein, the licensee shall promptly notify the SCO for incorporation into these COCs. Likewise, when the Department is made aware of any separately issued permits that were inadvertently not included in the COCs, the COCs will be modified to incorporate the substantive provisions and limitations of any such permit.

XXVI. COASTAL ZONE CONSISTENCY

Pursuant to Sections 373.428 and 403.511, F.S., certification of the facility constitutes the state's concurrence that the authorized activity or use is consistent with the federally approved program under the Florida Coastal Management Act.

[Sections 373.428, 380.23 and 403.511(7), F.S.]

XXVII. FINANCIAL RESPONSIBILITY

The Department may require the licensee to submit proof of financial responsibility and may require the licensee to post an appropriate bond in those instances where the Department is authorized to require proof of financial responsibility or a bond pursuant to a law or Department rule that is applicable to the certified facility.

[Rule 62-4.110, F.A.C.]

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XXVIII. TRANSFER OF CERTIFICATION

This certification is transferable in whole or in part, upon Department approval, to an entity determined to be competent to construct, operate and maintain the certified facility in accordance with these COC. The Department will consider whether the entity is a proper applicant as defined by the PPSA in making its approval. A transfer of certification of all or part of the certified facility may be initiated by the licensee's filing of a Notice of Intent to Transfer Certification with the Department. A copy of the necessary form may be obtained by contacting the SCO. Upon approval, the Department will initiate a modification to the COC to reflect the change in ownership in accordance with Rule 62-17.211, F.A.C. In the event of the dissolution of a certified licensee, the Department may transfer certification to successor entities which are determined to be competent to construct, operate and maintain the certified facility in accordance with the COC and which are proper applicants as defined by the PPSA. Upon determination that such a successor entity complies with the above, the Department will initiate a modification to the COC to reflect the change in ownership in accordance with Rule 62-17.211, F.A.C.

[Chapter 120, F.S.; Rule 62-17.211, F.A.C.]

XXIX. LABORATORIES AND QUALITY ASSURANCE

Chemical, physical, biological, microbiological and toxicological data collected as a requirement of these COC must be reliable, and collected and analyzed by scientifically sound procedures. Unless otherwise specified in these COC, the licensee shall adhere to the minimum field and laboratory quality assurance, methodological and reporting requirements of the Department as set forth in Chapter 62-160, F.A.C. Standard Operating Procedures can be downloaded from the following website: <http://www.dep.state.fl.us/labs/qa/sops.htm>.

[Rule 62-160, F.A.C.]

XXX. ENVIRONMENTAL RESOURCES

A. General

1. Submittals for Construction Activities

a. Prior to the commencement of construction of new facilities and/or associated facilities the licensee shall provide to the appropriate DEP District's Environmental Resource Permitting Section(s) for review, all information necessary for a complete *Joint Application for Environmental Resource Permit (ERP)*, DEP Form 62-343.900(1). These forms may be submitted; a) concurrently with a SCA, an amendment request, or a petition for modification; or b) as a post-certification submittal following approval of a project through certification, an amendment, or a modification. Such ERP applications, once received, shall be reviewed in accordance with the standards and criteria for issuance of an ERP, including all the provisions related to reduction and elimination of impacts, conditions for issuance, additional conditions for issuance, and mitigation contained in Chapters 62-330, 62-341, 62-343, and 62-346, F.A.C., as applicable unless otherwise stated in these COC.

Those forms submitted as part of a certification, an amendment, or modification, shall be processed concurrently with, and under the respective certification, amendment, or modification procedures. Those forms submitted as a post-certification submittal (after project certification and prior to construction) shall be processed in accordance with Section A. Condition XXII. Procedures for Post-Certification Submittals.

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No construction shall commence until the appropriate notification from the Department has been received.

b. The licensee shall submit a survey of wetland and surface water areas as delineated in accordance with Chapter 62-340, F.A.C., and verified by appropriate agency staff for Department approval.

[Chapter 62-340, F.A.C.]

[Section 373.416, F.S.; subsections 62-312, 62-343.070(2) and 62-346.070(2), paragraph 62-343.090(2)(b), and Forms 62-343.900(1) and 62-346.900(1), F.A.C.]

2 Construction, operation and maintenance of the proposed project (including any access roads and structures constructed within wetlands and other surface waters, and/or associated facilities) shall satisfy any applicable non-procedural requirements in the Department rules.

[Section 373.414, F.S.; paragraph 62-17.665(7)(d), F.A.C.]

3. Any delineation of the extent of a wetland or other surface water submitted as part of the DEP ERP application form required by Condition A.1.a. above, including plans or other supporting documentation, shall not be considered binding on the Department unless a specific condition of this license or a formal wetlands jurisdictional determination under Section 373.421(2), F.S., provides otherwise.

[Sections 373.421, 403.504, 403.523, and 403.9404, F.S.]

B. Surface Water Management

1. Surface water management systems will be evaluated under Part IV of Chapter 373, F.S. following submittal of Form 62-343.900(1) or 62-346.900(1), as applicable, to the appropriate office of the Department.

2. All construction, operation, and maintenance shall be as set forth in the plans, specifications and performance criteria contained in the Department's files and approved by this license. Any alteration or modification to the surface water management system as licensed requires prior approval from the Department.

3. Immediately prior to, during construction, and for the period of time after construction to allow for stabilization of all disturbed areas, the licensee shall implement and maintain erosion and sediment control best management practices, such as silt fences, erosion control blankets, mulch, sediment traps, polyacrylamide (PAM), temporary grass seed, permanent sod, and floating turbidity screens to retain sediment on-site and to prevent violations of state water quality standards. These devices shall be installed, used, and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the licensed work, and shall remain in place at all locations until construction is completed and soils are permanently stabilized. All best management practices shall be in accordance with the guidelines and specifications described in *the State of Florida Erosion and Sediment Control Designer and Reviewer Manual* (Florida DOT and DEP, 2007) unless a project-specific erosion and sediment control plan is approved as part of this license. If project-specific conditions require additional measures during any phase of construction or operation to prevent erosion or control sediments beyond those specified in the approved erosion and sediment control plan, the licensee shall implement additional best management practices as

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necessary, in accordance with the guidelines and specifications in *the State of Florida Erosion and Sediment Control Designer and Reviewer Manual* (Florida DOT and DEP). The licensee shall correct any erosion or shoaling that causes adverse impacts to the water resources as soon as practicable. Once project construction has been deemed complete, including the re-stabilization of all side slopes, embankments and other disturbed areas, and before conversion from the operation and maintenance phase, all silt screens and fences, temporary baffles, and other materials that are no longer required for erosion and sediment control shall be removed.

4. The licensee shall complete construction of all aspects of the surface water management system described in the DEP ERP application form, as part of the Application, a post-certification submittal, amendment, or modification, including water quality treatment features, and discharge control facilities prior to use of the portion of the certified facility being served by the surface water management system.

5. The Department must be notified in advance of any proposed construction dewatering. If the dewatering activity is likely to result in offsite discharge or sediment transport into wetlands or surface waters, a written dewatering plan must be submitted to and approved by the Department prior to the dewatering event. All dewatering discharges must be in compliance with Rule 62-621.300, F.A.C.

6. At least 48 hours prior to the commencement of construction of any new surface water management system authorized by this license, the licensee shall submit to the Department a written notification of commencement using an "Environmental Resource Permit Construction Commencement Notice" DEP Form 62-343.900(3) or 62-346.900(3), as applicable, indicating the actual start date and the expected completion date. When the duration of construction will exceed one year, the licensee shall submit construction status reports to the Department on an annual basis utilizing an "Annual Status Report Form" (Form No. 62-343.900(4), F.A.C.). Status Report Forms shall be submitted the following June of each year.

7. Each phase or independent portion of the approved system must be completed in accordance with the submitted DEP form prior to the operation of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the submitted DEP form prior to transfer of responsibility for operation and maintenance of that phase or portion of the system to a local government or other responsible entity

8. Within 30 days after completion of construction of any new portions of the surface water management system, the licensee shall submit a written statement of completion and certification by a registered professional engineer, or other appropriate registered professional, as authorized by law, utilizing an "As-Built Certification by a Registered Professional" DEP Form 62-343.900(5) or 62-346.900(4), as applicable. Additionally, if deviations from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved drawings with deviations noted.

9. Any substantial deviation from the approved drawings, exhibits, specifications or COC, may constitute grounds for revocation or enforcement action by the Department. Examples of substantial deviations may include excavation of ponds, ditches or sump areas deeper than shown on the approved plans.

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10. The operation phase of any new surface water management system approved by the Department shall not become effective until the licensee has complied with the requirements of the COC herein, the Department determines the system to be in compliance with the approved plans, and the entity approved by the Department accepts responsibility for operation and maintenance of the system. Following inspection of any system approved by the Department utilizing DEP Form 62-343.900(6) or 62-346.900(6) as applicable, the licensee shall request transfer of the license to the responsible operation and maintenance entity approved by the Department, if different from the licensee utilizing DEP Form 62-343.900(7) or 62-346.900(8) as applicable. Until a transfer is approved by the Department pursuant to paragraph 62-343.110(1)(d) or Rule 62-346.130, F.A.C., as applicable, the licensee shall be liable for compliance with the terms of the license.

[Chapters 62-25, 62-302, 62-330, 62-343, and 62-346, F.A.C., and Rule 62-4.242, F.A.C.]

C. Wetland and Other Surface Water Impacts

1. All certified facilities shall be constructed in a manner which will avoid or minimize adverse impacts to on-site and/or adjacent wetlands or other surface waters to the extent feasible. When unavoidable impacts to wetlands will occur, an applicant may propose and the Department shall consider mitigation to offset otherwise unpermittable activities under the Environmental Resource Permit review process pursuant to Condition A.1.a above.

2. Proposed mitigation plans submitted with the DEP ERP application forms required in Condition A.1.a. above, or submitted and approved as part of an amendment, modification, or certification, and that are deemed acceptable by DEP, shall include applicable construction conditions, success criteria and monitoring plans and shall be incorporated into these COC as Attachment B.

[Sections 373.413, 373.414, 373.4145, 403.511, 403.531, 403.814(6), and 403.9416, F.S.; Chapters 62-330, 62-341 62-342, 62-343, 62-345, and 62-346, F.A.C.]

XXXI. THIRD PARTY IMPACTS

The licensee is responsible for maintaining compliance with these COC even when third party activities authorized by the licensee occur in or on the certified area. Such third party activities authorized by the licensee may include but are not limited to mining, hunting, and timbering.

[Sections 403.506(1), 403.524(1), and 403.9405(1), F.S.]

XXXII. FACILITY OPERATION

The licensee shall properly operate and maintain the certified facility and systems of treatment and control (and related appurtenances) that are installed and used by the licensee to achieve compliance with these COC, as required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with these COC and when required by Department rules.

[subsection 62-4.160(6), F.A.C.]

XXXIII. RECORDS MAINTAINED AT THE FACILITY

A. A copy of these COC shall be kept at the work site of the certified facility.

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B. Upon request, the licensee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department.

C. The licensee shall hold at the certified facility, or other location designated by these COC, records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation required by these COC, copies of all reports required by these COC, and records of all data used to complete the SCA for this certification. These materials shall be retained at least three (3) years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule.

D. Records of monitoring information shall include:

1. the date, exact place, and time of sampling or measurements;
2. the person responsible for performing the sampling or measurements;
3. the dates analyses were performed;
4. the person responsible for performing the analyses;
5. the analytical techniques or methods used; and,
6. the results of such analyses.

[subsection 62-4.160(12) and paragraph 62-4.160(14)(b), F.A.C.]

XXXIV. WATER DISCHARGES

A. Discharges

1. The licensee shall not discharge to surface waters wastes which are acutely toxic, or present in concentrations which are carcinogenic, mutagenic, or teratogenic to human beings or to significant locally occurring wildlife or aquatic species. The licensee shall not discharge to ground waters wastes in concentrations which, alone or in combination with other substances, or components of discharges (whether thermal or non-thermal) are carcinogenic, mutagenic, teratogenic, or toxic to human beings (unless specific criteria are established for such components in Rule 62-520.420, F.A.C.) or are acutely toxic to indigenous species of significance to the aquatic community within surface waters affected by the ground water at the point of contact with surface waters.

2. All discharges and activities must be conducted so as to not cause a violation of the water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the provisions of Rules 62-4.243, 62-4.244, and 62-4.246, F.A.C., the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C.;

3. All dewatering discharges must be in compliance with Rule 62-621.300, F.A.C.

[Chapters 62-4, 62-302, 62-520, 62-550, and Rule 62-621.302, F.A.C.]

SECTION A: GENERAL CONDITIONS

B. Wastewater Incident Reporting

1. The licensee shall report to the Department any unauthorized discharge to surface or ground waters. Any information shall be provided orally within 24 hours from the time the licensee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the licensee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and time, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

2. For unauthorized releases or spills of treated or untreated wastewater reported that are in excess of 1,000 gallons per incident, or where information indicates that public health or the environment will be endangered, oral reports shall be provided to the Department by calling the STATE WARNING POINT TOLL FREE NUMBER (800) 320-0519, as soon as practical, but no later than 24 hours from the time the Licensee becomes aware of the discharge. The licensee, to the extent known, shall provide the following information to the State Warning Point:

- a. Name, address, and telephone number of person reporting;
- b. Name, address, and telephone number of licensee or responsible person for the discharge;
- c. Date and time of the discharge and status of discharge (ongoing or ceased);
- d. Characteristics of the wastewater spilled or released (untreated or treated, industrial or domestic wastewater);
- e. Estimated amount of the discharge;
- f. Location or address of the discharge;
- g. Source and cause of the discharge;
- h. Whether the discharge was contained on-site, and cleanup actions taken to date;
- i. Description of area affected by the discharge, including name of water body affected, if any; and
- j. Other persons or agencies contacted.

3. If the oral report has been received within 24 hours, the noncompliance has been corrected, and the noncompliance did not endanger health or the environment, the Department shall waive the written report.

[Chapter 376, F.S.; subsection 62-620.610(20), F.A.C.]

SECTION A: GENERAL CONDITIONS

XXXV. SOLID AND HAZARDOUS WASTE

A. Solid Waste

The licensee shall comply with all applicable provisions of Chapters 62-701 and 62-702, F.A.C., for any solid waste generated within the certified facility during construction and/or operation.

[Chapters 62-701 and 62-702, F.A.C.]

B. Hazardous Waste

The licensee shall comply with all applicable non-procedural provisions of Chapter 62-730, F.A.C., for any hazardous waste generated from the certified facility. An EPA identification number must be obtained before beginning hazardous waste activities, except for Conditionally Exempt Small Quantity Generators (CESQGs) who are exempt from this regulation under Title 40 Code of Federal Regulations (CFR), §261.5. CESQGs generate no more than 100 kg (220 lbs) of hazardous waste in any month.

[Chapter 62-730, F.A.C.]

C. Hazardous Substance Release Notification

1. Any owner or operator of a facility who has knowledge of any release of a hazardous substance from a facility in a quantity equal to or exceeding the reportable quantity in any 24-hour period shall notify the Department by calling the State Warning Point Number, (850) 488-1320, within one working day of discovery of the release.

2. Releases of mixtures and solutions are subject to these notification requirements only where a component hazardous substance of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.

3. Notification of the release of a reportable quantity of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc is not required if the mean diameter of the particles released is larger than 100 micrometers (0.004 inches).

[Chapter 62-150, F.A.C.]

XXXVI. STORAGE TANK SYSTEMS

Registration, construction, installation, operation, maintenance, repair, closure, and disposal of storage tank systems that store regulated substances shall be in accordance with Chapters 62-761 and 62-762, F.A.C., in order to minimize the occurrence and environmental risks of releases and discharges. Mineral acid storage tank systems are subject only to Rule 62-762.891, F.A.C.

A. Incident Notification Requirements.

Notification of the discovery of the loss of a regulated substance from a storage tank system exceeding 100 gallons on impervious surfaces, other than secondary containment, such as driveways, airport runways, or other similar asphalt or concrete surfaces, provided that the loss does not come in contact with pervious surfaces; or of the discovery of any other incident listed in subsections 62-761.450(2) or 62-762.451(2), F.A.C., shall be made to the

SECTION A: GENERAL CONDITIONS

affected county on Incident Notification Form 62-761.900(6) within 24 hours or before the close of the county's next business day:

B. Discharge Reporting Requirements

Upon discovery of an unreported discharge, the owner or operator shall report to the affected county on Discharge Report Form 62-761.900(1), F.A.C., within 24 hours or before the close of the county's next business day those items listed in paragraph 62-761.450(3)(a), F.A.C., including a spill or overfill event of a regulated substance to soil or another pervious surface, equal to or exceeding 25 gallons, unless the regulated substance has a more stringent reporting requirement specified in C.F.R. Title 40, Part 302.

C. Discharge Cleanup

If a discharge of a regulated substance occurs at a facility, actions shall be taken immediately to contain, remove, and abate the discharge under all applicable Department rules (for example, Chapter 62-770, F.A.C., Petroleum Contamination Site Cleanup Criteria). Owners and operators are advised that other federal, state, or local requirements may apply to these activities. If the contamination present is subject to the provisions of Chapter 62-770, F.A.C., corrective action, including free product recovery, shall be performed in accordance with that Chapter.

D. Out of Service and Closure Requirements

Storage tank systems shall be taken out-of-service and/or closed as necessary in accordance with Rules 62-761.800 and 62-762.801, F.A.C., as applicable.

[Chapters 62-761 and 62-762, F.A.C.]

XXXVII. NOISE

The licensee shall comply with applicable local noise ordinances.

XXXVIII. SCREENING

The licensee shall comply with applicable local government requirements concerning the screening of the certified facility.

SECTION B: SPECIFIC CONDITIONS

SECTION B. SPECIFIC CONDITIONS

I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

A. *Potable Water*

1. All the potable water supply well(s) shall be constructed according to public well standards found in Chapter 62-532, F.A.C, and shall comply with the required setbacks in Rule 62-555.312, F.A.C.
2. The non-transient, non-community potable water supply system(s) shall be designed and operated in conformance with the applicable requirements of Chapters 62-550, (Lead & Copper Rule 40 CFR 141, Subpart I), 62-555, 62-560, and 62-699 F.A.C. Information as required in Chapters 62-550, Lead & Copper Rule 40 CFR 141, Subpart I, 62-555, 62-560, and 62-699, F.A.C., shall be submitted to the Department prior to construction and operation of any potable water system. The operation of the potable water supply system shall be certified in accordance with Chapters 62-602 and 62-699, F.A.C. All monitoring reports shall be submitted to the Department's Northeast District Office, Potable Water Section and the SCO.
3. The list of requirements for a Preliminary Design Report (PDR) can be found in subsection 62-555.520(4), F.A.C. A preliminary design report or specifications, details, and design drawings are required for approval of a potable water system and shall be submitted to the Department's Northeast District Office, Potable Water Section and the SCO prior to construction and use.
4. For the non-transient, non-community potable water supply system(s), a demonstration of financial, managerial, and technical capacity (capacity development) form pursuant to Rule 62-555.525, F.A.C., must be completed and submitted to the Department's Northeast District Office, Potable Water Section and the SCO.
5. The limited use potable water system(s) shall be constructed and operated in conformance with the applicable requirements of Section 381.0062, F.S., and Chapter 64E-8, F.A.C. The Florida Department of Health Form 4092B and other required information shall be submitted to the Alachua County Health Department and the SCO for approval prior to the construction and operation of the limited use potable water system(s).

B. *Industrial Wastewater Treatment Facilities*

Within thirty days of completion of construction of any new industrial wastewater facilities, the licensee shall submit to the Department a completed "Certification of Completion of Construction" (DEP Form 62-620.910(12)) signed and sealed by the engineer of record or other engineer registered in the state of Florida.

C. *Solid Waste General*

1. All solid waste generated from the site during operation including: bottom ash from the boiler; solids/sludges from the water (process and waste) treatment facilities; used oil/sludges collected from the oil/water separator; spent lubricating oils; used oil filters; and related used petroleum products shall be collected in vendor provided or other suitable containers and transported offsite for disposal in a permitted landfill. Transportation and disposal of solid wastes shall be in accordance with applicable provisions of Chapters 62-701 and 62-702, F.A.C, and any specific requirements of the permitted landfill receiving the waste.

SECTION B: SPECIFIC CONDITIONS

2. The licensee shall submit to the Department a best management practices plan for handling, transporting, and disposing of solid waste prior to commercial operation of the certified facility.

[Rule 62-4.030, F.A.C.]

D. Fly Ash

1. Fly ash generated from the BFB boiler shall be transported and temporarily stored on site in accordance with the design specifications provided in the GREC Application.

2. Fly ash that may be used as a soil supplement shall undergo an initial test according to the Toxicity Characteristic Leaching Procedure (or an alternate plan proposed by the licensee and approved by the Department) prior to land application to assure the ash is not a characteristic hazardous waste.

[Rule 62-4.030, F.A.C.]

3. The results of the initial sampling shall be submitted to the Department for review within 30 days, prior to land application of any fly ash. If elevated levels of contaminants are discovered, the Department may require additional sampling.

[Rule 62-4.030, F.A.C.]

4. According to the Application, the biomass fuel will be derived primarily from forest residue and urban wood waste. If there is a material change in the fuel or fuel supply, the Department shall be notified and additional sampling of fly ash may be required before it is used as a soil supplement.

[Rule 62-4.030, F.A.C.]

5. Fly ash that is not used as a soil supplement shall be transported offsite in covered trucks and disposed of in a permitted landfill. Transportation and disposal of fly ash shall be in accordance with applicable provisions of Chapters 62-701 and 702, F.A.C, and any specific requirements of the permitted landfill receiving the waste.

6. Reasonable precautions pursuant to F.A.C. Rule 62-296.320(4)(c) shall be taken to control fugitive particulate at the site when loading/unloading and transporting fly ash.

E. Wetlands Mitigation

The licensee shall provide the Department with the executed conservation easement between GRU and DEP as described in the mitigation plan submitted with the Application prior to construction of the certified facility. The conservation easement is incorporated by reference herein as Attachment B. Violation of the limitations set forth in the conservation easement shall be a violation of these COC.

II. DEPARTMENT OF TRANSPORTATION

A. Access Management to the State Highway System

Any access to the State Highway System will be subject to the requirements of Chapters 14-96, State Highway System Connection Permits, and 14-97, Access Management Classification System and Standards, F.A.C.

SECTION B: SPECIFIC CONDITIONS

B. Overweight or Overdimensional Loads

Operation of overweight or overdimensional loads by the licensee on State transportation facilities during construction and operation of the certified facility will be subject to safety and permitting requirements of Chapter 316, F.S., and Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C.

C. Use of State of Florida Right of Way or Transportation Facilities

All usage and crossing of State of Florida ROW or transportation facilities will be subject to Chapter 14-46, Utilities Installation or Adjustment, F.A.C.; Florida DOT's Utility Accommodation Manual (Document 710-020-001); Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Standard Specifications for Road and Bridge Construction; and application sections of the Florida DOT's Project Development and Environmental Manual.

U.S. 441 has been identified as a Florida Intrastate Highway System (FIHS) and Strategic Intermodal System's (SIS) facility. The placement of the transmission line and pipeline should take into consideration the planned widening of this facility. The cost of relocation or reconstruction the transmission line and pipeline will be borne by the licensee to the extent required by Section 337.403, F.S., and Chapter 14-46, F.A.C.

D. Standards

The Manual on Uniform Traffic Control Devices: Florida DOT's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Florida DOT's Standard Specifications for Road and Bridge Construction; Florida DOT's Utility Accommodation Manual; and application sections of the Florida DOT's Project Development and Environmental Manual shall be adhered to in all circumstances involving the State Highway System and other transportation facilities.

E. Drainage

Any drainage onto State of Florida ROW and transportation facilities will be subject to the requirements of Chapter 14-86, Drainage Connections, F.A.C., including the attainment of any permit required thereby.

F. Use of Air Space

Any newly proposed structure or alteration of an existing structure will be subject to the requirements of Chapter 333, F.S., and Rule 14-60.009, Airspace Protection, F.A.C. Additionally, notification to the Federal Aviation Administration (FAA) is required prior to beginning construction, if the structure exceeds notification requirements of 14 CFR Part 77, Objects Affecting Navigable Airspace, Subpart B, Notice of Construction or Alteration. Notification will be provide to FAA Southern Region Headquarters using FAA Form 7460-1, Notice of Proposed Construction or Alteration in accordance with the instructions therein. A subsequent Determination by the FAA stating that the structure exceeds any federal obstruction standard of 14 CFR Part 77, Subpart C for any structure that is located within a 10-nautical-mile radius of the geographic center of a public-use airport or military airfield in Florida will be required to submit information for an Airspace Obstruction Permit from the Florida DOT or variance from the local government depending on the entity with jurisdictional authority over the site of the proposed structure. The FAA Determination regarding the structures serves only as a

SECTION B: SPECIFIC CONDITIONS

review of its impact on federal airspace and is not an authorization to proceed with any construction. However, FAA recommendations for marking and/or lighting of the proposed structure are made mandatory by Florida law. For a site under Florida DOT jurisdiction, application will be made by submitting Florida DOT Form 725-040-11, Airspace Obstruction Permit Application, in accordance with the instructions therein.

G. Level of Service on State Roadway Facilities

All traffic impacts to State roadway facilities on the FIHS, the SIS, or funded by Section 339.2819, F.S., will be subject to the requirements of the level of service standards adopted by local governments pursuant to Chapter 14-94, Statewide Minimum Level of Service Standards, F.A.C., and in accordance with Section 163.3180(10), F.S. All traffic impacts to State roadway facilities not on the FIHS, the SIS, or funded by Section 339.2819, F.S., will be subject to adequate level of service standards established by the local governments.

H. Best Management Practices

Traffic control during facility construction and maintenance will be subject to the standards contained in the Manual on Uniform Traffic Control Devices; Chapter 14-94, Statewide Minimum Level of Service Standards, F.A.C.; Florida DOT's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Florida DOT's Standard Specifications for Road and Bridge Construction; Florida DOT's Utility Accommodation Manual, whichever is more stringent.

It is recommended that the licensee encourage transportation demand management techniques by doing the following:

- Placing a bulletin board on site for car pooling advertisements; and
- Requiring the heavy construction vehicles remain onsite for the duration of construction to the extent practicable.

A temporary traffic control plan for handling construction related traffic is needed subject to the requirements and standards. The plan will need approval by the Florida DOT prior to construction.

If the licensee uses contractors for the delivery of any overweight or overdimensional loads to the site during construction, the licensee should ensure its contractors adhere to the necessary standards and receive the necessary permits required under Chapter 316, F.S., and Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C.

III. FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

Based on a Geographical Information System (GIS) analysis of the project site, the following imperiled species and associated habitats were identified:

- 16 protected species potentially occur onsite or in the vicinity of the site (see table below),
- Historical wading bird rookery,
- Florida Natural Areas Inventory-identified rare species habitat for the eastern indigo snake, and

SECTION B: SPECIFIC CONDITIONS

- FWC-identified potential habitat and priorities wetlands for Florida black bear and wading birds.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status*</u>
Gopher frog	<i>Rana capito</i>	SSC
Gopher tortoise	<i>Gopherus polyphemus</i>	ST
Florida pine snake	<i>Pituophis melanoleucus mugitus</i>	SSC
Eastern indigo snake	<i>Drymarchon corais couperi</i>	ST; FT
Tricolored heron	<i>Egretta tricolor</i>	SSC
Little blue heron	<i>Egretta caerulea</i>	SSC
Limpkin	<i>Aramus guarauna</i>	SSC
Snowy egret	<i>Egretta thula</i>	SSC
White ibis	<i>Eudocimus albus</i>	SSC
Bald eagle	<i>Haliaeetus leucocephalus</i>	P
Florida sandhill crane	<i>Grus canadensis pratensis</i>	ST
Southeastern American kestrel	<i>Falco sparverius paulus</i>	ST
Wood stork	<i>Mycteria americana</i>	SE; FE
Sherman's fox squirrel	<i>Sciurus niger shermani</i>	SSC
Florida black bear	<i>Ursus americanus floridanus</i>	ST

* SSC - Species of Special Concern; ST - State Threatened; SE - State Endangered; FT - Federally Threatened; FE - Federally Endangered; P - Protected under federal law and state management plan

A. Preserved Areas

The licensee provided baseline wildlife survey results in the Application which were conducted in May of 2009. Provided in the SCA are figures illustrating the vegetation communities using the Florida Land Use Cover and Forms Classification System. These vegetation communities were cross-referenced with Florida Natural Areas Inventory, which is more suitable to assessing wildlife conditions than the FLUCFCS or the results from the GIS analysis. Further, the FWC understands from the licensee, that GRU will be placing easements over those proposed preserve areas that provide potential habitat for listed species. In the event that the proposed construction layout of the certified facility is modified and impacts to those areas that have been identified as being used by listed species are unavoidable, the licensee will consult with the FWC and USFWS, as appropriate, to identify necessary conservation measures to offset impacts on the site adjacent to the certified area, to specifically benefit the impacted listed species.

[Article IV, Section 9, Florida Constitution; Section 379.2291, F.S.; Chapter 68A-27, F.A.C.]

B. Wetlands

Water resource permitting requirements for wetlands do not always meet all of the ecological needs for fish and wildlife resources in every case. During the pre-application consultation, the FWC provided the licensee with a U.S. Fish and Wildlife Service's wetland

SECTION B: SPECIFIC CONDITIONS

buffers FAQ sheet. The licensee shall evaluate the wetlands to be preserved within the site on a case-by-case basis and establish compatible-use buffer zones and wetland protection buffers around all wetland areas appropriate for the site's wildlife inventory in accordance with the U.S. Fish and Wildlife Service's wetland buffer guidelines.

[Article IV, Section 9, Florida Constitution; Section 379.2291, F.S.; Chapter 68A-27, F.A.C.]

C. General Listed Species Surveys

Prior to clearing and construction, the licensee shall conduct species-specific surveys for all listed species that may occur within the certified area, with appropriate buffer distances as defined by the survey protocols. Guidance related to species-specific survey protocols can be found in the FWC's Florida Wildlife Conservation Guide at <http://myfwc.com/conservation/fwcg.htm>. The results of those detailed surveys shall be provided to the FWC and coordination shall occur with the FWC and appropriate permitting agency on proposed impact mitigation methodologies.

[Article IV, Section 9, Florida Constitution; Sections 379.2291 403.507, and 403.5113(2), F.S.; Chapter 68A-27 and Rule 62-17.191, F.A.C.]

D. Listed Species Identified Onsite

1. *Gopher Tortoise*: The licensee acknowledges the presence of gopher tortoise burrows within the project site. It is anticipated that all gopher tortoises and their burrows shall be avoided during this project. However, in order to address unanticipated and unavoidable impacts to gopher tortoises, the licensee shall investigate the need to obtain a permit and shall adhere to the following guidelines:

- Either a conservation permit or a temporary exclusion permit from the FWC shall be obtained if any project activities would impact gopher tortoises, their burrows, or their habitat.
- The licensee shall refer to the most current (revised April 2009) FWC gopher tortoise permitting guidelines (www.myfwc.com/gophertortoise) to determine which specific permit would be best suited to this project, if applicable.
- All gopher tortoise work shall be conducted by "Authorized Agents" pursuant to the gopher tortoise permitting guidelines.

[Article IV, Section 9, Florida Constitution; Section 379.2291, F.S.; Rule 68A-27.004(2), F.A.C.]

2. *Bald Eagle*: Although the licensee did not identify a bald eagle nest on the project site during their 2009 wildlife surveys, suitable nesting habitat may still exist onsite or adjacent to the site. Given that the existing ponds on the Deerhaven Generating Station site contain fish, bald eagles may occur onsite prior to, during, or following construction of the certified facilities. In the event that the licensee modifies the site certification in the future, the licensee shall include as precautionary measures the following guidelines:

- If eagle nest sites are identified onsite or within the recommended buffer distance established by FWS and FWC, and prior to any future

SECTION B: SPECIFIC CONDITIONS

modifications to the site certification, the licensee shall avoid impacts to bald eagle nests where possible.

- In areas where adverse impacts to nests cannot be avoided, resulting in nest disturbance, the information required for an FWC Eagle Permit shall be obtained from the FWC, as authorized by Section 379.2291, F.S., and Rule 68A-16.002, F.A.C., and minimization and conservation measures outlined in the FWC Bald Eagle Management Plan shall be followed, as applicable.
- In areas where bald eagle nests occur prior to or during construction activities, efforts shall be made to avoid construction activities during the nesting season (October 1 – May 15) or when eagles are present before October 1 or after May 15.

[Article IV, Section 9, Florida Constitution; Sections 379.2291 and 403.5113(2), F.S.; Rules 62-17.191, 68A-16.002, and Chapter 68A-27, F.A.C.]

3. *Wading Birds and Grulifomres:* The licensee reported that wading birds have been identified in the Deerhaven Generating Station site foraging in the existing ponds. The current habitat may not be conducive for nesting, however, there may be potential for land management operations under this proposal to create more attractive conditions for nesting wading birds and gruliformes habitat such as sandhill crane or limpkin in the future. Whenever practical, the licensee shall avoid the active breeding season for species protected by Sections 68A-27.003-.005, F.A.C. (<https://www.flrules.org/gateway/chapterhome.asp?chapter=68A-27>), when land clearing and construction activities are proposed. If nesting activities are identified, the licensee shall adhere to the following guidelines:

- Monitor nesting activity during all clearing and construction activities. The monitoring shall be conducted by a person with documented experience in identifying normal and abnormal nesting behaviors of protected ground-nesting species and who can detect disturbances or nesting attempts during all clearing and construction activities.
- Stop clearing and construction activities if sandhill crane species start to nest in a dredged, cleared, or graded area, mark the nest site, allow the species to nest, and shall not resume construction activities in that area until all birds have fledged.

[Article IV, Section 9, Florida Constitution; Section 379.2291, F.S.; Chapter 68A-27 and Rule 68A-16.001, F.A.C.]

IV. SUWANNEE RIVER WATER MANAGEMENT DISTRICT

A. *Ground Water Withdrawal Limits*

GREC may initiate groundwater usage beginning approximately July 2012 at a rate of 0.1 million gallons per day (mgd), and may increase to 1.4 mgd (annual average) by approximately November 2013 when the plant is fully operational.

B. *Operation*

1. The licensee shall provide to the District monthly operating reports showing daily groundwater pumpage no later than 10 working days after the end of each quarter.

SECTION B: SPECIFIC CONDITIONS

The Suwannee River Water Management District water use permit number 09-00040 shall be displayed on all reports

2. If water use causes or contributes to a violation of Minimum Flows and Levels (MFLs), the District reserves the right to curtail future withdrawal rates or otherwise modify the COC as described in the recovery or prevention strategy associated with the MFL.
3. If water use causes adverse impacts to occur, the District reserves the right to curtail future withdrawal rates or otherwise modify the COC. Adverse impacts include:
 - a. Cumulative reduction in well water levels that impairs the ability of the well to produce water;
 - b. Cumulative reduction in levels in an adjacent water body such as a lake, pond, or retention/detention area that impairs the designated function of the water body or the ability for a permitted withdrawal facility to produce water;
 - c. Saline water intrusion or induced movement of pollutants into the water supply of an adjacent water use, resulting in harm due to a reduction in water quality;
 - d. Land collapse or subsidence caused by reduction in water levels;
 - e. Damage to crops and other types of vegetation;
 - f. Harm to a naturally occurring water body such as lake, pond, or wetland by reducing water levels or changing the hydroperiod; and
 - g. Harm to the natural system including damage to habitat for endangered or threatened species, or species of special concern.
4. The licensee shall maintain an accurate, non-resettable, totalizing flow meter(s) at each water withdrawal point. The meters shall be accurate to within 5 percent of actual flow. The meters shall be calibrated at a minimum every 5 years with a report of the calibration submitted to the District within 30 days of completion. Meters found to be outside the 5 percent flow measurement requirement shall be repaired or replaced within 30 days of discovery. The District shall be notified of any broken meters within 10 days of discovery, and the reported flow shall be estimated and submitted to the District for the time the meter was out of service.
5. If the actual flow is found to be greater than 5 percent different from the measured flow, within 30 days, the licensee shall have the meter re-calibrated, repaired, or replaced, whichever is necessary. Documentation of the test and a certificate of re-calibration, if applicable, shall be submitted within 30 days of each test or re-calibration.
6. The licensee shall monitor and report groundwater levels continuously at one centrally located well as approved by the District. The groundwater monitoring program shall be implemented at least one year prior to operation. The data shall be submitted no later than 10 working days after the end of each quarter. The reference datum should be North American Vertical Datum of 1988 (NAVD 88).

C. Reclaimed Water

1. The licensee shall provide to the District a written implementation plan and schedule for the use of reclaimed water from the City of Alachua to replace as much of the

SECTION B: SPECIFIC CONDITIONS

groundwater withdrawals as practicable for cooling purposes no later than 3 years after the commencement of operations. The plan shall include the identification of the supply of reclaimed water, the anticipated uncommitted amount of the supply, the plans, facilities, and estimated costs for providing the reclaimed water to the GREC site, and the schedule to begin the use of the reclaimed water no later than 5 years after the commencement of operations. Based on the District's review and approval of the implementation plan and schedule, the licensee shall implement the plan for the use of reclaimed water according to the approved schedule, and the COC shall be modified to require the use of reclaimed water.

2. In the event that an uncommitted, reasonable reclaimed water supply becomes available or is definitively scheduled to become available to the GREC site to meet all or part of the cooling tower makeup water needs prior to the required schedule above, the licensee shall provide the District a written implementation plan and schedule for using the reclaimed water. Based on the District's review and approval of the plan and schedule, the licensee shall implement the plan and the COC shall be modified to require the use of reclaimed water to reduce groundwater use.

3. If reclaimed water is used to supply all or part of the cooling tower makeup needs, groundwater use shall continue to be allowed for plant process and potable water use and, to the extent necessary, as supplemental or standby water supply for cooling tower makeup.

V. LOCAL GOVERNMENT

A. Prior to connecting to GRU's existing sewer line, the licensee shall submit the necessary information for a permit application to the City of Gainesville for review and approval and copy the SCO.

B. The licensee shall comply with all applicable ordinances under the City of Gainesville's Code of Ordinances.

Attachment A

Map 1

Map of Site

(To be attached upon Certification)

Attachment A

Map 2

Map of Certified Area

(To be attached upon Certification)

Attachment B
Wetlands Conservation Easement
(To be attached upon Receipt)

Appendix I
Air Construction (PSD) Permit
(To be attached upon Final Issuance)

Appendix II
Title V Air Operation Permit xxxxxxxx-xxx-AV
(To be attached upon Final Issuance)

Appendix II–1

Public Service Commission Determination of Need

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition to determine need for
Gainesville Renewable Energy Center in
Alachua County, by Gainesville Regional
Utilities and Gainesville Renewable Energy
Center, LLC.

DOCKET NO. 090451-EM
ORDER NO. PSC-10-0409-FOF-EM
ISSUED: June 28, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. "STEVE" STEVENS III

APPEARANCES:

ROY C. YOUNG, ROBERT SCHEFFEL WRIGHT, and JOHN T. LAVIA, III,
ESQUIRES, Young van Assenderp, P.A., 225 South Adams Street, Suite 200,
Tallahassee, Florida 32301

On behalf of Gainesville Regional Utilities and Gainesville Renewable Energy
Center, LLC. (GRU and GREC).

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On behalf of Gainesville Regional Utilities (GRU).

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On behalf of Paula H. Stahmer.

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32399-0850

On behalf of the Florida Public Service Commission (Staff).

CLERK OF COMMISSION - DATE

3302 JUN 28 2010

FPSC-COMMISSION CLERK

FINAL ORDER GRANTING PETITION FOR DETERMINATION OF NEED
FOR PROPOSED BIOMASS PLANT

BY THE COMMISSION:

BACKGROUND

Gainesville Regional Utilities (GRU) is a vertically integrated electric power production, transmission, and distribution system that is wholly owned by the City of Gainesville. GRU also provides wholesale electric service to the City of Alachua and Clay Electric Cooperative.¹ GRU's distribution system serves approximately 93,000 residential and commercial customers in both the incorporated and unincorporated areas of its service territory.

In 2007, the Gainesville City Commission began an extensive solicitation for biomass power proposals, resulting in the selection of a proposal by American Renewables, LLC (American Renewables) on May 12, 2008.² American Renewables created a wholly-owned subsidiary, Gainesville Renewable Energy Center, LLC (GREC LLC) for the proposed project. On May 7, 2009, the Gainesville City Commission unanimously approved the negotiated purchased power agreement (PPA) between GRU and GREC LLC for the purchase of energy and capacity from a proposed biomass-fueled facility for a term of 30 years.

On September 18, 2009, pursuant to Section 403.519, Florida Statutes (F.S.), and Rule 25-22.080 and 25-22.081, Florida Administrative Code (F.A.C.), GRU and GREC LLC (the Joint Petitioners) filed a joint petition for determination of need for the proposed Gainesville Renewable Energy Center (GREC Project) at GRU's existing Deerhaven plant site in Alachua County, Florida. GREC LLC will build a new nominal rated 100 megawatt (MW) net biomass-fired electric generating facility with an in-service date of December 1, 2013, located on land leased from GRU. The unit qualifies as an electrical power plant requiring a determination of need, as defined by Section 403.503(14), F.S., because it exceeds 75 MW of steam electrical generation.

On December 9, 2009, we convened a public hearing in Gainesville to take public comment on the proposed GREC Project. We heard from several public witnesses with a range of concerns and comments, and collected several exhibits from those witnesses. On December 16, 2009, we conducted a technical hearing in Tallahassee. Public witnesses were also provided the opportunity to testify at that hearing, with several ratepayers participating. The Joint Petitioners filed a brief on January 6, 2010.

At the conclusion of our February 9, 2010 Agenda Conference, we approved GRU's request to re-open the record for the limited purpose of addressing concerns raised by the Commissioners during the Agenda Conference. Those concerns fell into three basic categories: (1) the Commission's role in a need determination proceeding involving a municipal utility,

¹ GRU provides wholesale electric service to Clay Electric Cooperative through a contract between GRU and Seminole Electric Cooperative, of which Clay Electric Cooperative is a member.

² American Renewables is formerly known as Nacogdoches.

(2) risk mitigation measures available to the City of Gainesville and GRU, and (3) fuel availability and sustainability.

On March 3, 2010, the Prehearing Officer convened a Status Conference to address procedures regarding the taking of additional record evidence. Ms. Deevey and Ms. Stahmer (Intervenors) were granted leave to intervene on March 8, 2010. A supplemental technical hearing was initially scheduled for April 15, 2010, but was subsequently rescheduled to May 3, 2010.

At the May 3, 2010, supplemental technical hearing, public witnesses were again provided the opportunity to testify. More than two dozen witnesses, including the Florida Commissioner of Agriculture, a State Senator, several Gainesville City Commissioners, GRU ratepayers, and other concerned persons testified. The concerns voiced by the public at the public hearing in Gainesville and the two public hearings in Tallahassee included: system reliability and integrity, reasonable cost of electricity, fuel diversity and supply reliability, renewables/conservation/demand-side management, and cost-effectiveness.

Public testimony also focused on subjects such as environmental and health concerns, local economic impacts, and traffic concerns, which are beyond our jurisdiction to consider under our authorizing statutes. The public testimony regarding environmental concerns and health issues falls under the Department of Environmental Protection's (DEP) jurisdiction and may be relevant in certification proceedings before the DEP, the Division of Administrative Hearings (DOAH), and the Governor and Cabinet presiding as the Siting Board.

On May 24, 2010, the Intervenors filed a Joint Emergency Motion to Reopen the Record and Take Official Recognition of United States Environmental Protection Agency's (EPA's) recently promulgated Title V, Greenhouse Gas Tailoring Rule (GHG Rule). On May 26, 2010, GRU and GREC LLC responded in opposition to the motion. The EPA's GHG Rule was promulgated after the record had closed but prior to our decision on this petition. After considerable discussion at the May 27, 2010, Special Agenda Conference, we denied the Intervenors' motion.

We have jurisdiction over the subject matter of this proceeding pursuant to Sections 366.04(2)(c), 366.05, 366.92, 403.507(4), and 403.519, F.S.

STANDARD OF REVIEW

Our decision regarding an application for a determination of need is an integral part of the overall site certification process as set forth in Chapter 403, F.S. We are the sole forum for a determination of need. If a need determination is granted, the process continues with reviews by the DEP and other state and local agencies. Final certification requires the approval of the Governor and Cabinet presiding as the Siting Board based on their review of the total record.

In making our determination of need, Section 403.519, F.S., requires that we take into account the following:

... the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. . . .

While the applicable need determination statute makes it clear that each of these factors must be taken into consideration, the statute does not prescribe what importance or weight should be given to each. Therefore, we have broad authority to determine how each of these may be weighed, and we have the discretion to determine the need for an electrical power plant based upon one or more of the qualifications above, so long as each has been considered as a component of the final decision. See Nassau Power Corp. v. Beard, 601 So. 2d 1175, 1176-77 (Fla. 1992) (noting the Commission must make findings for each of the statutory criteria); Order No. 10108, issued June 26, 1981, in Docket No. 810045-EU, In re: JEA/FPL's Application of need for St. John's River Power Park Units 1 and 2 and related facilities (considering, in addition to the statutory need criteria, the socio-economic need of reducing the consumption of imported oil in the State of Florida and the adoption of the Florida Energy Efficiency and Conservation Act (FEECA)); Order No. 10320, issued October 2, 1981, in Docket No. 810180-EU, In re: Petition for Certification of Need for Orlando Utilities Commission, Curtis H. Stanton Energy Center Unit 1 (considering, in addition to the need for power, the socio-economic need of reducing the consumption of imported oil and conservation goals established pursuant to FEECA); Order No. PSC-08-0518-FOF-EI, issued August 12, 2008, Docket No. 080148-EI, In re: Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc. (noting that the Commission also considered Section 366.93, F.S., which allows pre-construction cost recovery for nuclear power plants).

The promotion of the development of renewable energy in the State of Florida is a matter falling within our jurisdiction, and is relevant for consideration in this proceeding. The Legislature has provided guidance to us specifically related to promoting renewable energy in Section 366.92(1), F.S., which states:

It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.

The Legislature also provided guidance to municipal utilities and rural electric cooperatives in Section 366.92(5), F.S., which states:

Each municipal electric utility and rural electric cooperative shall develop standards for the promotion, encouragement, and expansion of the use of renewable energy resources and energy conservation and efficiency measures. . . .

In this case, we have also given consideration to the fact that local governments are responsive to the people they serve and their representatives must stand for reelection. Over the course of both hearings, it became clear that the Gainesville City Commission's decision to pursue the GREC Project was the result of the community's desire to encourage the expansion of renewable energy resources. The GREC Project is also designed to provide a hedge against future regulation of carbon emissions and achieve the Gainesville City Commission's self-imposed goals for greenhouse gas reduction.

We will not review the final costs or establish rates resulting from the proposed GREC project because GRU, a municipal utility, is not rate-regulated by this Commission.³ As such, it is the Gainesville City Commission that is ultimately responsible to its citizen-ratepayers for all rate impacts associated with the project. The record indicates that both the Gainesville City Commission and GRU made many efforts to inform GRU's customers that their rates could increase when the plant is operational. We would expect that the Gainesville City Commission will continue to review the project's total costs as well as other impacts associated with the project such as increased jobs, property taxes, traffic patterns, and future off-system power sales before establishing retail electric rates for its citizens.

DECISION SUMMARY

Need for Electric System Reliability and Integrity and Fuel Diversity

GRU's current load forecast indicates that the utility does not have a strict reliability need for additional capacity until the year 2023, but the addition of the GREC Project's capacity will improve GRU's overall reliability and contribute significantly to fuel diversity on GRU's system. In the past, we have approved need determinations for cogeneration and renewable facilities for similar reasons. See Order No. 11611, February 14, 1983, in Docket No. 820460-EU, In re: Petition of Florida Crushed Stone Company for Determination of Need for a Coal-Fired Cogeneration Electrical Power Plant (approving the need because, in addition to the statutory need criteria, the proposed cogeneration facility appeared to be a cost-effective conservation measure under FEECA); Order No. 17752, issued June 26, 1987, in Docket No. 870193-EG, In re: Petition of Pasco County for determination of need for a solid waste-fired cogeneration power plant (approving Pasco County's 29 MW cogeneration facility because it would make some small contribution to electric system reliability and integrity in Peninsula Florida). We note that our decision on a need determination petition must be made several years in advance and based on the facts as they exist at the time of the filing. If conditions change from what was presented at the need determination proceeding, then a prudent utility would be expected to respond accordingly.

³ Section 366.11, F.S.

Most Cost-Effective Alternative and Risk Mitigation Measures

The purchased power from the GREC project may initially increase the cost of electricity for GRU's customers by \$3 to \$13 dollars per month. The evidence continues to indicate that the only scenario where the GREC Project would become the most cost-effective alternative would be if pending legislation regarding CO₂ emissions is enacted. While we are concerned about what risk mitigation measures have been taken or will be taken in order to minimize any adverse rate impacts, the Gainesville City Commission is ultimately responsible to its citizen-ratepayers for the rate impact associated with the project. During the supplemental hearing, witnesses described risk mitigation techniques and indicated that the Gainesville City Commission considered other aspects of the project such as additional tax revenues, local job creation, bond ratings, and other matters outside the need determination statutes. Again, if projections presented at the hearing do not materialize, then we would expect GRU and the Gainesville City Commission to respond accordingly in order to minimize any adverse rate impacts.⁴

Fuel Availability

The evidence contained in the record shows that there is an adequate supply of woody biomass available to support the output of the GREC facility. While no contracts have been signed to date, there are letters of intent and GREC LLC continues to negotiate with area suppliers. During the public testimony phase of the supplemental hearing, forestry representatives from near-by communities offered their support of the project and the resulting employment opportunities. We note that since this is a purchased power agreement, GRU's ratepayers will only pay if power can be produced. In other words, if the GREC facility were not able to secure enough woody biomass to meet its performance obligations, then GRU's ratepayers would be held harmless.

Summary of Findings

After considering all the evidence contained in the full record, we approve the application for determination of need for the GREC Project. In support of this decision, we find that the GREC Project will: enhance the overall reliability of the GRU system and can replace older, less efficient generation; satisfy a need for GRU to improve its fuel diversity and supply reliability; promote the development of renewable generation in Florida; and become the most cost-effective alternative if pending legislation regarding CO₂ emissions is enacted. This order reflects our decision and serves as our report under the Power Plant Siting Act, as required by Section 403.507(4)(a), F.S.

⁴ Florida Statutes and our Rules related to purchase power contracts provide safeguards such that regulated investor owned utility (IOU) ratepayers would not pay above avoided costs for purchases of renewable capacity and energy. See § 366.051, Fla. Stat. (2010) and Rules 25-17.0825, 25-17.0832, 25-17.240, and 25-17.250, F.A.C. Such is not the case with the current proceeding because GRU is not rate-regulated by this Commission. We note, therefore, that if the applicants were an IOU, our decision may have been different.

DECISION

To reach our decision, we have evaluated all the statutory considerations pursuant to Section 403.419, F.S., and have made specific findings as to each along with determining that GRU and GREC LLC were the proper applicants before this Commission. Our detailed analysis continues below.

PROPER APPLICANTS

GRU is a municipal electric, natural gas, water, wastewater, and telecommunications utility serving retail customers. It is owned and operated by the City of Gainesville in Alachua County, located in north-central Florida, and it is a valid applicant under the Florida Electrical Power Plant Siting Act (PPSA), Chapter 403, Part II, F.S.

GREC LLC is a private renewable power producer that will own, operate, and maintain the proposed Gainesville Renewable Energy Center biomass facility and sell 100 percent of the facility's electric power output to GRU under a 30-year power purchase agreement (PPA). Therefore, consistent with our prior decisions, we find that GRU and GREC LLC are the proper applicants within the meaning of Section 403.519, F.S. and the Florida Supreme Court's decision in Nassau Power Corp. v. Deason, 641 So. 2d 396 (Fla. 1994).

NEED FOR ELECTRIC SYSTEM RELIABILITY AND INTEGRITY

The Joint Petitioners contend that the capacity of the proposed GREC Project is needed to improve and maintain the reliability of GRU's existing system. The Joint Petitioners state that the capacity from the proposed GREC Project is needed to replace capacity resulting from maintenance and forced outages on GRU's Deerhaven 2 unit. In addition, the Joint Petitioners state that the GREC Project is needed by GRU to provide reliable, low-cost baseload capacity in light of the fact that most of the remainder of GRU's capacity will be retired during the term of the GREC LLC PPA. The Joint Petitioners state that GRU currently purchases baseload capacity and energy from Progress Energy Florida, Inc. (PEF or Progress) as an economic and reliability hedge, and the expiration of this contract in 2013 results in a need for baseload capacity. The Joint Petitioners assert that the overall decision to pursue the GREC Project was based on the City of Gainesville's commitment to address the environmental concerns of climate change, sustainability, and energy independence. The Joint Petitioners contend that GRU's wholesale contracts with the City of Alachua and Clay Electric Cooperative are anticipated to be renewed, and that allowing them to expire without renewal would not affect the timing of GRU's strict reserve margin need.

Intervenor Stahmer contends that that GREC Project will not enhance GRU's system reliability and integrity, that GRU does not require additional baseload capacity, and that GRU should use its projected period of excess capacity to implement additional conservation measures.

Intervenor Deevey contends that GRU could significantly delay a capacity need by electing to not renew its wholesale contracts with the City of Alachua and Clay Electric

Cooperative.⁵ In addition, Intervenor Deevey asserts that not renewing the wholesale contracts would result in significant decreases in energy needs, and result in lower CO₂ emissions by GRU. Finally, Intervenor Deevey states that by delaying a capacity need, GRU would have additional time to seek alternatives to the GREC Project.

Analysis

GRU developed forecasts for the number of customers, energy sales, and seasonal peak demands for 2009 through 2044. We reviewed GRU's forecast assumptions, regression models, and the projected system peak demands and find that they are appropriate for use in this docket. The forecast assumptions were drawn from independent sources, which we have relied upon in prior cases. The regression models used to calculate the projected peak demands conform to accepted economic and statistical practices.

GRU uses the University of Florida's Bureau of Economic and Business Research (BEBR) to develop its population projections. GRU's base case annual net energy for load forecast projects usage growth in the 2009 through 2044 period, at an average annual growth rate of approximately 0.71 percent.

GRU's existing net summer generating capacity is approximately 608 MW. The Deerhaven and John R. Kelly generating facilities are the primary sites on the GRU system. Both the Deerhaven and John R. Kelly facilities consist of steam turbine and combustion turbine units. The John R. Kelly facility also includes a combined cycle unit. Also included on the GRU system are: the South Energy Center, which provides combined heat and power services to the Shands HealthCare cancer hospital; a share of PEF's Crystal River 3 nuclear unit; and distributed generation. For 2009, GRU projected a summer peak demand of 441 MW which results in a reserve margin of 269 MW or 61 percent.

The first step in analyzing the need for new generating capacity is to determine the timing of a unit addition. Typically, such analyses attempt to project when a utility's system will fall below a predetermined planning criterion, such as reserve margin. GRU uses a 15 percent reserve margin as a planning criteria for such analyses. Assuming load growth as discussed above, GRU's existing capacity would exceed the 15 percent criteria until the year 2023. In 2023, GRU will need an additional 48 MW of capacity. This is attributed to the retirement of GRU's Deerhaven Steam Unit 1 which will result in a reduction of 83 MW of summer net capacity. Such a result indicates that from a system reliability viewpoint GRU's existing system is adequate to serve projected load for over a decade.

While not technically needed to maintain reliability of the GRU system, the addition of the GREC Project will enhance system reliability and fuel diversity for Peninsular Florida and GRU. The capacity from the proposed GREC Project will add value to GRU's generation portfolio by modernizing its generation fleet. Approximately two-thirds of GRU's existing capacity is at least 28 years old. We also note that GRU plans a 50-year unit life for most of its

⁵ GRU provides wholesale electric service to Clay Electric Cooperative through a contract between GRU and Seminole Electric Cooperative, of which Clay Electric Cooperative is a member.

current generating units. However, GRU expects the Deerhaven 2 unit will exceed its 50-year life expectancy. Some units such as coal-fired units can have a life expectancy as high as 60 years. Deerhaven Unit 2 is GRU's main generating unit; it is a 222 MW coal unit that has operated since 1981. The capacity from the proposed GREC Project would enhance reliability by replacing capacity lost during maintenance and forced outages at the Deerhaven 2 unit. Moreover, the GREC Project will improve GRU's generating system reliability from both a firmness of capacity perspective and from the perspective of exposure to high cost of replacement power. GRU's primary focus was fuel diversification and to provide a financial hedge against future carbon regulation. We discuss fuel diversification and future carbon legislation in greater detail later in this order.

GRU asserted that the GREC Project would improve system reliability by providing baseload generation, including during planned and unplanned outages of Deerhaven Unit 2. Outages during peak periods, such as the Winter 2010 cold snap, could require purchases from other utilities with limited options for GRU. Intervenors also raised questions regarding wholesale contracts and their potential impact upon GRU's need for capacity.

In developing GRU's forecasted peak demand for the contract period, GRU embedded wholesale sales resulting from contracts with the City of Alachua and Clay Electric Cooperative. These full requirements contracts include maintaining sufficient generation resources to serve the demand and provide for a reserve margin, and increase GRU's forecasted peak demand and annual net energy for load. These contracts expire before the GREC contract period begins, but are expected to be renewed on or before that date. Intervenors argue that if GRU elects to let the contracts expire without renewal, GRU would increase its reserve margin by decreasing its overall peak demand. GRU states that if the specific contracts with City of Alachua and Clay Electric Cooperative are not renewed, then the utility would attempt to market the excess capacity to maximize value for its retail customers of its existing capacity. We believe that if the wholesale contracts are allowed to expire without renewal, the GREC Project still improves GRU's system reliability.

Conclusion

Based on GRU's 15 percent reserve margin criteria and expected renewal of existing wholesale contracts, GRU's load forecast indicates that GRU does not have a reliability need for additional capacity until 2023. The expiration and expected renewal of wholesale contracts does not influence the need for the GREC Project, as it is needed for fuel diversity and as a hedge against future carbon legislation. Therefore, we find that the GREC Project would enhance the overall reliability of the GRU system, particularly during potential outages of Deerhaven Unit 2 or periods of high demand, and can replace older, less efficient generation.

NEED FOR ADEQUATE ELECTRICITY AT A REASONABLE COST

The Joint Petitioners assert that GRU performed a levelized cost of energy (LCOE) and cumulative present worth revenue requirement (CPWRR) analysis of the GREC Project. The Joint Petitioners contend that when compared to multiple alternative technologies to be constructed by 2014, the GREC Project was the most cost-effective excluding coal.

The Joint Petitioners assert that the GREC Project and PPA are cost-effective when compared to other self-build supply options and to other renewable energy options available to GRU. They also contend that an extensive and competitive solicitation process was utilized under the guidance of the Gainesville City Commission. The GREC Project also mitigates a wide variety of risks, including fossil fuel price volatility, fuel supply reliability, replacement power cost. The Joint Petitioners also contend that the contract's provisions protect GRU and its customers from issues that would exist if the GREC Project was self-build, including unit degradation, cost of outages of the GREC Project, and financial risks from increased debt.

Additionally, the Joint Petitioners state that GRU considers that future regulation of carbon emissions or renewable energy, enacted by legislation or rule, is inevitable. The Joint Petitioners argue that the GREC Project will meet the Gainesville City Commission's climate policy objectives, protect GRU's customers, and meet GRU's need for adequate electricity at a reasonable cost.

Intervenor Stahmer asserts that the GREC Project will not provide electricity at a reasonable cost and argues that the Joint Petitioners have not included the impact of forecasted price increases for the biomass fuel to be consumed by the GREC Project. Intervenor Stahmer contends that the negotiated contract between GRU and GREC LLC increased the capital costs of the GREC Project significantly compared to the original bid. Intervenor Stahmer suggests that construction indices are an insufficient explanation for the capital cost increase.

Intervenor Deevey contends that the cost effectiveness of the project hinges upon the cost of the biomass fuel to be consumed by the GREC Project. Intervenor Deevey suggests that the price of biomass proposed by the Joint Petitioners is not reasonable, as biomass prices would increase significantly with the enactment of a renewable portfolio standard (RPS), either at a state or federal level. Intervenor Deevey asserts that several studies show an RPS would increase demand for forestry products, and result in price increases. Intervenor Deevey states that the Joint Petitioners have not demonstrated that biomass fuel prices will remain indexed to inflation, but rather could face large price increases from potential RPS legislation.

Analysis

GRU conducted a LCOE analysis of the GREC Project using multiple scenarios, including several alternative units. The alternate units include a combustion turbine unit, a combined cycle unit, a pulverized coal unit, and a pulverized coal unit with carbon capture and sequestration. The GREC Project had a lower LCOE value than any of the natural gas-fired alternatives, and was more cost-effective than the coal-fired alternatives when considering carbon regulation or carbon capture and sequestration. On an annual basis the GREC Project did not always possess the lowest cost per kilowatt-hour. In the beginning years, the GREC PPA was more expensive than some of the alternative units in certain scenarios. However, the LCOE analysis demonstrated that over the 30-year term of the PPA, the GREC Project resulted in the lowest LCOE, as further discussed below.

We find that while the LCOE analysis performed by GRU is a valuable screening tool, it may have misleading assumptions for the GREC Project. While GRU's current generating fleet

is sufficient to adequately supply electricity to GRU's ratepayers until 2023, the LCOE analysis conducted assumes all units would be placed in commercial operation by 2014. As a result, we find that a more appropriate comparison would be between the GREC Project and no new construction until 2023.

At our staff's request, GRU conducted a CPWRR Analysis, comparing the GREC Project to GRU's system cost assuming no new construction until 2023. Under this analysis, GRU would receive the full capacity of the GREC Project for the entire 30-year period. Such a scenario originally resulted in a cumulative net present value cost of approximately \$100 million over the contract's term.

GRU states in its petition that it intends to resell approximately half the capacity of the GREC Project during the first ten years. As part of its analysis, GRU assumed that it will be able to resell the power from the GREC Project at the full contract rate. With this assumption, GRU originally estimated that the GREC Project would show a total savings of approximately \$62 million over the 30-year period. It is likely that GRU would be able to resell some or all of the GREC Project's capacity, though GRU may not receive the full contract price. The Joint Applicants updated this through the supplemental hearing.

Another major influence on GRU's system cost is the potential of carbon regulation, which was modeled in a series of scenarios by GRU. As discussed further later, GRU modeled the potential cost impact of future carbon regulations based on pending carbon legislation, specifically House Resolution 2545, or the Waxman-Markey Bill. The GREC Project originally showed large savings with carbon regulation.

The supplemental hearing featured significant updates, including additional information on potential carbon and renewable legislation, fuel forecasts, market sales, and other factors. Concerns of high biomass prices were a focus of the Intervenor's arguments. At our staff's request, GRU updated the CPWRR analysis. In updating it, GRU provided multiple iterations of the CPWRR analysis, including multiple significant changes from the initial filing including an updated fuel forecast. This updated fuel forecast shows a small initial increase in natural gas and coal prices, followed by a significant decrease in the outer years compared to the previous fuel forecast.

The update included potential profits from sales of renewable energy credits (RECs) produced by the GREC Project in the Regulated CO₂ Case. This is intended to reflect the effects of the renewable portfolio standard proposed as part of the Waxman-Markey Bill, which forms the basis of the Regulated CO₂ Case.

GRU also included the value of potential market sales from existing assets during periods of excess capacity. These serve to reduce system costs in all scenarios, including no new

construction. The underutilized existing assets, so-called stranded assets, were not considered in the initial filing.⁶

GRU considered sales from the GREC Project if GRU was unable to resell the half of the output at full contract price. A market contract price was developed based upon a sale of firm capacity and energy from 50 MW of the GREC Project, using GRU's contract with PEF as a model. All scenarios now consider the resale of half of the GREC Project's capacity for the initial ten years of operation. It is important to note that GRU currently has no signed contracts for resale of the GREC Project, either at full contract price or at a market-based.

Conclusion

There is considerable uncertainty about the economics of this project. The GREC Project could result in a loss of approximately \$56 million based on a cumulative net present worth revenue requirement analysis using current environmental regulations, fuel forecasts, and market assumptions. However, the GREC Project could result in a savings of approximately \$448 million, if currently pending environmental regulations are enacted at proposed levels and GRU resells half of the capacity at full contract price. Therefore, we find that the GREC Project acts as a hedge against potential cost increases associated with future regulation of carbon emissions and renewable energy.

NEED FOR FUEL DIVERSITY AND SUPPLY RELIABILITY

The Joint Petitioners argue that the GREC Project will significantly diversify GRU's fuel mix, which is dominated by coal and natural gas. The Joint Petitioners state that the GREC Project will also increase the amount of renewable energy on GRU's system, and the state of Florida as a whole. The Joint Petitioners contend the biomass fuel supply requirements of the GREC Project can be met sustainably on a long-term basis, with minimal impacts to existing biomass facilities. The Joint Petitioners assert the Gainesville City Commission fully considered the range of benefits offered by the GREC Project, including for fuel diversity, fuel supply reliability, and as a hedge against potential carbon regulation.

Intervenor Stahmer contends that while the GREC Project will improve the fuel diversity of GRU's system, it will not reduce coal and natural gas consumption. Intervenor Deevey took no position on this issue.

Analysis

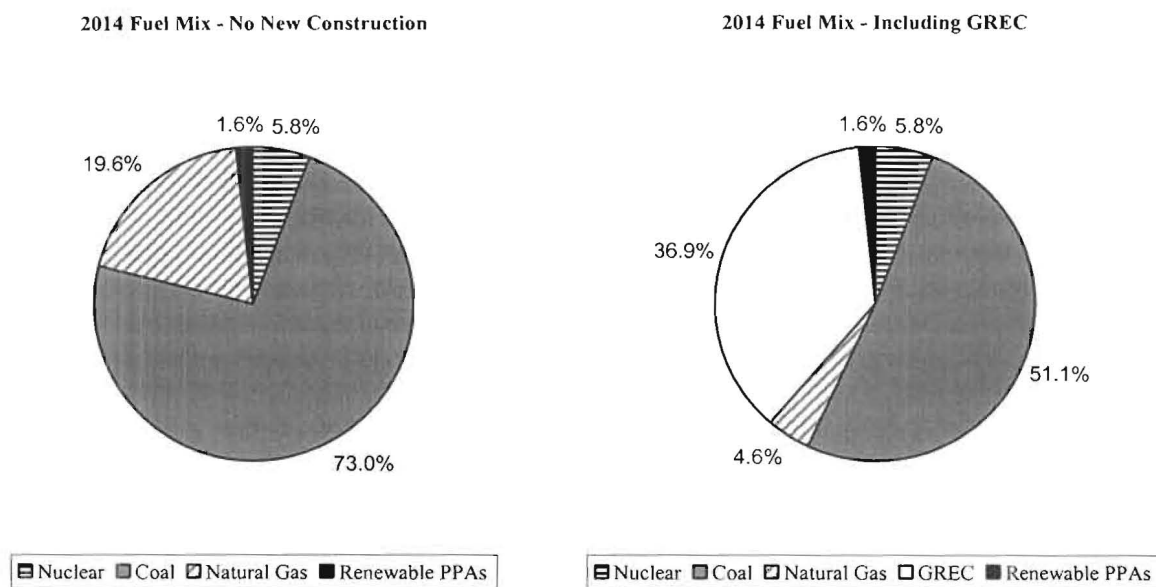
Fuel Mixture

GRU's existing system consists primarily of coal-fired baseload generation at Deerhaven Unit 2, supplemented by natural gas-fired intermediate and peaking generation from the rest of its fleet. The only non-fossil fueled unit is GRU's 1.4079 percent of ownership of the Crystal River 3 nuclear plant. GRU also receives a significant portion of its energy from purchased

⁶ For purposes of this order, stranded assets are those generating assets that are available for use for economic wholesale sales, but are not utilized.

power agreements (PPAs). GRU's largest single PPA is with PEF, through which GRU receives a portion of the utility's baseload system including coal and natural gas. GRU also receives renewable energy from other purchase agreements with a local landfill gas operation and distributed solar photovoltaic systems through its Solar Feed-in-Tariff system.

GRU's PPAs with PEF expire in 2013. Even with the expiration of PEF's PPAs, GRU has sufficient generation capacity to serve its projected needs until 2023 and GRU's existing generation fleet would have to rely more heavily upon coal, increasing its percentage share from 61.4 percent in 2008 to 73 percent of system energy by 2014. GRU's usage of natural gas is also projected to increase from 16.3 percent in 2008 to approximately 19.6 percent by 2014 without the addition of the GREC Project.



The addition of the GREC Project would significantly reduce fossil fuel consumption for GRU's customers. As illustrated in the charts above, if GRU retains all capacity from the GREC Project, the percentage of renewable generation increases from 1.6 to 38.5 percent, while coal drops from 73.0 to 51.1 percent and natural gas drops from 19.6 to 4.6 percent. The potential resale of a portion of the GREC Project's capacity reduces the fuel diversity benefits somewhat, but GRU's system would still show a notable reduction in fossil fuel usage.

Intervenor Stahmer suggests that the GREC Project will not reduce coal or natural gas usage. GRU's analysis, discussed above, shows that the GREC Project allows significant reductions in coal and natural gas as a percentage of GRU's net energy for load. However, GRU's existing fossil-fueled assets could still be utilized to make off-system sales to produce net revenues.

Fuel Transportation

In addition to having a diverse set of fuel types from which to supply electricity to its ratepayers, utilities generally desire to have diversity in transportation and delivery mechanisms for their fuels. Multiple methods of transportation limit the risk of interruption and allow flexibility in fuel delivery. As an inland utility, GRU is restricted to overland transport for its fuel. Currently, for deliveries of coal and natural gas, a single transit method is available for each fuel. With the addition of biomass, GRU would be able to use surface roads as a fuel transport system for its baseload generation, diversifying the fuel transportation methods available to GRU to satisfy its ratepayers' energy requirements.

Biomass Supply Concerns

A primary concern for development of any power plant is access to sufficient fuel supply. Unlike traditional fossil fuels, biomass would not typically be shipped for long distances from centralized production facilities. Biomass for the GREC Project would come from the GREC Project wood basket, a region approximately 75 miles in radius around the plant site. The GREC wood basket is developed as a result of economics, rather than any technological limitation. A visual display of the fuel catchment area, with forested areas highlighted, was provided as part of GRU's presentation during the public hearing. The GREC Project would use a range of biomass for fuel, including forest residue, mill residue, pre-commercial thinnings, used pallets, urban wood waste, and opportunity fuels. Opportunity fuels include trees requiring disposal from storm damage or disease, for which the GREC Project may be eligible for a tipping fee. The GREC Project will not use construction and demolition debris.

As a part of its supplemental filings, GRU introduced a number of studies analyzing biomass resources within the GREC Project's wood basket and for Florida as a whole. Witness Schroeder estimated that approximately 5.85 million green tons of suitable biomass material are produced annually in the GREC Project's wood basket. As the evidence in the record indicates, the GREC Project requires an estimated annual fuel supply of 1 million green tons, with some variability due to moisture content. Witness Schroeder identified several varieties of biomass that are candidates to be used as fuel for the GREC Project. These include urban wood waste, logging residues, mill residues, and pre-commercial thinnings.

As of the date of this decision, GREC LLC has not entered into any firm fuel contracts, but has signed a letter of intent for approximately one-third of its fuel supply with Wood Resource Recovery, LLC. GREC LLC has identified and begun negotiations with various landowners for biomass. Several contract measures serve to protect GRU in the event that sufficient biomass is unavailable, or not available at a reasonable price.

Conclusion

The GREC Project would add a sustainable biomass fuel source that would significantly reduce coal and natural gas usage on the GRU System. GREC LLC has signed a letter of intent for approximately one-third of its fuel supply with Wood Resource Recovery, LLC. Witness Schroeder also testified that the GREC Project wood basket has sufficient biomass and that

GREC LLC is in the process of identifying and beginning negotiations with various landowners for biomass. The contract between the Joint Petitioners contains some protections for GRU in the event that the GREC Project is unable to procure sufficient biomass or experiences high fuel costs. Thus, we find that the GREC Project would satisfy a need for GRU to improve its fuel diversity and supply reliability.

VII. RENEWABLE ENERGY SOURCES AND TECHNOLOGIES, AS WELL AS CONSERVATION MEASURES

The Joint Petitioners contend that GRU is a leader in aggressively utilizing renewable energy resources and energy conservation measures. The Joint Petitioners assert that GRU already utilizes a combination of solar photovoltaic energy and landfill gas generation to the extent available. The Joint Petitioners assert that GRU encourages cogeneration with a combined heat and power plant. They assert that GRU's conservation measures include a variety of programs open to all customer classes, and include government services such as traffic signals and pedestrian lighting. They argue that GRU's existing renewable energy resources and conservation efforts have delayed a strict reserve margin need for capacity, but not a need for baseload energy generation.

Intervenor Stahmer asserts that GRU should take advantage of its current period of excess capacity to invest in additional demand side management (DSM). Intervenor Stahmer argues that additional conservation and DSM measures could dramatically reduce current demand load and represent a cheaper and less risky alternative to the GREC Project.

Intervenor Deevey states that GRU has not conducted any examination of non-generational means of reducing need, as a need does not occur until 2023. Intervenor Deevey asserts that GRU's conservation efforts have significantly reduced the need for new capacity, until 2023, eight years after the proposed in-service date of the GREC Project. Also, Intervenor Deevey suggests allowing wholesale contracts with the City of Alachua and Clay Electric Cooperative to expire without renewal.

Analysis

The City of Gainesville, and by extension its municipal utility GRU, has a history of emphasizing renewable energy over conventional generation and has voluntarily entered into agreements to reduce its carbon emissions in line with the Kyoto Protocol. GRU's existing renewable programs include landfill gas to energy, solar thermal, and photovoltaic rebates, using a European style solar feed-in-tariff. Gainesville's Feed-in-Tariff, or FIT, provides a purchased power agreement for a 20-year term for fixed payments to distributed solar generators at a rate significantly above GRU's current avoided cost.

GRU's current demand side management (DSM) portfolio is based on the Total Resource Cost (TRC) test, which was adopted in 2006, and offers a wide range of conservation programs. GRU's DSM programs have resulted in cumulative energy reductions of 151 gigawatt-hours (GWh) and cumulative peak demand savings of 30 MW.

GRU asserts that its existing renewable energy and DSM programs have deferred the need for additional capacity by several years. As discussed above, GRU does not have a reserve margin based need for additional capacity until 2023. Because the decision to build the GREC Project was made to enhance fuel diversity and act as an economic hedge against future carbon regulation, GRU did not perform a formal evaluation to determine whether there are any DSM or conservation measures available that could mitigate the need for the proposed GREC biomass facility, a renewable source in and of itself.

Intervenor Stahmer proposes that GRU increase its conservation measures to significantly reduce existing load as an alternative to the GREC Project. Since there is no strict reserve margin need for capacity, additional conservation efforts would not mitigate the need for the GREC Project. Intervenor Deevey proposed that by allowing the expiration of wholesale contracts GRU could further reduce its capacity needs.

Conclusion

We take into account that, while GRU did not evaluate whether there are any conservation measures that can mitigate the need for the GREC Project, GRU has a history of promoting renewable energy development and energy conservation as illustrated by its Solar FIT program and basing its DSM portfolio on the TRC test. We note that GRU made the decision to pursue the GREC Project for other reasons. We also take into account that the GREC Project represents a renewable energy resource capable of supplying firm baseload capacity. As a renewable resource, we find that the GREC Project enhances GRU's fuel diversity, acts as an economic hedge against future carbon and renewable regulations, and furthers the Legislature's intent expressed in Section 366.92, F.S., to promote renewables by increasing Florida's renewable generating capacity.

MOST COST-EFFECTIVE ALTERNATIVE AVAILABLE

The Joint Petitioners contend that the GREC Project, when compared to multiple alternative technologies to be constructed by 2014, in a variety of cases and scenarios, was the most cost-effective alternative excluding coal. The Joint Petitioners assert that while the GREC Project is not as cost-effective in an LCOE analysis as a pulverized coal unit, it is unlikely that a coal unit would be permitted in Florida.

The Joint Petitioners assert that the CPWRR analysis shows that GRU's customers will receive significant savings, and that only unrealistic assumptions result in net present value costs. The Joint Petitioners state that, among other factors, the GREC Project frees up existing utility assets to potentially be used for economy sales by GRU to other utilities, thus, reducing costs further.

Intervenor Stahmer argues that the GREC Project is highly speculative, and that the cost-effectiveness is uncertain given the current regulatory climate. Intervenor Stahmer asserts that the GREC Project is not cost-effective for ratepayers due to the contract pricing method. Intervenor Stahmer contends that the Joint Petitioners have not included the impact of forecasted price increases for the biomass fuel to be consumed by the GREC Project. Intervenor Stahmer

asserts that the negotiated contract between GRU and GREC LLC increased the capital costs of the GREC Project significantly compared to the original bid. Intervenor Stahmer suggests that construction indices are an insufficient explanation for the capital cost increase.

Intervenor Deevey contends that the cost effectiveness of the project hinges upon the cost of the biomass fuel to be consumed by the GREC Project. Intervenor Deevey suggests that the price of biomass proposed by the Joint Petitioners is not reasonable, as biomass prices would increase significantly with the enactment of a renewable portfolio standard (RPS), either at a state or federal level. Intervenor Deevey asserts that several studies show an RPS would increase demand for forestry products, and result in price increases. Intervenor Deevey contends that the Joint Petitioners have not demonstrated that biomass fuel prices will remain indexed to inflation, but rather could face large price increases from potential RPS legislation.

Analysis

The record indicates that the Gainesville City Commission fully considered the impact of the GREC project would have on the GRU system when it rendered its unanimous decision to approve the project. It focused on the ability of biomass to provide baseload energy, and it also considered the ability of GREC to provide a hedge against future carbon legislation, given GRU's current coal heavy fuel mix. As part of its policy to encourage the development of renewable resources, the Gainesville City Commission directed GRU to solicit proposals for baseload renewable resources, eventually resulting in the selection of the GREC Project. We find that the GREC Project can reasonably be considered the least cost biomass generator commercially available. Moreover, the timing of the GREC project may make it eligible for significant economic benefits from the American Recovery and Reinvestment Act of 2009.

Contract Payment Terms and Protections

The PPA between GRU and GREC LLC is a performance agreement in which capacity payments are paid on a dollar per megawatt-hour basis, instead of the traditional kilowatt per month basis. The contract payments can be divided into two generic groups: non-fuel energy charges based upon the availability of the unit, and fuel charges based upon the dispatch of the unit.

The non-fuel energy charges can be broken down into the capacity payment, which will be adjusted based upon the construction price index difference from the signing of the contract and the beginning of construction, and the fixed operations and maintenance expenses, which will not be escalated. Prices for non-fuel energy charges are based upon the availability of the unit, which has minimum requirements outlined in the contract, and performance incentives to maintain that availability. The non-fuel energy charge will be paid regardless of the actual energy output of the facility, and are thus a 'sunk' cost when considering economic dispatch. Based upon GRU's economic analysis of the GREC Project, these charges will constitute the majority of payments to the facility for almost the entire 30-year term. In the event that the facility is unable to operate, GRU would not be responsible for any payments. However, if the facility is able to operate, but GRU opts not to dispatch it, GRU would still be required to pay the non-fuel component of the charges in the amount of energy as if the facility was dispatched. The

fuel charges are based upon a combination of the variable operations and maintenance, escalated at 2.50 percent, and the biomass fuel itself, which was escalated for analysis purposes at the consumer price index. Combined, the fuel charge would be used for dispatch purposes, and is comparable to that of a coal unit.

The PPA between GRU and GREC LLC includes multiple contractual protection mechanisms to ensure that GRU's ratepayers are safeguarded from non-performance by the GREC Project, with GRU able to draw upon financial instruments to purchase replacement power. If GREC LLC goes into default, the contract becomes void.

Levelized Cost of Electricity (LCOE) Analysis

The GREC Project was compared to several fossil-fueled alternative units in a levelized cost of electricity (LCOE) analysis. LCOE serves well to screen a variety of technologies on an 'apples to apples' basis, meaning in the case of electrical utilities that similar technologies are approximately interchangeable with an existing system. The four alternative units included a combustion turbine, a combined cycle unit, a pulverized coal unit, and a pulverized coal unit with carbon capture and sequestration (CCS) equipment. Of the four alternative units utilized in GRU's analysis, only the coal-fired units are considered baseload generation similar to the GREC Project.

The LCOE analysis included a range of scenarios, including variations in fuel prices, capital costs, and carbon regulation for the alternative units. Additional scenarios were performed for each alternative unit. For example, the analyses included multiple capacity factors for the base case, and the sensitivities on fuel, capital cost, and carbon regulation were conducted at a 90 percent capacity factor for all units as well. Based on these scenarios, the pulverized coal unit is the only alternative more cost-effective than the GREC Project, excluding both carbon cases.

This form of LCOE analysis may be misleading due to several assumptions used. GRU's LCOE analysis used the assumption that any alternative unit would be constructed so as to have a commercial in-service date identical to the proposed GREC Project, by January 1, 2014. Providing for permitting and construction time, neither of the two coal-fired units proposed as alternatives would be able to begin operation by the 2014 timeframe. Even if construction timing was not a factor, witness Kushner testified that it is unlikely that a new coal unit would be approved in Florida given the current regulatory climate. The remaining units, both natural gas-fired, likely could be constructed by 2013. However, only the natural gas-fired Combined Cycle unit is designed to operate in a similar fashion to GREC as a baseload unit.

The GREC Project was assumed for all comparisons to have a 90 percent capacity factor, which was derived from the performance requirements of the PPA. The LCOE analysis did not model possible short-term rate impacts of the units analyzed. On an annual LCOE basis, the GREC Project became more cost effective than the natural gas-fired combined cycle unit by 2027 at a 90 percent capacity factor. When compared to the combustion turbine operating at a 90 percent capacity factor, the GREC Project did not begin to produce energy at a lower cost per

kilowatt-hour until after 2021. Such results indicated that the initial capital costs of the GREC Project were not offset by fuel savings until 7 to 13 years into the contract term.

An LCOE analysis is useful as a screening tool once a decision has been made to construct a unit and can assist in selecting between similar technologies. However, the LCOE analysis conducted by GRU assumed a need exists to construct a unit of approximately 100 MW capacity by 2014. This is not the case for GRU, as no need exists until approximately 2023 based upon reserve margin criteria. If the GREC Project is not constructed, it is unlikely that one of the alternate units mentioned above would be constructed to begin service by 2014. As a result, we believe it is more appropriate to compare the GREC Project to a scenario of no new construction until 2023, which is more easily conducted using a CPWRR analysis.

Cumulative Present Worth Revenue Requirement Analysis

GRU provided a CPWRR analysis for GRU's system with the GREC Project and with no new construction until 2023. Multiple scenarios were analyzed including a resale of half of the GREC Project's capacity for ten years, and the estimated impact of pending carbon legislation.

GRU did not include any new construction for the 30-year term of the GREC PPA, but as witness Regan stated, GRU's analysis included projected market costs for capacity and energy in its projected requirements. Typically, "filler units" are used to represent future capacity additions that are outside of the utility's normal planning period. Filler units consist of natural gas-fired combustion turbines or combined cycle units dependent upon projected capacity and energy requirements. Instead, the use of market purchases for energy began in 2024 with the retirement of Deerhaven Unit 1 and increased as other units on the GRU system were retired. The most significant increase occurred in 2031, with the retirement of Deerhaven Unit 2, when market purchases for power represented approximately 30 percent of net energy for load. In addition to market purchases, the existing units on GRU's systems were heavily utilized, especially in the outer years. For example, the Deerhaven Combustion Turbine Unit 3 was modeled at a capacity factor equal to 96.3 percent in the no new construction scenario by 2032.

We believe it is unlikely that GRU would operate its units in this manner, and that it is more likely that new, efficient units would be constructed at some point during the period to meet customer demand. Also, witness Regan testified that GRU hopes to get more than 50 years out of the Deerhaven Unit 2, which would push the retirement date of this unit further into the future. Due to the lack of the use of "filler units," variability of retirement dates, high amount of market purchases, and unusually high capacity factor for peaking resources, we find that the CPWRR analyses conducted by GRU provides no clear answer to the economic viability of the GREC Project.

The analyses, however, do indicate that the primary driver of estimated savings comes from the estimated impacts associated pending environmental regulations affecting CO₂. As such, we believe that the enactment of pending carbon legislation will have the greatest impact upon the cost-effectiveness of the GREC Project. If the GREC Project is considered carbon neutral, and is able to reduce the requirement of GRU to purchase carbon credits or allocations, then the facility may provide significant economic benefit. As witness Regan testified, the

GREC Project acts as a hedge against potential carbon legislation that may have a negative effect upon the cost effectiveness of coal-fired generation, upon which GRU relies heavily.

The GREC Project's output would assist GRU in meeting its voluntary Kyoto Protocol carbon emission goals. It would also operate as a hedge against possible future regulation of carbon emissions at the federal level. House Resolution 2545, or the Waxman-Markey Bill, was used by GRU to develop the economic impact of carbon legislation. In addition, the GREC LLC PPA provides all the environmental attributes associated with the facility to GRU.

While GRU's economic analysis is based upon pending legislation, the regulation of carbon emissions and federal renewable portfolio standard are not guaranteed to remain in its current draft form, or be implemented into law. Significant changes, delays, or withdrawal of the pending legislation could impact the anticipated rate impact of the GREC Project. For example, the Waxman-Markey Bill and multiple federal and international organizations consider biomass to be a renewable and sustainable resource. In fact, the collection and combustion of biomass can serve to reduce carbon emissions by reducing methane emissions related to rotting biomass. However, biomass generation typically involves the use of fossil fuels for transport of fuel to the facility, which amounts to approximately four percent of the equivalent carbon emissions had the fuel been coal. As a result, until legislation is enacted, there will remain some uncertainty as to whether biomass facilities would be considered fully carbon neutral or partially so, dependent upon fuel source and transportation.

Resale of Capacity and Energy

GRU plans to resell 50 MW of capacity from the GREC Project for the first ten years of the contract and several utilities have expressed interest in purchasing this capacity, including Florida Municipal Power Agency, Orlando Utilities Commission, Reedy Creek Improvement District, and City of Lakeland. While these utilities, or others, may purchase portions of the GREC Project's capacity, it is not known if GRU would be able to secure resale PPAs for the full price of the contract that GREC LLC is guaranteed by GRU. We believe that it is likely that GRU would be able to resell capacity from the GREC Project and that the no resale scenario represents a worst-case situation.

Financial Assumptions

GRU's financial assumptions for the GREC Project include an anticipated capital structure consisting of 100 percent debt financing using primarily long-term tax-exempt municipal bonds. GRU structured the transaction with GREC LLC as a PPA rather than GRU obtaining an equity share in the facility. The annual costs for GRU's participation in the project are not tied to an investment in a self-build asset. GRU is the counterparty to the PPA upon which GREC LLC will obtain project financing. Standard & Poor's and Moody's have issued bond ratings to GRU of AA and Aa2, respectively.

GRU's other financial assumptions include an annual rate of 4.2 percent for the long-term tax-exempt municipal bond rate, interest during construction rate, and present worth discount rate. Additionally, a 2.5 percent annual percentage rate was used for the general inflation rate

and the escalation rate that was applied to both capital costs and O&M costs. These financial assumptions as applied are consistent and comparable with financial assumptions used in other recent need determinations that were approved by this Commission.⁷ There was no evidence presented in the record that disputes the reasonableness of these financial assumptions. Based on this review, we find that the financial assumptions used for this initial evaluation are reasonable.

Intervenor Stahmer also raises issues concerning differences in the estimated capital cost of the project between the original binding proposal and the final negotiated purchase power agreement before us in this need determination. The matter before this Commission, however, is the final negotiated purchased power agreement, signed by GRU and GREC LLC, and not the original binding proposal. The differing estimates from the original binding proposal and the final negotiated purchase power agreement are not relevant to our decision.

Updated Cumulative Present Worth Revenue Requirement Analysis

As part of the supplemental testimony process, GRU updated its CPWRR to include a new fuel forecast, off-system sales from existing assets, market sales of the GREC Project, and consideration of renewable energy credits. In addition to modifying the overall CPWRR analysis, these factors also change the rate impact of the GREC Project.

In total, there have been significant changes to each of the scenarios and cases described at the original hearing. There is considerable uncertainty about the economics of this project because the overall cost-effectiveness of the GREC Project is heavily dependent upon the cost of future carbon regulation, and the potential resale of half the project's capacity. The GREC Project could result in a loss of approximately \$56 million based on a CPWRR analysis using current environmental regulations, fuel forecasts, and market assumptions. However, the GREC Project could result in a savings of approximately \$448 million if pending environmental regulations are enacted, and GRU resells half of the capacity at full contract price.

Overall, the updated analysis featured an improvement in the cost-effectiveness of the GREC Project. The cases and scenarios described above have important assumptions that influence their cost-effectiveness. Foremost, all scenarios now assume some form of resale of the GREC Project's capacity, either at the full contract price or at a market-based price. We consider it likely that GRU would be able to resell power, but whether they are able to achieve the estimated rates will have a significant impact upon the cost of the GREC Project. As discussed above, GRU has not yet executed any contracts, though multiple utilities have expressed interest in purchasing capacity and energy from the GREC Project.

The Regulated CO₂ case described above envisions carbon and renewable legislation based upon the Waxman-Markey Bill. As a part of its supplemental filings, GRU included an

⁷ Order No. PSC-09-0111-FOF-EM, issued February 25, 2009, in Docket No. 080614-EM, In re: Petition to determine need for Greenland Energy Center Combined Cycle Conversion in Duval County by JEA (5 percent original cost rate/7 percent revised cost rate) and Order No. PSC-06-0457-FOF-EM, issued May 24, 2006, in Docket No. 060155-EM, In re: Petition for determination of need for proposed Stanton Energy Center Combined Cycle Unit B electrical power plant in Orange County, by Orlando Utilities Commission (5.25 percent cost rate including insurance costs and issuance fees).

update on this legislation, as well as multiple other legislative efforts, at a state and federal level, to regulate carbon emissions or renewable energy. Witness Regan also describes findings by the Environmental Protection Agency (EPA) that has made an Endangerment Finding regarding greenhouse gas emissions, including carbon dioxide. At this time, however, no additional environmental regulations on renewable energy or carbon emissions have passed or are set to be enforced on a federal or state level.

The Joint Petitioners suggest that the form of analysis utilized above is inappropriate, because resale of the contract at full price, and regulated CO₂ represent the most appropriate "Base Case." The term "Base Case" refers to scenarios performed under current environmental regulations only. These include a Full Contract Resale scenario, a Market Resale Scenario, and a No New Construction Until 2023 scenario. We believe that comparing the cost to GRU between No New Construction Until 2023 and scenarios with the GREC Project is an objective analysis method that demonstrates the impact of the GREC Project upon the cost-effectiveness of GRU's system.

Expected Value Analysis

During the supplemental hearing, GRU proposed an additional form of cost-effectiveness analysis, referred to as a probabilistic risk analysis, or expected value analysis. This process included estimating the potential financial cost of a series of risk factors, what impact the GREC Project may have on the risk factors, multiplying the GREC Project's impact by a percentage, and then summing the result. GRU performed two expected value analyses. With assumptions biased against the GREC Project, one expected value analysis represented a risk adjusted benefit to cost ratio of approximately 2 to 1, or approximately \$70 million. The other expected value analysis, with mid-range assumptions, resulted in a benefit to cost ratio of greater than 10 to 1, or approximately \$279 million.

We believe that the expected value analysis, while useful for risk analysis, does not reflect the fact that the outcome of a scenario is one result or another. For example, pending carbon legislation, or functionally similar legislation, will either be enacted, or it will not. Witness Regan suggests in his first scenario, described as biased against the GREC Project, that carbon regulation has a ten percent chance of occurring, and in his second scenario, described as mid-range, there is a 50 percent chance of regulation occurring. We believe that a more clear presentation of this is to compare the cost impacts of full scenarios with and without carbon regulation, as has been conducted above in the CPWRR Analysis in the Base Cases and Regulated CO₂ Cases. Thus, we the CPWRR Analysis allows us to weigh for ourselves what we believe the likelihood of these conditions will be in the future.

Updated Customer Bill Impact

With the updated CPWRR analysis, GRU provided an updated rate impact to reflect the changes discussed above. The customer impact of the GREC Project is affected greatly by the degree to which GRU will be able to resell capacity at or near the full contract price, and whether pending carbon legislation is enacted. The customer rate impact numbers are lower per average GRU customer. GRU customers use approximately 831 kWh monthly as compared to the state

average of approximately 1,200 kWh per month. In addition, GRU anticipates this value to decrease in the future.

Based on the analyses above, the purchased power from the GREC project is projected to increase the cost of electricity for GRU's customers. As illustrated by the table below, the initial residential customer bill impact ranged from approximately \$18.75 per month in the worst case scenario to as low as \$4.36 per month in the best case scenario. The updated residential customer bill impact ranges from \$3.22 to \$13.40 per month.

Residential Monthly Bill Impact Summary

Initial Rate Impact in 2014 (\$/831 kWh-mo)				
Scenario	Revised Original Estimate		Current Estimate	
	Title	Value	Title	Value
Base Case	Resale	\$7.35	Contract Resale	\$7.13
	No Resale	\$18.75	Market Resale	\$13.40
Regulated CO₂	Resale	\$4.36	Contract Resale	\$3.22
	No Resale	\$13.18	Market Resale	\$6.41

We will not review the final costs or establish rates resulting from the proposed GREC project because GRU is not rate-regulated by us and any rate impact would be the result of the Gainesville City Commission's policy decisions. The Gainesville City Commission is ultimately responsible to its citizen-ratepayers for all rate impacts associated with the project. The record indicates that both the Gainesville City Commission and GRU made many efforts to inform GRU's customers that their rates could increase when the plant is operational. We would expect that the Gainesville City Commission will continue to review the project's total costs as well as other impacts associated with the project such as increased jobs, property taxes, traffic patterns, and future off-system power sales before establishing retail electric rates for its citizens.

Biomass Supply Concerns and Contract Protections

As of the date of this decision, GREC LLC has not entered into any firm fuel contracts, but has signed a letter of intent for approximately one-third of its fuel supply with Wood Resource Recovery, LLC. Witness Schroeder also testified that GREC LLC has identified and begun negotiations with various landowners for biomass.

The GREC Project will require approximately one million green tons of biomass annually to operate. Intervenors raised significant concerns that the biomass prices utilized for the cost-effectiveness analysis are unreasonable. Several contract measures serve to protect GRU in the event that sufficient biomass is unavailable, or not available at a reasonable price. If the GREC Project is unable to find sufficient biomass to operate, it would be considered unavailable, and GRU would not be responsible for any payments, either energy or non-energy.

In the event that biomass prices are higher than projected by GRU, the cost of the GREC Project would increase, with a cost-sharing mechanism being utilized, as described above. Under the contract, GRU has the option to dispatch the GREC Project, which can reduce the unit's output. A reduction in dispatch would reduce fuel consumption, thereby reducing fuel

costs and avoiding more expensive biomass purchases. However, GRU would still be responsible for non-energy payments, as the GREC Project would be considered available during this time period. In any of these instances, costs to GRU would increase beyond those assumed in the cost-effectiveness analysis above.

Credit Ratings

At the supplemental hearing, concerns were raised about the proposed GREC Project's potential effect on GRU's credit ratings. These concerns focused on GRU's fuel diversity, credit rating agency imputed debt, energy sales of excess capacity, and higher debt obligations. Witness Hanrahan stated that the GREC Project would secure a new fuel source giving the utility greater fuel diversity to address a stated concern of both Standard & Poor's (S&P) and Moody's. Witness Hanrahan asserted that in several meetings with both S&P and Moody's, the credit rating agencies expressed concerns about GRU's reliance on fossil fuels with regard to carbon regulations.

Witness Hanrahan testified that the additional costs that would be incurred as a result of this project are not considered debt of GRU since the proposed GREC Project is structured as a purchased power contract with no obligations to GRU in the event the power is not produced. Witness Regan testified that, based on representations made in meetings with the credit rating agencies, the imputation of debt would not be applicable to GRU. Additionally, witness Regan asserted that only a contract default would elicit security provisions estimated in the area of about six months of payments applicable to GRU.

Additional Commissioner concerns were raised about the credit rating agencies' view of the resale viability of the excess contracted power by GRU. Witness Hanrahan asserted that the perception of the credit rating agencies is that the excess contracted power is very marketable and would be easily sold.

We reviewed the most current credit rating agency reports for GRU from S&P and Moody's. In the September 2009 S&P report, the credit rating agency cited two credit concerns:

- Dependence on one generating unit to provide about 65 percent of the system's electricity.
- Additional debt burden associated with a sizable capital spending program through 2014, although rate increases and the post-2013 reduction of debt service associated with existing debt mitigate this.

In the September 2009 Moody's report, the credit rating agency placed a negative outlook on GRU's credit rating. In its analysis, Moody's asserted that the negative outlook was premised on electric rates that are projected to increase to support additional debt and that are becoming less competitive, leaving very little headroom to raise rates further. The negative outlook also considered the liquidity available to cover the variable rate debt and the future dependency on operating reserves to meet significant capital improvement and other operation and maintenance-related cost increases. Moody's stated the following five challenges for GRU:

- Six year capital improvement program puts additional pressure on currently above-average rates.
- Lack of fuel diversity could place pressure on future rates.
- Meeting regulatory requirements could result in system modifications increasing costs substantially.
- Less competitive electric rates than other utilities in the region.
- Future dependency on rate stabilization fund.

We concur with GRU witness Hanrahan that one cannot speculate as to what the actions of the credit rating agencies would be from either an approval or denial of this project. We believe that the proposed GREC Project could possibly alleviate the credit rating agencies' expressed concerns about GRU's fuel diversity and potential carbon compliance costs. However, the proposed GREC Project may exacerbate the credit rating agencies concerns regarding non-competitive electric rates and restrained liquidity. S&P and Moody's have issued bond ratings to GRU of AA and Aa2, respectively. As such, GRU is one of only 20 of approximately 2,000 utilities in the country possessing such a favorable AA rating. Based on the foregoing, we do not believe that the decision to approve or deny the GREC Project would materially affect GRU's relatively high credit ratings.

Conclusion

There is considerable uncertainty about the economics of this project because the overall cost-effectiveness of the GREC Project is heavily dependent upon the cost of future carbon regulation, and the potential resale of half the project's capacity. The GREC Project could result in a loss of approximately \$56 million based on a CPWRR analysis using current environmental regulations, fuel forecasts, and market assumptions. However, the GREC Project could result in a savings of approximately \$448 million if pending environmental regulations are enacted, and GRU resells half of the capacity at full contract price. Therefore, we find that the GREC Project could act as a hedge against potential cost increases associated with future regulation of carbon emissions and renewable energy and could become the most cost-effective alternative if pending legislation regarding CO₂ emissions is enacted.

RISK MANAGEMENT

As with most power generation projects, there are uncertainties about the economics of the proposed biomass project. Additionally, the Florida Public Service Commission does not regulate GRU electric rates. Furthermore, many of the financial, contractual, and environmental regulation aspects associated with the proposed biomass generating unit were not yet fully known or definitized at the time this case was decided.

Based on the above, it is incumbent upon GRU and the City of Gainesville to mitigate the ratepayer impact associated with the proposed biomass generating unit by considering, but not limited to, the following:

- The need to sell excess generation capacity from the proposed biomass unit at the contractual rate
- The need to continue to sell excess generating capacity associated with GRU's existing generating units on the wholesale market or through power purchase agreements
- The need to contractually source a long-term fuel supply for the proposed biomass generating unit at favorable pricing
- The need to continue to evaluate the financial viability of the proposed biomass generating unit in relation to pending environmental regulations

CONCLUSION

As discussed above, GRU does not have a capacity need until 2023. However, the addition of the capacity from the proposed GREC Project would enhance reliability of GRU's system. GRU has chosen to place more emphasis on renewable generation and therefore sought to replace its expiring purchased power contracts with generation from a renewable energy source capable of baseload operation. GRU's existing system consists primarily of coal-fired baseload generation. The addition of capacity from the proposed GREC Project will provide renewable baseload capacity while replacing purchased power, thereby reducing coal and natural gas usage on GRU's system. The GREC Project was selected by GRU as the least-cost renewable proposal during an RFP process for biomass facilities, and is a continuation of GRU and the Gainesville City Commission's efforts to encourage renewable energy.

The GREC Project would be a baseload renewable energy resource that can improve GRU's system reliability, fuel diversity, and provide an economic hedge against future carbon regulation. The updated values provided in the supplemental hearing show that the GREC Project, with market resale, is estimated to have a cumulative net present value cost of \$56 million without carbon regulation, but could also have a cumulative present worth savings of approximately \$448 million under the Regulated CO₂ Case with resale at full contract price. The Gainesville City Commission was aware that the GREC Project would have an initial rate impact and the Project could face risks related to resale and delay.

Since GRU is a municipal utility, we do not have rate-setting authority over it, and we are therefore limited in what oversight we can perform. If GREC LLC contracted with an IOU, recovery of payments made under the purchase power agreement would be subject to our approval and we would be able to prevent ratepayers from paying above avoided cost for the renewable energy and capacity of the project.⁸ We note that if the petitioner were an IOU, our decision may have been different. Here, the Gainesville City Commission is ultimately responsible for mitigating any potential rate impacts of the GREC Project. We note that our decision on a need determination petition must be made several years in advance and based on the facts as they exist at the time of the filing. If conditions change from what was presented at

⁸ Florida Statutes and our Rules related to purchase power contracts provide safeguards such that IOU ratepayers would not pay above avoided costs for purchases of renewable capacity and energy. See Florida Statutes 366.051 and Rules 25-17.0825, 25-17.0832, 25-17.240, and 25-17.250, F.A.C.

the need determination proceeding, then a prudent utility would be expected to respond accordingly.⁹ If projections presented at the hearing do not materialize, then we would expect GRU and the City of Gainesville to respond accordingly.

We note that GRU has made a strategic decision to contract with a biomass renewable resource provider for additional baseload generation. The selection of a renewable resource corresponds to the intent of the Legislature, as set forth in Section 366.92(1), F.S., to promote renewable development in the State of Florida. The GREC Project will enhance the overall reliability of the GRU system by providing an additional source of baseload generation. The GREC Project satisfies a need for GRU to improve its fuel diversity and supply reliability. The GREC Project also represents a significant investment in the development of renewable energy in Florida. Meaningful economic benefits to GRU and its ratepayers could also accrue if pending legislation regarding carbon emissions is enacted. GRU has enacted several contract provisions to minimize the cost of this renewable resource to the utility and its ratepayers. As a municipal utility, GRU is not rate-regulated by this Commission. Therefore, the Gainesville City Commission is ultimately responsible for the rate impact of the GREC Project and any potential efforts to mitigate the risks associated with that impact. For all of the reasons identified herein and based on our review of the record evidence, we approve of the determination of need for the GREC Project.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC's joint petition to determine the need for the Gainesville Renewable Energy Center, LLC, is granted. It is further

ORDERED that the docket shall be closed when the time for filing an appeal has run.

By ORDER of the Florida Public Service Commission this 28th day of June, 2010.



ANN COLE
Commission Clerk

(S E A L)

ELS

⁹ For an IOU, we must review the final costs for cost recovery purposes when the generating unit comes on-line. If, after review, it were found that an IOU should have stopped construction or pursued a more cost-effective alternative, we can adjust the IOU's rates accordingly. However, we do not have final rate making authority over municipal utilities and will not review the final costs or establish rates resulting from the proposed GREC project.

DISSENTS BY: CHAIRMAN ARGENZIANO
COMMISSIONER STEVENS

CHAIRMAN ARGENZIANO, dissenting:

I dissent from the decision of the majority due to improper application of the statutory scheme and improper assessment of the need for the project.

Defects in the Majority's Construction of the Relevant Statutory Scheme

The majority, without competently articulating its reasons, has created two separate and alternative levels of scrutiny for a need determination under the same exact statutory language.¹⁰ Determining which level of scrutiny now applies is solely dependent on who the petitioner is: there is apparently a demanding standard for investor-owned utilities, and a significantly slacker standard for municipalities.¹¹ The majority created such a tiered system because it misperceived the statutory backdrop to include submissive deference¹² to municipalities due to "political accountability,"¹³ a factor not addressed by statute but invented. At best this is federalism—

¹⁰ See Agenda Hr'g Tr. 42, Feb. 9, 2010 (Commissioner Edgar, opining: "I guess I would put forth . . . that balancing of circumstances and factors and criteria . . . may be different for a municipal facility than it would be for an investor-owned utility . . ."). Cf. Agenda Hr'g Tr. 42 (Staff Attorney Saylor, stating: "My understanding is that whether it's a muni or an IOU, we weigh all the factors similarly.").

¹¹ See Special Agenda Hr'g Tr. 89, May 27, 2010 (Commissioner Skop, stating: "[W]e're being asked to sign off on pretty much a blank check with a lot of things that aren't yet fully known or definitized, and that's a little bit of a leap and I think . . . it's prudent for the Commission to articulate these risks in light of giving deference to local rule and the desires of local government, as Commissioner Edgar and myself have referenced. They want to do something, and so long as we clearly and transparently state the risks and clearly the City acknowledges it has a duty and GRU has a duty, then that's fine.") (emphasis added); Special Agenda Hr'g Tr. 77, May 27, 2010 (Commissioner Skop, stating: "The difference on this one is that it is a power purchase agreement, it is with a municipality, but to otherwise approve this for an investor-owned utility would violate Commission precedent . . ."). See also Agenda Hr'g Tr. 33-34, Feb. 9, 2010 (Commissioner Skop, noting: "And I think the staff has noted that this Commission would not approve this project for an investor-owned utility based upon the record evidence."); Revised Staff Recommendation, issued May 20, 2010, in Docket No. 090451-EM, In re: Joint Petition to determine need for Gainesville Renewable Energy Center in Alachua County, by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC at 39 ("Staff notes . . . that if the petitioner were an IOU, our recommendation may have been different."). Thus, according to at least one of the Commissioners in the majority, all that is required of a municipality during need determination proceedings is that "the City acknowledge[] it has a duty." Special Agenda Hr'g Tr. 89, May 27, 2010. The reality that Section 403.519(3), Florida Statutes, says nothing of the sort is no obstacle.

¹² See Agenda Hr'g Tr. 37, Feb. 9, 2010 (Commissioner Skop, stating: "So at least from my perspective, it's not for me to . . . impart my judgment. [A]t the end of the day it is really not for me to tell the City of Gainesville what they should do or what they should not do.")

¹³ Compare Agenda Hr'g Tr. 41, Feb. 9, 2010 (Commissioner Edgar, stating: "I do believe that it is appropriate to give deference to a local government who is obviously closer to the people who will stand for election . . .") and Agenda Hr'g Tr. 47 (Commissioner Klement, opining: "I appreciate my colleague's concern for the blame coming to us, but I believe that customers of any utility understand where their bills come from and who approved it. I don't blame the PSC if my Tallahassee power bill is higher in January. I blame Tallahassee or myself for turning the heat up too high. So I think that the Gainesville customers will understand that if they do get in the position that is

allocation of political benefits and burdens to parties responsible for legislation—in an inappropriate arena. At worst it clumsily attempts to avoid political consequences for opposing a project backed by a municipality and key legislative and executive officials,¹⁴ and waters-down need determination requirements, which are designed to prevent inefficient allocations of resources and unnecessary burdens on ratepayers, for all projects—those brought forward by both investor-owned utilities and municipalities.¹⁵

I do not believe that two cases under the exact same statutory language should be examined under fundamentally different levels of scrutiny depending on whether the petitioner is an investor-owned utility or a municipality. Numerous flaws in the majority's reasoning demonstrate why their theory is unsound.

Acknowledging the premise that investor-owned utilities and municipalities are different, the majority concludes that Section 403.519(3), Florida Statutes, conceals two very different forms of treatment based on this fact. This is in error. The Commission has the responsibility to make a need determination. The need determination is one stop along an administrative avenue. Vehicles traversing the roadway do not necessarily deserve different treatment, especially given that the travel procedure is dictated by Section 403.519(3), Florida Statutes. In this, there are no

possible that they will look to their city commissioners and mayor and say why did you do this, and they will have to defend it.”) and Agenda Hr’g Tr. 54 (Commissioner Klement, noting: “the political price of this will be paid by the City Commission and not this Commission if this proves to be a bad decision.”) with Agenda Hr’g Tr. 50 (Chairman Argenziano, reasoning: “The risk is \$100 million. That part does belong to GRU and those political -- I’m not looking at political, because, you know, politicians come and go, and by the time year 2023 is around those people won’t be around or probably won’t be around to answer to their constituents. And that’s their concern. I’m looking at what I need to look at today. . . . [T]here’s red flags all through staff’s recommendation, and I see it all through there. It would be incumbent on me to pay attention to those red flags because they mean something. After all, if they didn’t mean something . . . it wouldn’t be here in front of us today.”). See also Special Agenda Hr’g Tr. 76, May 27, 2010 (Commissioner Skop, stating: “The . . . important point of how I would distinguish this from an investor-owned utility is . . . local rule. You have a municipal government wanting to do something, and . . . the risk/reward lies in the lap of . . . the City of Gainesville . . .”).

¹⁴ Notable officials testified in favor of the project: Gainesville Mayor Hanrahan, numerous Gainesville City Commissioners; Senators Rod Smith and Steven Oelrich; Commissioner Charles Bronson.

¹⁵ Compare Special Agenda Hr’g Tr. 50, May 27, 2010 (Commissioner Edgar, suggesting that where “staff notes that if the petitioner were an IOU our recommendation may have been different . . . seems somewhat gratuitous to me to put in the final order . . .”) and Special Agenda Hr’g Tr. 51 (Commissioner Edgar, again referring to staff’s language distinguishing investor-owned utilities from municipalities as “a tad gratuitous”) with Special Agenda Hr’g Tr. 78 (Commissioner Klement, referring to staff’s language discussed by Commissioner Edgar: “And I think that Commissioner Edgar’s reference . . . at the bottom of Page 39 earlier is basically cover your rear for precedent that might be cited by an IOU, and that, to me that’s prudent also. This is a different case. It’s a municipal. It’s not the investor-owned.”). See also Revised Staff Recommendation, issued May 20, 2010, in Docket No. 090451-EM, In re: Joint Petition to determine need for Gainesville Renewable Energy Center in Alachua County, by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC at 39 (“Staff notes . . . that if the petitioner were an IOU, our recommendation may have been different.”); Agenda Hr’g Tr. 42, Feb. 9, 2010 (Commissioner Edgar, opining: “I guess I would put forth . . . that balancing of circumstances and factors and criteria . . . may be different for a municipal facility than it would be for an investor-owned utility . . .”). Of course, it is no wonder that Commissioner Klement had difficulty following Commissioner Edgar’s implied aims; after all, from the standpoint of achieving transparency it makes little sense to recognize a distinction that one believes to be important throughout the decision-making process yet be unwilling to fully articulate that distinction in the final order.

directions to treat need determination applications from municipalities differently than those from investor-owned utilities. See § 403.519(3), Fla. Stat. Simply, if the legislature wanted them to be treated differently, it would have said so.¹⁶

Next, the majority believes that the decisions of a municipality are accountable politically, while those of a private utility company are not, and that this distinction is critical and justifies alternative levels of scrutiny under Section 403.519(3), Florida Statutes. Acknowledging the aspect of political accountability, the majority concludes that there is therefore a lower standard for municipalities than for investor-owned utilities. This conclusion is erroneous. The legislature is aware of such political accountability, and did not recognize this as deserving mention, let alone the alternative levels of scrutiny the majority envisions. The legislature crafted need determination language that treats investor-owned utilities and municipalities identically. See § 403.519(3), Fla. Stat. The majority has improperly *attached a significance* to a fact that the legislature has not.

Third, an added remedy may be only an added remedy, not a lower standard of scrutiny. This can be illustrated from the perspective of a ratepayer who is being forced to pay for an unnecessary power-plant: the result is the same whether the plant is built by an investor-owned utility or a municipality; the only difference is the value of the vote as a remedy.¹⁷ Thus the majority has accepted the unremarkable truth that residents of municipalities may vote if they so choose, and then reasoned that the added value of this remedy justifies less vigorous review on their part. The majority has correctly recognized a fact, but then assumed something further that does not follow.

Fourth, assume for the sake of argument that my two most recent points—(1) that the majority is unjustified in attaching special significance to a fact that the legislature has not, and (2) that an added remedy may mean only an added remedy, not a lower standard of scrutiny—are unconvincing. That is, assume that the majority is correct that under Section 403.519(3), Florida Statutes, the notion of political accountability is relevant to differentiating need determinations between investor-owned utilities and municipalities. The majority may still have misperceived the value of this distinction. I believe that the majority has done this: it overvalues the distinction. In my view the argument is, at best, a makeweight; it does not turn this Commission into a laundromat for poor or ill-timed plans. If the legislature had intended the Commission to abdicate its role in need determinations to local governments (as the majority in this case has in

¹⁶ The argument can be made that the legislature intended to provide the Commission with significant discretion in need determinations by including that “[t]he commission shall also expressly consider . . . conservation measures . . . and other matters within its jurisdiction which it deems relevant.” § 403.519(3), Fla. Stat. Yet the link between the political accountability of decisions made by the City of Gainesville and matters within the Commission’s jurisdiction appears fairly attenuated, and thus stretches the bounds of fair license. But regardless of whether that may be, the discretionary nature of *whether to* treat investor-owned utilities and municipalities differently under Section 403.519(3), Florida Statutes, does not undermine the claim just made that need determinations involving investor-owned utilities and municipalities *need not* be treated differently and that if the legislature wanted them treated differently it could have said as much. Furthermore, even if the discretionary aspect of the statute is admitted, one can still dispute that the majority uses this discretion appropriately.

¹⁷ Unfortunately new local regimes usually cannot simply void 30-year contracts.

fact done),¹⁸ it would have exempted municipalities from the requirement, as it has exempted municipalities from rate oversight. Compare § 403.519(3), Fla. Stat. with § 366.02(1), Fla. Stat. The legislature has not done so.

Fifth, reason counsels against the majority's conclusion that municipalities should face a lower standard of scrutiny than investor-owned utilities, for Section 366.051, Florida Statutes, and Rules 25-17.0825, 25-17.0832, 25-17.240, and 25-17.250, Florida Administrative Code, limit the risk borne by ratepayers of investor-owned utilities and shift the risk above that of avoided cost to shareholders; by contrast, with a municipal or an electric cooperative the entire risk is borne by the ratepayers. That is, Section 366.051, Florida Statutes, provides ratepayers of investor-owned utilities with a safeguard that does not exist for ratepayers of municipalities. Thus if the majority's notion of political accountability lowered the standard of scrutiny for municipalities, the comparative lack of protection that ratepayers face because Section 366.051, Florida Statutes, does not apply to municipalities should raise that standard back up (equal to or even arguably above the standard for investor-owned utilities), for it makes the Commission's approval of need pursuant to Section 403.519(3), Florida Statutes, all the more significant.¹⁹ If the majority is going to minutely compare the appropriate level of scrutiny for investor-owned utilities and municipalities, it is only fair to consider the differences between existent safeguards along with the imagined.

To sum up thus far: the majority's conclusion that Section 403.519(3), Florida Statutes, conceals two separate and alternative levels of scrutiny—one a legitimate standard for investor-owned utilities, another a slack and permissive standard for municipalities—is not supported by a plain reading of the statute; attaches an unjustified, extraordinary significance to the fact that residents of municipalities may vote; wrongly assumes that an added remedy justifies a lower standard, rather than merely being an added remedy; overvalues the importance of a distinction of its own invention; and wrongly concludes that municipalities should face a lower standard of scrutiny than investor-owned utilities even though existent safeguards indicate otherwise. Unfortunately there is still more.

After abandoning its post under Section 403.519(3), Florida Statutes, the majority tries to distance the Commission from the consequences of doing so.²⁰ Aside from the fact that this is an overt attempt to skirt accountability for their decision, the majority's approach—including a

¹⁸ E.g., Agenda Hr'g Tr. 37, Feb. 9, 2010 (Commissioner Skop, stating: "So at least from my perspective, it's not for me to . . . impart my judgment. [A]t the end of the day it is really not for me to tell the City of Gainesville what they should do or what they should not do.").

¹⁹ And it could be argued that the statutory elements of "the need for adequate electricity at reasonable cost" and "whether the proposed plant is the most cost-effective alternative available" take on added weight in such a scenario.

²⁰ Agenda Hr'g Tr. 42, Feb. 9, 2010 (Commissioner Skop, stating: "I don't feel that the Commission should take the blame if GRU and the City of Gainesville fails to execute and fails to mitigate all of this risk. Again, they are taking a huge risk with the ratepayers' money here. So I think that if the Commission does decide to move forward with granting approval of this need determination, that the Commission should clearly distance itself from some of the risk inherent with this project . . ."); Agenda Hr'g Tr. 45 (Commissioner Skop, stating: "GRU is taking the risk, but the Commission is equally taking the risk without distancing itself from this abundance of risk in terms of if the Commission were to move forward with granting approval of the need determination.").

section in the Commission's order entitled "risk management"²¹—only creates more problems. This is not "comfort language."²² It is a list of allowable deficiencies. A municipality may now receive approval for a need determination without mitigating the substantial risk associated with lack of a plan for selling excess generation capacity from the proposed unit and from existing units, for proceeding without a contractual source of long-term fuel supply, and without mitigation plans for potential changes to environmental regulations that could significantly alter the financial viability of the project.

Moreover, if one is concerned, as I am, that the majority's tiered levels of scrutiny under the same exact statutory language is untenable, then one should not be satisfied that the majority's slack and permissive standard with allowable deficiencies will be limited to cases involving municipalities. In other words, I have no confidence, as the majority does, that certain language in the order is an adequate "cover your rear for precedent that might be cited by an [investor-owned utility]" Special Agenda Hr'g Tr. 78, May 27, 2010 (Commissioner Klement, commenting). Nor am I assured that "an investor-owned utility would not take the regulatory risk of petitioning the Commission for this type of project, given the existing underlying margins, the lack of definitization of contracts and such." Special Agenda Hr'g Tr. 78-79 (Commissioner Skop, commenting).

There are significant defects in the majority's construction of the relevant statutory scheme; I cannot join their reasoning. I hope the majority's decision is only an isolated case of confusion, rather than a sign of an enduring malady.²³

²¹ Special Agenda Hr'g Tr. 86-88, May 27, 2010 ("GRU does not have a need for additional baseload generation capacity until 2023. Additionally, the Florida Public Service Commission does not regulate GRU electric rates. Furthermore, many of the financial, contractual, and environmental regulation aspects associated with the proposed biomass generating unit were not yet fully known or definitized at the time this case was decided. Based on the above, it is incumbent on GRU and the City of Gainesville to mitigate the substantial risks associated with the proposed biomass generating unit . . . "). This initial description of the project's risks was subsequently revised because the majority was uncomfortable with its honesty. See Special Agenda Hr'g Tr. 97 (Commissioner Edgar, stating: "A suggestion . . . would be in the . . . beginning of the first sentence under risk management to change the wording slightly but not the intent so that the first sentence would read, 'As with most power generation projects, there are uncertainties about the economics of the proposed biomass project.' . . . Then the second paragraph, I would slightly change the words in the middle . . . I would delete the words 'the substantial risk' and input . . . instead 'ratepayer impact.' ").

²² Special Agenda Hr'g Tr. 97 (characterizing the risk management section as "comfort language").

²³ See Agenda Hr'g Tr. 36, Feb. 9, 2010 (Commissioner Skop, stating: "I'm struggling for words here, but weighing the statutory criteria, Commissioner Edgar mentioned this also, what are we supposed to do as a Commission? This one is really atypical because it involves a municipality and it is not as clear-cut."); Agenda Hr'g Tr. 41 (Commissioner Edgar, stating: "I really appreciate the comments of Commissioner Skop as to what is -- my words, what is our role, which is something that I touched on when we started this discussion today, and something that I am still grappling with. . . . Is it to basically bless a request from a municipal that comes before us because they are a local government and have all of those aspects that are different from an IOU, or is it to -- well, let me just put it there. Is our role -- and I know we have talked about this earlier, but I'm still obviously grappling with it -- what is our role . . . "); Agenda Hr'g Tr. 56-57 (Commissioner Edgar, stating: "[M]y understanding is that under the statute we have exclusive jurisdiction to determine need under the criteria that is listed in, in the statute and that is our responsibility. I still come back in my own mind to how is that responsibility the same or different for a municipal versus IOU request for need determination, which I have had come before me? What is our role with a

Insufficient Conditions for Approval of Need

This project does not satisfy statutory requirements for approval of need: the evidence reflects that the project is not needed to achieve system reliability or integrity; the provision of electricity at a reasonable cost is too uncertain and constitutes an unnecessary gamble; it was not demonstrated that the proposed plant was the most cost-effective alternative available; and conservation measures would only further mitigate the need for the proposed plant. Although the plant would help achieve greater fuel diversity, this is not enough to outweigh the other factors. While I commend the City of Gainesville for its forward-thinking vision, it is taking a large and unnecessary risk with its ratepayers' money.

GRU does not have a reliability need for additional capacity until 2023. The existing system is adequate to serve the area for more than a decade. And the City has a reserve margin of 66% at the time of this request. As another Commissioner puts this, "that's like having six cars in your garage, and you only drive one car every day, and then wanting to go out and buy a brand new car that you really don't need yet." Agenda Hr'g Tr. 42, Feb. 9, 2010 (Commissioner Skop, commenting).

Whether electricity will be provided at a reasonable cost is too uncertain and constitutes an unnecessary gamble given the lack of demonstrated need. The forecasts of cost vary widely—from a loss of approximately \$56 million, to a savings of \$448 million (which will be achieved *if* pending environmental regulations are enacted, those regulations deal favorably with biomass, regional woody biomass remains relatively inexpensive for the next 30 years, and GRU sells half of the generated capacity at full contract price).²⁴ I would have been more inclined to approve the project if there were more of a reason to take such a speculative gamble, such as if there were a need for additional capacity. Additionally I would have been more amenable to the project if risk-shifting mechanisms were available to prevent the entire risk from being borne by ratepayers. Cf. § 366.051, Fla. Stat. But there is no need and there are no protections.

It was not demonstrated that the proposed plant was the most cost-effective alternative available. There is considerable uncertainty regarding the economics of this project. Under certain assumptions no plant (a completely feasible alternative) is more cost-effective than the proposed plant.

Gainesville has implemented very successful energy conservation measures, raising the question of why the City has not taken advantage of the primary economic benefit of such measures—deferring the costs of new power-plants—and instead petitioned for a new plant ahead of demand. Conservation measures taken by and reasonably available to the City mitigate the need for the proposed plant.

municipal proposal? And I am still -- I am not 100 percent yet in my own mind, so I'm glad to have the open discussion . . .").

²⁴ See also Agenda Hr'g Tr. 37, Feb. 9, 2010 (Commissioner Skop, noting that "everything has to go perfect for this project to be economically viable, otherwise it's going to cost ratepayers at least \$100 million.")

The proposed plant does help improve fuel diversity. But the favorable aspects of fuel diversity could just as easily be achieved with a smaller, less expensive plant; for example, one below the 75 megawatts threshold that triggers a need determination pursuant to Section 403.503(14), Florida Statutes. Or fuel diversity could be improved at some point in the future—such as in 2023, when there will be a supply-side need for the plant.²⁵ This matters because the Petitioners have been unable to demonstrate a significant need for fuel diversity *at this time*.²⁶ In other words, fuel diversity would be a much more important factor if it were a pressing need, one where, for example, in the absence of improvement the utility would face rapidly rising costs.²⁷ There is no such immediate need here.

The sum of the above factors indicates that this project does not satisfy sufficient conditions for approval of need.²⁸

²⁵ See also Agenda Hr'g Tr. 61, Feb. 9, 2010 (Commissioner Skop, expounding: “[I]t’s the right idea, it’s just the wrong time. If they were trying to do this in 2020, absolutely, because they’d have the need for the 100 megawatts of additional baseload generation. They don’t have that need. They’ve got so many generating assets I’m surprised half of them aren’t sitting idle right now. So, again, there’s too many red flags . . .”).

²⁶ The Petitioners argue that greater fuel diversity is needed now as a hedge against future regulations. At first blush the argument has appeal. But there is difficulty quantifying (1) the temporal limits of this argument and (2) the degree of assurance necessary regarding the content of the supposedly impending legislation. In order to accept the Petitioners’ argument some showing must be made on both of these factors. In other words, why is legislation immediately relevant as opposed to in any other case or at any other time? What is it that makes *now* the time to act in anticipation of future regulation, and how do we know this, with at least a modicum of certainty (the kind which responsible persons are accustomed to relying on in serious matters), if the content of the legislation (*i.e.*, whether it will favorably or adversely impact the circumstances in this case—the treatment of biomass) has not been disclosed, is inconsistent or unclear, or is still open to change. To respond to these concerns the Petitioners have nothing more than that a bill was proposed in Congress. If this Commission proposes to rely on “impending legislation” as a justification for the reasonableness of multimillion dollar gambles, it should define the limits of that principle, rather than let it run wild.

Furthermore, although the Petitioners imply that now is the time to act because currently they can take advantage of subsidies, this does not assess the temporal question or the level of assurance necessary regarding the content of legislation; it only lessens the cost of taking unknown risks. This is reasonable, yet it also opens the door to the Intervenor’s description of the project: as one designed “to capitalize on the availability of subsidies in a classic carpetbagger wager that will make a few people richer while . . . the ratepayers will be left to pay the bill.” (Stahmer’s Post-Hearing Br. 6.)

²⁷ Thus this case is distinguishable from need determinations made during or near after an energy crisis. Cf. Order No. 10108, issued June 26, 1981, in Docket No. 810045-EU, In re: JEA/FPL’s Application of need for St. John’s River Power Park Units 1 and 2 and related facilities; Order No. 10320, issued October 2, 1981, in Docket No. 810180-EU, In re: Petition for Certification of Need for Orlando Utilities Commission, Curtis H. Stanton Energy Center Unit 1.

²⁸ See also Special Agenda Hr’g Tr. 57-58, May 27, 2010 (Commissioner Stevens, reasoning: “[W]orking through the requirements that we need to look at for the determination of need, I think that this is a very high risk project that we’re getting into. And with that risk, even though there’s some hedging here and there, I’m not sure this is cost-effective, we’re not told that it’s cost-effective. I don’t know if it’s providing electricity at a reasonable cost. It does have fuel diversity, but I don’t think the capacity is required. And so I’ll listen to discussions from other Commissioners, but I’m . . . having a hard time with the project.”); Agenda Hr’g Tr. 36, Feb. 9, 2010 (Commissioner Skop, agreeing: “It’s a real stretch to get you there on some of the criteria. I mean, Commissioner Stevens hit that nail on the head. Some of the criteria you just can’t get there. It’s basically fuel diversity is the only thread to hang on.”); Agenda Hr’g Tr. 33, Feb. 9, 2010 (Commissioner Skop, stating: “The approval of this project

COMMISSIONER STEVENS, dissenting without opinion.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within five (5) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

goes against every aspect of my better judgment.”); Agenda Hr’g Tr. 68, Feb. 9, 2010 (Commissioner Skop, concluding: “I’ve listened to the discussion and, again, approval of this project goes against every aspect of my better judgment given the risks that exist and all the red flags. I . . . commend GRU for their initiative. But, again, if they were better situated in terms of needing baseload generation, this would be more palatable. But when you’re asking me to approve something just because you want to be green or you’re worried about carbon legislation but there’s no real need for it because you have so much excess generation to begin with, . . . basically all that does is strand ratepayer investment with excess generation.”).

Appendix II-2

Suwannee River Water Management District Agency Report

STAFF REPORT

WATER USE PERMIT APPLICATION

DATE: May 20, 2010

PROJECT: Gainesville Renewable Energy Center

APPLICANT:

Gainesville Renewable
Energy Center
75 Arlington Street, 5th Floor
Boston, MA 02116

PERMIT APPLICATION NO.: 2-09-00040

DATE OF APPLICATION: December 1, 2009

APPLICATION COMPLETE: March 2, 2010

DEADLINE FOR AGENCY REPORT: June 14, 2010

MANAGER/MEMBER DETAIL:

AMERICAN RENEWABLES, LLC 75 ARLINGTON STREET, 5 TH FLOOR BOSTON, MA 02116	MGRM
FRANK GETMAN 1 NEW HAMPSHIRE AVE – STE 207 PORTSMOUTH, NH 03801	MGR
JAMES GORDON 75 ARLINGTON STREET – STE 704 BOSTON, MA 02116	MGR
KAORU USAMI TYR ENERGY INC 7500 COLLEGE BLVD – STE 650 OVERLAND PARK, KS 66210	MGR

Project Review Staff

Kevin Wright and Carlos D. Herd, P.G., have reviewed the application.

Project Location

The withdrawal facilities are located in Township 8 South, Range 19 East, Section 27, Alachua County, adjacent to the Deerhaven Generating Station (map attached).

Project Description

The District received a water use permit application, which was included within the site certification application for the Gainesville Renewable Energy Center (GREC) on December 1, 2009. The applicant requests a groundwater withdrawal from the upper Floridan aquifer for power production. The operation will use two proposed production wells and two potable wells located within GREC property.

GREC's proposed wellfield consists of two 14-inch diameter production wells, both with a capacity of 1,250 gallons per minute (gpm). The potable wells will consist of two 5-inch diameter wells, both with a capacity of 20 gpm. GREC's proposed average daily use will be 1.4 million gallons per day (mgd).

Demonstration of Need

GREC's primary consumption of water will be evaporative cooling towers. Other uses include boiler water make up, dust control, effluent disposal, and indoor needs. GREC has provided a water balance demonstrating annual needs.

GREC will initiate groundwater usage in July 2012 at a rate of 0.1 mgd, and will increase to 1.4 mgd by November 2013 when plant is fully operational.

Gainesville Regional Utilities will voluntarily reduce their average allocated quantities associated with the Deerhaven Generating Station by 1.4 mgd. The site certification for Deerhaven Generating Station was issued on May 16, 1978.

Water Conservation

As a low impact development design, GREC is incorporating a zero liquid discharge system. A zero liquid discharge system will minimize water that is traditionally discharged to an open water body. A zero liquid discharge system also promotes efficient use of water.

Permit Duration

The water use associated with GREC will be permitted through the Florida Department of Environmental Protection's Siting Coordination Office with a duration of the life of the facility.

Evaluation of Conditions for Issuance of Permit

Will the project interfere with any presently existing legal use of water?

[ref. 40B-2.301(1)(b)]

The applicant has provided reasonable assurance that the project will not interfere with any presently existing legal use of water.

Is the project consistent with the public interest?

[ref. 40B-2.301(1)(c)]

The applicant has provided reasonable assurance that the project is consistent with the public interest.

Is the project reasonable-beneficial?

[ref. 40B-2.301(1)(a)]

The applicant has provided reasonable assurance that the project reasonable-beneficial based on the following criteria.

The use is in such quantity and of such quality as is necessary for economic and efficient use.

[ref. 40B-2.301(2)(a)]

The applicant has provided reasonable assurance that the use is in such quantity and of such quality as is necessary for economic and efficient use.

The use is for a purpose that is both reasonable and consistent with the public interest.

[ref. 40B-2.301(2)(b)]

The applicant has provided reasonable assurance that the use is for a purpose that is both reasonable and consistent with the public interest.

The source of water is capable of producing the requested amounts and appropriate quality of water.

[ref. 40B-2.301(2)(c)]

The applicant has provided reasonable assurance that the source of water is capable of producing the requested amounts and appropriate quality of water.

The use will not degrade the source from which it is withdrawn.

[ref. 40B-2.301(2)(d)]

The applicant has provided reasonable assurance that the use will not degrade the source from which it is withdrawn.

The use will not cause or contribute to flooding.

[ref. 40B-2.301(2)(e)]

The applicant has provided reasonable assurance that the use will not cause or contribute to flooding.

The use will not harm offsite land uses.

[ref. 40B-2.301(2)(f)]

The applicant has provided reasonable assurance that the use will not harm offsite land uses.

The use will not cause harm to wetlands or other surface waters.

[ref. 40B-2.301(2)(g)]

The applicant has provided reasonable assurance that the use will not cause harm to wetlands or other surface waters. This determination was made using the District's regional groundwater model.

The use will not cause or contribute to a violation of either minimum flows or levels.

[ref. 40B-2.301(2)(h)]

The applicant has agreed to enter into an Agreement with Suwannee River Water Management District, City of Alachua and Gainesville Regional Utilities to initially provide approximately 400,000 gpd of reclaimed water to offset a portion of the proposed plants cooling water needs. This Agreement will act as a mitigation strategy to provide reasonable assurance that the use will not cause or contribute to a future violation of either minimum flows or levels. Staff modeled the proposed average daily withdrawal of 1.0 mgd of groundwater and found that with use of 400,000 gpd of reclaimed water, there were no adverse impacts to the Santa Fe River or other natural features. This determination was made by a predictive simulation using the District's regional groundwater model.

The use will not cause or contribute to a violation of state water quality standards in waters of the state as set forth in Chapters 62-301, 32-302, 62-520, and 62-550, F.A.C.

[ref. 40B-2.301(2)(i)]

The applicant has provided reasonable assurance that the use will not cause or contribute to a violation of state water quality standards in waters of the state as set forth in Chapters 62-301, 32-302, 62-520, and 62-550, F.A.C.

The use is otherwise a reasonable-beneficial use as defined in Section 373.019(2), F.S., with consideration given to the factors set forth in subsection 62-40.410(2), F.A.C.

[ref. 40B-2.301(2)(j)]

The applicant has provided reasonable assurance that the use is otherwise a reasonable-beneficial use as defined in Section 373.019(2), F.S., with consideration given to the factors set forth in subsection 62-40.410(2), F.A.C.

Site Certification Limiting Conditions

Staff recommends the following limiting conditions be included in the permit site certification:

1. Gainesville Renewable Energy Center shall provide to the District monthly operating reports showing daily groundwater pumpage no later than 10 working days after the end of each quarter. The Suwannee River Water Management District water use permit number 09-00040 shall be displayed on all reports.
2. If water use causes or contributes to a violation of Minimum Flows and Levels (MFLs), the District reserves the right to curtail future withdrawal rates or otherwise modify the site certification as described in the recovery or prevention strategy associated with the MFL.
3. If water use causes adverse impacts to occur, the District reserves the right to curtail future withdrawal rates or otherwise modify the site certification.
Adverse impacts include:
 - a. Cumulative reduction in well water levels that impairs the ability of the well to produce water;
 - b. Cumulative reduction in levels in an adjacent water body such as a lake, pond, or retention/detention area that impairs the designated function of the water body or the ability for a permitted withdrawal facility to produce water;
 - c. Saline water intrusion or induced movement of pollutants into the water supply of an adjacent water use, resulting in harm due to a reduction in water quality;
 - d. Land collapse or subsidence caused by reduction in water levels;
 - e. Damage to crops and other types of vegetation;
 - f. Harm to a naturally occurring water body such as lake, pond, or wetland by reducing water levels or changing the hydroperiod; and,
 - g. Harm to the natural system including damage to habitat for endangered or threatened species, or species of special concern.
4. Gainesville Renewable Energy Center shall maintain an accurate, non-resettable, totalizing flow meter(s) at each water withdrawal point. The meters shall be accurate to within 5 percent of actual flow. The meters shall be calibrated at a minimum every 5 years with a report of the calibration submitted to the District within 30 days of completion. Meters found to be outside the 5 percent flow measurement requirement shall be repaired or replaced within 30 days of discovery. The District shall be notified of any broken meters within 10 days of discovery, and the reported flow shall be estimated and submitted to the District for the time the meter was out of service.
5. If the actual flow is found to be greater than 5% different from the measured flow, within 30 days, the Permittee shall have the meter re-calibrated, repaired, or replaced, whichever is necessary. Documentation of the test and

a certificate of re-calibration, if applicable, shall be submitted within 30 days of each test or re-calibration.

6. Gainesville Regional Utilities will reduce allocated quantities for Deerhaven Generating Station by 1.4 mgd.
7. Gainesville Renewable Energy Center shall monitor and report groundwater levels continuously at one centrally located well as approved by the District. The groundwater monitoring program shall be implemented at least one year prior to operation. The data shall be submitted no later than 10 working days after the end of each quarter. The reference datum should be North American Vertical Datum of 1988 (NAVD 88).
8. Gainesville Renewable Energy Center (GREC) shall provide to the District a written implementation plan and schedule for the use of reclaimed water from the City of Alachua to replace as much of the groundwater withdrawals as practicable for cooling purposes no later than 3 years after the commencement of operations. The plan shall include the identification of the supply of reclaimed water, the anticipated uncommitted amount of the supply, the plans, facilities, and estimated costs for providing the reclaimed water to the GREC site, and the schedule to begin the use of the reclaimed water no later than 5 years after the commencement of operations. Based on the District's review and approval of the implementation plan and schedule, GREC shall implement the plan for the use of reclaimed water according to the approved schedule, and the conditions of the certification shall be modified to require the use of reclaimed water.
9. In the event that an uncommitted, reasonable reclaimed water supply becomes available or is definitively scheduled to become available at the GREC site boundary to meet all or part of the cooling tower makeup water needs prior to the required schedule above, GREC shall provide the District a written implementation plan and schedule for using the reclaimed water. Based on the District's review and approval of the plan and schedule, GREC shall implement the plan and the conditions of the certification shall be modified to require the use of reclaimed water to reduce groundwater use.
10. If reclaimed water is used to supply all or part of the cooling tower makeup needs, groundwater use shall continue to be allowed for plant process and potable water use and, to the extent necessary, as supplemental or standby water supply for cooling tower makeup.

Appendix II-3

Florida Fish and Wildlife Conservation Commission Agency Report



Florida Fish
and Wildlife
Conservation
Commission

Commissioners
Rodney Barreto
Chair
Miami

Kathy Barco
Vice Chair
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Fort Lauderdale

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Brian S. Yablonski
Tallahassee

Executive Staff
Nick Wiley
Executive Director
Greg Holder
Assistant Executive Director
Karen Ventimiglia
Deputy Chief of Staff

Division of Habitat and
Species Conservation
Timothy A. Breault
Director
(850)488-3831
(850)921-7793 FAX

Managing fish and wildlife
resources for their long-term
well-being and the benefit
of people.

620 South Meridian Street
Tallahassee, Florida
32399-1600
Voice: (850) 488-4676

Hearing/speech impaired:
(800) 955-8771 (T)
(800) 955-8770 (V)

MyFWC.com

June 10, 2010

Mr. Mike Halpin, Administrator
Siting Coordination Office, Mail Station 48
Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, FL 32399

Re: Gainesville Renewable Energy Center; Alachua County,
Conditions of Certification; Final Agency Report

Dear Mr. Halpin:

The Division of Habitat and Species Conservation, Habitat Conservation Scientific Services Section, of the Florida Fish and Wildlife Conservation Commission (FWC) has coordinated our agency's review of the referenced project in accordance with the Florida Electrical Power Plant Siting Act, Section 403.5252, Florida Statutes.

Project Description

The Gainesville Renewable Energy Center (GREC), LLC, has submitted a Site Certification Application (SCA) for the proposed construction and operation of an electrical power plant and associated facilities within the City of Gainesville, Alachua County, Florida. The proposed facility would use woody biomass material as fuel to generate electrical energy. The 131-acre development footprint is located within the existing Deerhaven Generating Station.

Potentially Occurring Fish and Wildlife Resources

Based on a Geographical Information System (GIS) analysis of the proposed project site, the following imperiled species and associated habitats were identified:

- 16 protected species potentially occur onsite or in the vicinity of the proposed site (see table below),
- Historical wading bird rookery,
- Florida Natural Areas Inventory-identified rare species habitat for the eastern indigo snake, and
- FWC-identified potential habitat and priorities wetlands for Florida black bear and wading birds.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status*</u>
Gopher frog	<i>Rana capito</i>	SSC
Gopher tortoise	<i>Gopherus polyphemus</i>	ST
Florida pine snake	<i>Pituophis melanoleucus mugitus</i>	SSC
Eastern indigo snake	<i>Drymarchon corais couperi</i>	ST; FT

Tricolored heron	<i>Egretta tricolor</i>	SSC
Little blue heron	<i>Egretta caerulea</i>	SSC
Limpkin	<i>Aramus guarauna</i>	SSC
Snowy egret	<i>Egretta thula</i>	SSC
White ibis	<i>Eudocimus albus</i>	SSC
Bald eagle	<i>Haliaeetus leucocephalus</i>	P
Florida sandhill crane	<i>Grus canadensis pratensis</i>	ST
Southeastern American kestrel	<i>Falco sparverius paulus</i>	ST
Wood stork	<i>Mycteria americana</i>	SE; FE
Sherman's fox squirrel	<i>Sciurus niger shermani</i>	SSC
Florida black bear	<i>Ursus americanus floridanus</i>	ST

* SSC - Species of Special Concern; ST - State Threatened; SE - State Endangered; FT - Federally Threatened; FE - Federally Endangered; P - Protected under federal law and state management plan

Recommended Conditions of Certification

The FWC recommends the following conditions be included in the special conditions as part of the certification process to address preservation of wildlife utilization areas, wetlands, and specific wildlife species.

Preserved Areas:

The applicant provided baseline wildlife survey results in the site certification application which were conducted in May of 2009. Provided in the application are figures illustrating the vegetation communities using the Florida Land Use Cover and Forms Classification System. These vegetation communities were cross-referenced with Florida Natural Areas Inventory, which is more suitable to assessing wildlife conditions than the FLUCFCS or the results from our GIS analysis. Further, we understand from the applicant's consultant, ECT, that the applicant is interested in placing easements over those proposed preserve areas that provide potential habitat for listed species. In line with that, we have some suggested language regarding delineation and management of these areas.

Recommended Condition: In the event that the proposed construction layout of the GREC site plan is modified and impacts to those areas that have been identified as being used by listed species are unavoidable, the Licensee will consult with the FWC and USFWS, as appropriate, to identify necessary conservation measures to offset those impacts on GREC lands adjacent to the project site, to specifically benefit the impacted listed species.

CITATIONS: Article IV, Sec. 9, Florida Constitution (Fla. Const.); Section 379.2291, Florida Statutes (F.S.); and Rule 68A-27, Florida Administrative Code (F.A.C.).

Wetlands:

Water resource permitting requirements for wetlands do not always meet all of the ecological needs for fish and wildlife resources in every case. During our pre-application

consultation, we provided the applicant a U.S. Fish and Wildlife Service's wetland buffers FAQ sheet (attached).

Recommended Condition: The applicant shall evaluate the wetlands to be preserved within the project site on a case-by-case basis and establish compatible-use buffer zones and wetland protection buffers around all wetland areas appropriate for the site's wildlife inventory in accordance with the U.S. Fish and Wildlife Service's wetland buffers guidelines.

CITATIONS: Article IV, Sec. 9, Fla. Const.; Section 379.2291, F.S.; and Rule 68A-27, F.A.C.

General Listed-Species Surveys

a. The Licensee shall conduct species-specific surveys for all listed species that may occur within the Certified Facilities, with appropriate buffer distances as defined by the survey protocols. Guidance related to species-specific survey protocols can be found in the FWC's Florida Wildlife Conservation Guide at <http://myfwc.com/conservation/fwcg.htm>.

b. Surveys shall be conducted prior to clearing and construction in accordance with the survey protocols. The results of those detailed surveys shall be provided to the FWC and coordination shall occur with the FWC and the appropriate permitting agency on proposed impact mitigation methodologies.

CITATIONS: Article IV, Sec. 9, Fla. Const.; Section 379.2291, F.S.; Sections 403.507 and 403.5113(2), F.S.; Rule 62-17.191, F.A.C.; and Rule 68A-27, F.A.C.

Gopher Tortoise:

The applicant acknowledges the presence of gopher tortoise burrows within the proposed project site. It is anticipated that all gopher tortoises and their burrows shall be avoided during this project.

Recommended Condition: In order to address unanticipated and unavoidable impacts to gopher tortoises, the applicant shall investigate the need to obtain a permit and shall follow the guidelines listed below:

- Either a conservation permit or a temporary exclusion permit from the FWC shall be obtained if any project activities would impact gopher tortoises, their burrows, or their habitat.
- The applicant shall refer to the most current (revised April 2009) FWC gopher tortoise permitting guidelines (www.myfwc.com/gophertortoise) to determine which specific permit would be best suited to this project, if applicable.
- All gopher tortoise work shall be conducted by "Authorized Agents" pursuant to the gopher tortoise permitting guidelines.

CITATIONS: Article IV, Sec. 9, Fla. Const.; Section 379.2291, F.S.; and Rule 68A-27.004(2), F.A.C.

Bald Eagle:

Although the applicant did not identify a bald eagle nest on the project site during their 2009 wildlife surveys, suitable nesting habitat may still exist onsite or adjacent to the site. Given that the existing ponds on the Deerfield site contain fish, bald eagles may occur onsite prior to, during, or following construction of the site.

Recommended Condition:

In recognition that the applicant may need to apply for modifications to the site's certification in the future, the applicant shall include as precautionary measures the following guidelines:

In the event that eagle nest sites are identified onsite or within the recommended buffer distance established by FWS and FWC, and prior to any future modifications to the site's certification, the Licensee shall avoid impacts to bald eagle (*Haliaeetus leucocephalus*) nests where possible. In areas where adverse impacts to nests cannot be avoided, resulting in nest disturbance, the information required for an FWC Eagle Permit shall be obtained from the FWC, as authorized by Section 379.2291 F.S., and Rule 68A-16.002, F.A.C., and minimization and conservation measures outlined in the FWC Bald Eagle Management Plan shall be followed, as applicable. In areas where bald eagle nests occur prior to or during construction activities, efforts shall be made to avoid construction activities during the nesting season (October 1 – May 15) or when eagles are present before October 1 or after May 15.

CITATIONS: Article IV, Sec. 9, Fla. Const.; Section 403.5113(2), F.S.; Rule 62-17.191, F.A.C.; Section 379.2291, F.S.; Rule 68A-27, F.A.C.; and Rule 68A-16.002, F.A.C.

Wading Birds and gruliformes:

The applicant has reported that wading birds have been identified in the Deerhaven site foraging in the existing ponds. The current habitat may not be conducive for nesting, however, there may be potential for land management operations under this proposal to create more attractive conditions for nesting wading birds and gruliformes habitat such as sandhill crane or limpkin in the future.

Recommended Condition: Whenever practical, the applicant shall avoid the active breeding season for species protected by sections 68A-27.003, -.004, and -.005, Florida Administrative Code (<https://www.flrules.org/gateway/chapterhome.asp?chapter=68A-27>), when land clearing and construction activities are proposed. If nesting activities are identified, the applicant shall:

- Monitor nesting activity during all clearing and construction activities. The monitoring shall be conducted by a person with documented experience in identifying normal and abnormal nesting behaviors of protected ground-nesting species and who can detect disturbances or nesting attempts during all clearing and construction activities.
- Stop clearing and construction activities if sandhill crane species start to nest in a dredged, cleared, or graded area, mark the nest site, allow the species to nest, and shall not resume construction activities in that area until all birds have fledged.

CITATIONS: Article IV, Sec. 9, Fla. Const.; Section 379.2291, F.S.; Rule 68A-27, F.A.C.; and Rule 68A-16.001, F.A.C.

Conclusion

The FWC recommends approval of the Gainesville Renewable Energy Center subject to the Conditions of Certification outlined herein to ensure that the applicant is in compliance with State of Florida's listed species requirements found in Chapter 68-27,

F.A.C., during construction and operation of the Gainesville Renewable Energy Center and any associated facilities. This finding does not relieve the applicant from following requirements of all Florida Administrative Code rules relating to surveying for and obtaining necessary permits for impacts to fish and wildlife (especially those listed as endangered, threatened or of special concern) that might be a result of future construction. We will continue to work with the applicant and your office to further refine the conditions of certification as necessary.

If you or your staff would like to coordinate further on the issues and recommendations contained in this report, please contact Mary Ann Poole at 850-410-5272 or via email at maryann.poole@myfwc.com. If you or your staffs have any specific questions regarding our comments, I encourage them to contact Dr. Joe Walsh at 772-778-6354 or via email at Joe.Walsh@myfwc.com.

Sincerely,



Scott Sanders
Habitat & Species Conservation Section Leader

ss/jw/sr
ENV 2-11-3
Gainesville Renewable Energy Center_2532_061010

Enclosure

cc: Phil Simpson, ECT, psimpson@ectinc.com
Jessica Dalton, FDEP, Tallahassee, Jessica.Dalton@dep.state.fl.us

Buffers: An Efficient Tool for Watershed Protection

What Are Buffers?

A **buffer** is a strip of naturally vegetated land along a lake, stream, or wetland that provides numerous benefits. Preserving a buffer zone protects water resources from neighboring land uses. Nutrient inputs are of great concern because of their abundant sources (fertilizer, septic tank drain fields, leaking sewage lines, animal waste). Excess nutrients in lakes and estuaries cause toxic algal blooms and depleted oxygen. Natural chemical and biological processes within buffers alter or uptake nutrients and pollutants *before* they enter a water body, thus providing a cost-effective treatment system. Buffers preserve native habitat for wildlife and enhance aquatic habitat. The range of benefits provided by buffers includes:

- Water quality protection 
- Erosion control
- Storage of floodwaters and flood damage reduction
- Aquatic habitat enhancement 
- Habitat for terrestrial riparian wildlife 
- Maintenance of base flow in streams
- Improved aesthetic appearance of stream corridors
- Recreational and educational opportunities

Riparian refers to the land adjoining a body of water, usually a river or stream.

Buffer Width: Bigger is Better

Choosing a buffer width depends on your planning goals. As buffer width increases, the buffer provides greater benefits. As seen in the table below, a 30-foot buffer provides minimal service. At 50 feet, the buffer meets minimum water quality protection recommendations and gives some aquatic habitat benefits. For effective water quality and aquatic habitat protection, a buffer width of 100 feet is needed. Buffers to enhance riparian wildlife should be 300 feet or greater. Special buffer zones may be required to protect vulnerable species.  Width should be increased where slope, impervious surface, and soil type reduce buffer effectiveness. The consequences of an inadequate buffer may be an increased need for stormwater ponds, increased flooding, decreased abundance of sportfish, and/or loss of certain species such as some salamanders or crayfish.

Benefit Provided:	Buffer Width:					
	30 ft	50 ft	100 ft	300 ft	1,000 ft	1,500 ft
Sediment Removal - Minimum						
Maintain Stream Temperature						
Nitrogen Removal - Minimum						
Contaminant Removal						
Large Woody Debris for Stream Habitat						
Effective Sediment Removal						
Short-Term Phosphorus Control						
Effective Nitrogen Removal						
Maintain Diverse Stream Invertebrates						
Bird Corridors						
Reptile and Amphibian Habitat						
Habitat for Interior Forest Species						
Flatwoods Salamander Habitat – Protected Species						

Sources

Burke, V.J. and J.W. Gibbons, 1995, Terrestrial Buffer Zones and Wetland Conservation: A Case Study of Freshwater Turtles in a Carolina Bay, *Conservation Biology* 9 (6), pp. 1365-1369.

Desbonnet, A., V. Lee, P. Pogue, D. Reis, J. Boyd, J. Willis, and M. Imperial, 1995, Development of Coastal Vegetated Buffer Programs, *Coastal Management* 23, pp. 91-109.

Mitsch, W.J. and J.G. Gosselink, 1993, *Wetlands*, Van Nostrand Reinhold, New York, New York.

Semlitsch, R.D., 1998, Biological Delineation of Terrestrial Buffer Zones for Pond-Breeding Salamanders, *Conservation Biology* 12 (5), pp. 1113-1119.

U.S. Fish and Wildlife Service, April 1, 1999, Endangered and Threatened Wildlife and Plants: Final Rule to List the Flatwoods Salamander as a Threatened Species, *Federal Register* 62(241): 15691-15704.

Wenger, S., 1999, *A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation*, Office of Public Service and Outreach, Institute of Ecology, University of Georgia, Athens, Georgia.

Wenger, S. and L. Fowler, 2000, *Protecting Stream and River Corridors: Creating Effective Local Riparian Buffer Ordinances*, Carl Vinson Institute of Government, University of Georgia, Athens, Georgia.

For Further Information Contact:

U.S. Fish and Wildlife Service

Panama City Field Office

1601 Balboa Avenue

Panama City, Florida 32405

Tel: (850) 769-0552

Fax: (850) 763-2177

E-mail: FW4_ES_FR_Panama_City@fws.gov

Appendix II-4

North Central Florida Regional Planning Council Agency Report

North Central Florida Regional Planning Council

2009 NW 67 PLACE, SUITE A, GAINESVILLE, FLORIDA 32653-1603
(352)955-2200 SUNCOM 625-2200 FAX (352) 955-2209



June 7, 2010

Mr. Mike Halpin, Administrator
Siting Coordination Office
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399

RE: Final Agency Report for Gainesville Regional Utilities
Gainesville Renewable Energy Center Site Certification Application

Dear Mr. Halpin:

This letter serves as the Final Agency Report of the North Central Florida Regional Planning Council concerning the Gainesville Regional Energy Center Site Certification Application pursuant to Section 403.507, Florida Statutes.

APPLICABLE REGIONAL PLAN GOALS AND POLICIES

A portion of the subject property is located within the Rocky Creek Stream-To-Sink Watershed, a Natural Resource of Regional Significance as identified and mapped in the regional plan. Applicable regional goals and policies are as follows:

REGIONAL GOAL 4.3. Protect all sources of recharge to the Floridan aquifer from all activities which would impair these functions or cause a degradation in the quality of the water being recharged in recognition of the importance of maintaining adequate supplies of high-quality groundwater for the region.

Policy 4.3.6. Ensure that local government comprehensive plans, DRIs, and requests for federal and state funds for development activities reviewed by the Council include adequate provisions for stormwater management and aquifer recharge protection in order to protect the quality and quantity of water contained in the Floridan Aquifer

The subject property is also located adjacent to U.S. Highway 441, which is a segment of the Regional Road Network as identified in the North Central Florida Strategic Regional Policy Plan. Applicable transportation goals and policies are as follows:

REGIONAL GOAL 5.1. Maintain a regional road network which operates at or above the minimum level of service standard contained in local government comprehensive plans for those segments located outside Transportation Concurrency Exception Areas.

Policy 5.1.9. Mitigate impacts created by development so as to maintain the minimum adopted level of service standard on non-FIHS roads identified in this plan as significant regional transportation facilities as established in local government comprehensive plans.

IMPACTS TO REGIONAL FACILITIES AND RESOURCES

STREAM-TO-SINK WATERSHEDS

Section 4.9 of the site certification application provides detailed information regarding the proposed stormwater system for the project. The application further notes that the project must obtain a stormwater discharge permit under the Florida Department of Environmental Protection Multisector Generic Permit for Stormwater Discharge Associated with Industrial Activity. Therefore, significant adverse impacts to the quality of water entering the Floridan Aquifer via the Rocky Creek Stream-to-Sink Watershed are not anticipated as a result of the project.

REGIONAL ROAD NETWORK

As noted in Section 6.9 of the application, the project is anticipated to result in an additional 378 average annual daily trips external to the project site. The analysis indicates that no significant adverse impacts are anticipated to the Regional Road Network as a result of the project. Therefore, significant adverse impacts are not anticipated to the Regional Road Network as a result of the project.

NONPROCEDURAL REQUIREMENTS

The project requires no variance, exemption, exception, or other relief from this agency to proceed further in the certification process.

PROPOSED CONDITIONS

No conditions are proposed to prevent significant adverse impacts to regional facilities or Natural Resources of Regional Significance.

RECOMMENDATION FOR APPROVAL OR DENIAL OF PROJECT

The proposed project is consistent with the North Central Florida Strategic Regional Policy Plan. Therefore, it is recommended that the application be approved.

If you have any questions concerning this matter, please do not hesitate to contact Steven Dopp, Senior Planner of the Planning Council's Regional and Local Government Programs staff, at (352) 955-2200, extension 109.

Sincerely,



Scott R. Koons, AICP
Executive Director

xc: Jack Doolittle, ECT

Appendix II-5
Department of Transportation Agency Report



Florida Department of Transportation

CHARLIE CRIST
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

STEPHANIE C. KOPELOUSOS
SECRETARY

Mail Station 58
850/414-5265

June 14, 2010

Mr. Mike Halpin, Program Administrator
Florida Energy and Siting Coordination Office
Department of Environmental Protection
2600 Blair Stone Road, MS 48
Tallahassee, Florida 32399-2400

RE: Gainesville Renewable Energy Center LLC
Power Plant Siting Application No. PA09-55
DOAH Case No. 09-6641EPP
DEP OGC Case No. 09-4002

Dear Mr. Halpin:

Enclosed is the Florida Department of Transportation's Agency Report for the Gainesville Renewable Energy Center Power Plant Siting Application.

If you have any questions, please call me at 414-5294 or Connie Mitchell, Siting Coordinator, at 414-4572. Thank you.

Sincerely,

Kimberly C. Menchion
Assistant General Counsel

KCM/cm

cc: All Parties of Record
Connie Mitchell

FLORIDA DEPARTMENT OF TRANSPORTATION
GAINESVILLE RENEWABLE ENERGY CENTER
June 2010

SECTION I. CORRIDOR LOCATION ISSUES

No outstanding issues.

SECTION II. OUTSTANDING SUFFICIENCY ISSUES

No outstanding issues.

SECTION III. VARIANCES TO STANDARDS

No variances requested.

SECTION IV. SPECIAL USE PERMISSIONS

No special use permissions requested.

SECTION V. RECOMMENDATION FOR CERTIFICATION

The Florida Department of Transportation recommends the certification of the proposed energy center. This recommendation is made contingent upon the conditions of Section VI being addressed/met.

SECTION VI. PROPOSED CONDITIONS OF CERTIFICATION

6.1 REQUEST FOR RESTRICTED AREAS

No requests for restricted areas are necessary.

6.2 POST CERTIFICATION REVIEW ITEMS

Access Management to the State Highway System: Any access to the State Highway System will be subject to the requirements of Rule Chapters 14-96, State Highway System Connection Permits, and 14-97, Access Management Classification System and Standards, Florida Administrative Code.

Overweight or Overdimensional Loads: Operation of overweight or overdimensional loads by the applicant on State transportation facilities during construction and operation of the utility facility will be subject to safety and permitting requirements of Chapter 316, Florida Statutes, and Rule Chapter

14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, Florida Administrative Code.

Use of State of Florida Right of Way or Transportation Facilities: All usage and crossing of State of Florida right of way or transportation facilities will be subject to Rule Chapter 14-46, Utilities Installation or Adjustment, Florida Administrative Code; Florida Department of Transportation's Utility Accommodation Manual (Document 710-020-001); Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Standard Specifications for Road and Bridge Construction; and pertinent sections of the Florida Department of Transportation's Project Development and Environmental Manual.

U.S. 441 has been identified as Florida Intrastate Highway System (FIHS) and Strategic Intermodal System's (SIS) facilities. The placement of the transmission line and pipeline should take into consideration the planned widening of these facilities. The cost of relocating or reconstructing the transmission line and pipeline will be borne by the applicant to the extent required by Section 337.403, Florida Statutes, and Rule Chapter 14-46, Florida Administrative Code.

Standards: The Manual on Uniform Traffic Control Devices; Florida Department of Transportation's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Florida Department of Transportation's Standard Specifications for Road and Bridge Construction; Florida Department of Transportation's Utility Accommodation Manual; and pertinent sections of the Department of Transportation's Project Development and Environmental Manual will be adhered to in all circumstances involving the State Highway System and other transportation facilities.

Drainage: Any drainage onto State of Florida right of way and transportation facilities will be subject to the requirements of Rule Chapter 14-86, Drainage Connections, Florida Administrative Code, including the attainment of any permit required thereby.

Use of Air Space: Any newly proposed structure or alteration of an existing structure will be subject to the requirements of Chapter 333, F.S., and Rule 14-60.009, Airspace Protection, F.A.C. Additionally, notification to the Federal Aviation Administration (FAA) is required prior to beginning construction, if the structure exceeds notification requirements of 14 CFR Part 77, Objects Affecting Navigable Airspace, Subpart B, Notice of Construction or Alteration. Notification will be provided to FAA Southern Region Headquarters using FAA Form 7460-1, Notice of Proposed Construction or Alteration in accordance with instructions therein. A subsequent Determination by the FAA stating that the structure exceeds any federal obstruction standard of 14 CFR Part 77, Subpart C for any structure that is located within a 10-nautical-mile radius of the geographical center of a public-use airport or military airfield in Florida will be required to submit information for an Airspace Obstruction Permit from the Florida Department of Transportation or variance from local government depending on the entity with jurisdictional authority over the site of the proposed structure. The FAA Determination regarding the structure serves only as a review of its impact on federal airspace and is not an authorization to proceed with any construction. However, FAA recommendations for marking and/or lighting of the proposed structure are made mandatory by Florida law. For a site under Florida Department of Transportation jurisdiction, application will be

made by submitting Florida Department Transportation Form 725-040-11, Airspace Obstruction Permit Application, in accordance with the instructions therein.

Level of Service on State Roadway Facilities: All traffic impacts to State roadway facilities on the FIHS or the SIS, or funded by Section 339.2819, Florida Statutes, will be subject to the requirements of the level of service standards adopted by local governments pursuant to Rule Chapter 14-94, Statewide Minimum Level of Service Standards, Florida Administrative Code, in accordance with Section 163.3180(10), Florida Statutes. All traffic impacts to State roadway facilities not on the FIHS, the SIS, or funded by Section 339.2819, Florida Statutes, will be subject to adequate level of service standards established by the local governments.

SECTION VII BEST MANAGEMENT PRACTICES

Traffic control during facility construction and maintenance will be subject to the standards contained in the Manual on Uniform Traffic Control Devices; Rule Chapter 14-94, Statewide Minimum Level of Service Standards, Florida Administrative Code; Florida Department of Transportation's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway; Florida Department of Transportation's Standard Specifications for Road and Bridge Construction; and Florida Department of Transportation's Utility Accommodation Manual, whichever is more stringent.

It is recommended that the applicant encourage transportation demand management techniques by doing the following:

- Placing a bulletin board on site for car pooling advertisements.
- Requiring that heavy construction vehicles remain onsite for the duration of construction to the extent practicable.
- A temporary traffic control plan for handling construction related traffic is needed subject to the requirements and standards. The plan will need approval by Florida Department of Transportation prior to construction.

If the applicant uses contractors for the delivery of any overweight or overdimensional loads to the site during construction, the applicant should ensure its contractors adhere to the necessary standards and receive the necessary permits required under Chapter 316, Florida Statutes, and Rule Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, Florida Administrative Code.

Appendix II-6
Department of Community Affairs Letter



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

June 14, 2010

Mr. Mike Halpin, Program Administrator
Siting Coordination Office
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399

Re: Agency Report: Gainesville Renewable Energy Center (GREC), LLC Site Certification Application

Dear Mr. Halpin:

This letter serves as the report of the Department of Community Affairs in response to the application for certification filed by Gainesville Renewable Energy Center (GREC), LLC in November 2009 pursuant to the Florida Power Plant Act.

The proposed facility, GREC, will use clean, renewable, woody biomass material as fuel to generate 100 megawatts (MW) of net electrical energy (116 MW gross). GREC will be located on approximately 131 acres of property in northwest Gainesville that the applicant, GRECC LLC, will lease from the City of Gainesville (d/b/a/ Gainesville Regional Utilities (GRU)). The proposed GREC facility site is located within the boundaries of the 1,146 acre, previously certified site, for GRU's existing Deerhaven Generating Station.

In accordance with section 403.507(2)(a)(1), Florida Statutes (F.S.) the project application has been reviewed based upon consistency with the state comprehensive plan, applicable emergency management provisions of Chapter 252, Part I, F.S., and other jurisdictional matters. The Department recommends approval and has no recommendations for inclusion as conditions of certification in the final order for this project as it is currently described.

2555 SHUMARD OAK BOULEVARD TALLAHASSEE, FL 32399-2100

Phone: 850-488-8466 Fax: 850-921-0781 Website: www.dca.state.fl.us

COMMUNITY PLANNING

Phone: 850-488-2356 Fax: 850-488-3309

AREAS OF CRITICAL STATE CONCERN FIELD OFFICE

Phone: 305-289-2402 Fax: 305-289-2442

HOUSING AND COMMUNITY DEVELOPMENT

Phone: 850-488-7956 Fax: 850-922-5623

Mr. Mike Halpin
June 14, 2010
Page 2

If you have any questions regarding this report, please contact Robert Arredondo at (850) 922-1770, or email robert.arredondo@dca.state.fl.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Gauthier", with a stylized flourish at the end.

Charles Gauthier, AICP, Director
Division of Community Planning

CG/ra

cc: Scott Koons, Executive Director, North Central Florida Regional Planning Council

Appendix II-7

Department of State, Division of Historical Resources Letter



FLORIDA DEPARTMENT OF STATE

Dawn K. Roberts

Interim Secretary of State
DIVISION OF HISTORICAL RESOURCES

Ms. Jessica Dalton
Florida Department of Environmental Protection
3900 Commonwealth Boulevard MS 48
Tallahassee, Florida 32399

June 9, 2010

Re: DHR No.: 2010-541B
Agency Report for Gainesville Renewable Energy Center Application
Alachua County

Dear Ms. Dalton:

Pursuant to 403.507(2) *Florida Statutes*, this agency is required to submit an agency report regarding the Gainesville Renewable Energy Center.

It is the opinion of this office that the site certification application should be approved with regards to cultural and historical resources.

If you have any questions concerning our comments, please contact Samantha Earnest, Historic Preservationist, by electronic mail searnest@dos.state.fl.us, or at 850.245.6333.

Sincerely,

Laura A. Kammerer
Historic Preservationist Supervisor
Compliance Review Section
Bureau of Historic Preservation

DEPARTMENT OF
ENVIRONMENTAL PROTECTION

JUN 11 2010

SITING COORDINATION

500 S. Bronough Street • Tallahassee, FL 32399-0250 • <http://www.flheritage.com>

☐ Director's Office
850.245.6300 • FAX: 245.6436

☐ Archaeological Research
850.245.6444 • FAX: 245.6452

☒ Historic Preservation
850.245.6333 • FAX: 245.6437

Appendix II-8
City of Gainesville Agency Report

June 8, 2010

Jessica Dalton
Environmental Specialist
Department of Environmental Protection
Siting Coordination Office
3900 Commonwealth Blvd. MS 48
Tallahassee, FL 32399

RE: Agency Report Relating to Gainesville Renewable Energy Center

Dear Ms. Dalton:

This letter will serve as the Agency Report for the City of Gainesville pursuant to the Florida Electrical Power Plant Siting Act (F.S. 40.501 – 403.539). The City has reviewed the Site Certification Application for the Gainesville Renewable Energy Center (GREC) and makes the following observations:

1. The City Commission has previously (May 9, 2009) unanimously approved the GREC project and, in fact, has participated as a joint petitioner with GREC, LLC in the Determination of Need at the Florida Public Service Commission.
2. The proposed GREC site is wholly within the jurisdictional limits of the City of Gainesville.
3. The approximate 130 acre site of GREC is wholly within the confines of the City's (d/b/a Gainesville Regional Utilities) Deerhaven Generating Station, and is subject to that certain Lease Agreement between the City and GREC, LLC dated September 28, 2009.
4. The Site Plan for GREC has been reviewed by the City and is:
 - consistent with the Gainesville Comprehensive Plan,
 - consistent with the Gainesville Land Development Code,
 - consistent with the Public Facilities Future Land Use Designation and Public Services (PS) Zoning District,
 - consistent with applicable provisions of the Code of Ordinances of the City of Gainesville.

5. Site Plan Review is on the agenda of the City Development Review Board (DRB) for June 10, 2010. Any conditions that may be imposed by the DRB will be enforceable under Gainesville Code of Ordinances and the City will manage any such issues under applicable local ordinances. Accordingly, no conditions for certification are requested.

Recommendation:

Based upon the foregoing, the City recommends approval and certification of the proposed Gainesville Renewable Energy Center.

Should you have any questions concerning the above report and recommendation, please feel free to contact me.

Sincerely,



Russ Blackburn
City Manager

xc: Robert Hunzinger