

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
ALACHUA COUNTY, FLORIDA

CASE NO.: 01-2012-CA-001346

DIVISION: J

GAINESVILLE CITIZENS CARE, INC.,

Plaintiff,

vs.

CITY OF GAINESVILLE d/b/a
GAINESVILLE REGIONAL UTILITIES,

Defendant,

and

GAINESVILLE RENEWABLE ENERGY CENTER,
LLC,

Intervenor.

_____ /

DEPOSITION OF: EDWARD J. REGAN, JR., P.E.

DATE: November 13, 2012

TIME: 1:34 p.m. - 4:00 p.m.

PLACE: 408 West University Avenue
Suite 505
Gainesville, Florida 32601

REPORTED BY: Lynn Marie Durscher, RPR, CRR,
Notary Public

APPEARANCES:

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 and

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 1300 Thomaswood Drive
 Tallahassee, Florida 32308
 Attorneys for Intervenor

ALSO PRESENT:

Ms. Jo Beaty

Mr. Robert E. Hunzinger

I-N-D-E-X

Witness	Direct	Cross	Redirect	Recross
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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT REPORTER: So, Mr. Regan, if you'd please
3 raise your right hand to be sworn.

4 Do you swear that the testimony you're about to give
5 is the whole truth and nothing but the truth, so help you
6 God?

7 THE WITNESS: I do.

8 THE COURT REPORTER: Thank you.

9 MS. WARATUKE: Can we just on the record, then, put
10 an agreement that she can use the pen for -- the tape for
11 her own personal notes, but, obviously, the court
12 reporter's will be the official record --

13 MS. BEATY: Okay.

14 MS. WARATUKE: -- and it won't be released for any
15 other purpose.

16 Thanks.

17 MS. BEATY: Thank you. I appreciate it.

18 THEREUPON:

19 EDWARD J. REGAN, JR., P.E.,
20 was called as a witness and, having been first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LaHART:

24 Q. Good afternoon. I introduced myself before we went
25 on the record. I'm Marcy LaHart. I represent Gainesville

1 Citizens Care.

2 Would you state your name for the record?

3 A. My name is Edward J. Regan, Jr.

4 Q. Mr. Regan, what is your current address?

5 A. 10003 Southwest 67th Drive, Gainesville, Florida
6 32608.

7 Q. How long have you lived in Gainesville?

8 A. Well, I came here for college in 1970.

9 Q. And you've lived here ever since?

10 A. Yep.

11 Q. You're a lucky man. I had to move away for 20 years
12 before I got to come back.

13 What did you study at the University of Florida?

14 A. My first degree was in behavioral psychology.

15 Q. And then your next degree?

16 A. Was environmental sciences and engineering.

17 Q. Were those both bachelors?

18 A. The first one was a Bachelor's of Science. The
19 second one was a Master's of Science.

20 Q. Did you go on to get a Ph.D.?

21 A. No.

22 Q. When did you graduate?

23 A. 1977.

24 Q. That was with your master's?

25 A. Correct.

1 Q. What did you do after you graduated?

2 A. Careerwise?

3 Q. Yes.

4 A. I went to work for the North Central Florida
5 Regional Planning Council, and I was the environmental
6 planner for an 11-county area.

7 Q. How long did you hold that position?

8 A. Until I took a position with Gainesville Regional
9 Utilities, which was in November of 1979.

10 Q. What was your first position with GRU?

11 A. My job was to set up all of the energy conservation
12 programs and train people to implement them. My title was
13 technical energy management coordinator.

14 Q. Technical energy management coordinator?

15 A. Yes.

16 Q. That sounds very important.

17 A. A mouth full.

18 Q. How long were you in that position?

19 A. Oh, I think it was until '81 or '82. I'm not
20 exactly sure when I was secunded into the planning
21 department, what they called system planning department of
22 Gainesville Regional Utilities.

23 Q. What did you do in the planning department? What
24 was your title, if you recall?

25 A. I was a utility analyst II.

1 Q. What were your duties as a utility analyst II?

2 A. There was an activity going on called integrative
3 resource planning, and so I was supporting that and also a
4 lot of the planning and design work for conservation
5 programs, energy conservation programs.

6 Q. What's integrated resource planning?

7 A. It's a -- I guess it's a term of art in the power
8 supply world where to meet your customers' energy needs,
9 which are heating, cooling, lighting, comfort, entertainment,
10 you look at all possible resources, including supply-side
11 generation and demand side, which would be energy
12 conservation programs or what they call demand response
13 programs like load management.

14 Q. How long were you in that position?

15 A. Well, I was in the planning department until --
16 well, I've been in the planning department ever since, so my
17 position evolved into I became a senior utility engineer.
18 During that period I got my P.E., professional engineer
19 registration.

20 Q. Uh-huh.

21 A. And then I was put over the water and wastewater
22 facilities planning probably '84, '85. I don't remember
23 exactly.

24 So did that for awhile, and then in '89, I became
25 the interim strategic planning director. By then it was

1 called the strategic planning department, and I think in 1990
2 I became the full-time strategic planning director, which
3 eventually evolved into the assistant general manager for
4 strategic planning because of the changing roles and
5 responsibilities.

6 Q. Was the assistant general manager position the last
7 position that you held at GRU?

8 A. It was, yes.

9 Q. You are no longer employed by GRU, correct?

10 A. I do have a contract with them.

11 Q. But you are retired?

12 A. I'm retired, yes.

13 Q. When did you retire?

14 A. February, end of February 19 -- 2012.

15 Q. Congratulations.

16 A. Thank you.

17 Q. Tell me about the contract that you have with the
18 City.

19 A. It's an as-needed basis. Whenever the general
20 manager would like my services, we have an agreed upon rate
21 schedule, and I provide the services requested.

22 Q. What sorts of services have you provided since you
23 have entered into that contract?

24 A. I participated with staff in developing power
25 proposals, power supply proposals.

1 Q. Tell me a little more about that.

2 A. Gainesville Regional Utilities, it's an activity
3 I've been engaged in for Gainesville Regional Utilities for
4 years and years, since 1990, so it's a question of looking at
5 what the potential off-taker might need, what their supply
6 portfolio is, what their loads are and their demands.

7 Q. By off-taker do you mean a potential GRU customer?

8 A. This would be a wholesale power customer and looking
9 at the resources that Gainesville Regional Utilities has to
10 offer and try to structure something that would be
11 competitive, usually competitive proposals.

12 Q. Have you been trying to find purchasers for power
13 that will be generated from the biomass plant?

14 A. I'll definitely have my ear to the ground on that
15 one. What -- that's one of the resources that we were trying
16 to market.

17 Q. You were actually doing that for the City before you
18 left, weren't you?

19 A. Yes.

20 Q. Have you had any success?

21 A. Over the years, yes. Because there's two parts to
22 that. There's buying and selling. So, for example, --

23 Q. I guess my question is, have you had any success in
24 arranging a purchaser for the power to be generated by the
25 biomass plant?

1 A. No.

2 Q. Why do you think that is?

3 A. Because of the unprecedented downturn in the gas
4 markets and the falling off of loads throughout the state.

5 THE COURT REPORTER: Of?

6 THE WITNESS: Of falling off of loads or reduction
7 in demand for electricity in Florida and the southeast.

8 BY MS. LaHART:

9 Q. When you say the downturn in gas prices, is
10 essentially the problem that, because of the downturn in gas
11 prices, the biomass is no longer competitive, the fuel
12 created by the biomass plant is not competitive?

13 A. When you say fuel, do you mean electricity?

14 Q. Yes. That's what I mean. I'm sorry.

15 A. Actually, the -- this could be a very complicated
16 discussion, so let me break this apart.

17 There's a variable operating cost with the plant,
18 which is very competitive, and then there's a fixed
19 component, or it's not the fuel component of it.

20 So in the wholesale power market, you're not
21 necessarily trying to market the full price. So what has
22 happened is that, with the falling off of gas prices, you
23 can't get the whole, the full -- nobody can sell wholesale
24 power, full wholesale power price. Well, not nobody, but
25 it's very difficult to do so.

1 Q. Okay. How much time do you devote to marketing
2 electricity that will be generated by the biomass plant?

3 A. For the last six months, probably none.

4 Q. How about since you have left GRU?

5 A. Oh, in the first few months when I had a contract
6 with them, I put a fair amount of time into some structured
7 power proposals.

8 Since then Bob has apparently delegated that to
9 other people in his staff and is using me less and less.

10 Q. Do you have a cell phone that's paid for by GRU?

11 A. No.

12 Q. Do you still have a GRU e-mail account?

13 A. I do.

14 Q. Are you being paid for your work on this case?

15 A. No.

16 Is that allowed?

17 MR. McDERMOTT: Only in South Florida.

18 Q. It depends on which jurisdiction you are in,
19 Mr. Regan. That is a safe answer to any legal question.

20 All right. I lost my train of thought. Where were
21 we?

22 When you worked for GRU, did you have a cell phone
23 that was paid for by GRU?

24 A. Yes.

25 Q. Do you recall what that number was?

1 A. 352-538-4301.

2 Q. 538-4301?

3 A. Yes.

4 Q. Do you know who the carrier was?

5 A. Verizon. And when I left GRU, I arranged to keep
6 that number because of number portability, and Verizon is
7 still my carrier.

8 Q. But GRU doesn't pay the bill for you anymore?

9 A. No.

10 Q. You didn't want a clean break with a new cell phone
11 number?

12 A. At the time I felt that I know many, many people in
13 the state and the country, and I wanted to not be changing my
14 phone number.

15 Q. I understand.

16 Mr. Regan, something I have learned since my
17 involvement in this matter is that, between May of 2008 when
18 the city commission accepted the RFB -- RFP from Nacogdoches
19 -- am I saying that right?

20 A. Nacogdoches.

21 Q. Nacogdoches, and approximately a year later when the
22 Power Purchase Agreement was approved by the City of
23 Gainesville, there was a series of meetings that took place
24 between GRU employees and agents and representatives from
25 first Nacogdoches and then GREC.

1 A. Right.

2 Q. Did you attend those meetings?

3 A. Yes, many of them. I don't know if I went to all of
4 them.

5 Q. From what I can gather by all the e-mails that I
6 have gone through, you were a pretty key player on the team;
7 were you not?

8 A. Well, my job was as assistant general manager for
9 strategic planning. Many of the -- well, some of the subject
10 matter experts worked for me, and I was pretty familiar with
11 most of the other subject matter experts and pretty familiar
12 with the power industry in general.

13 Q. Which of the subject matter experts worked for you?

14 A. Rick Bachmeier. Initially Yolanta Jonynas, Rob
15 Klemans.

16 THE COURT REPORTER: Pardon me? I didn't understand
17 that second name. Initially --

18 THE WITNESS: Yolanta Jonynas.

19 MS. WARATUKE: Can you spell it?

20 THE WITNESS: J-o-n-y-l-a-n-t-a -- oh, boy,
21 J-o-n-a-s-n-a-s (sic).

22 Yolanta Jonynas. It's a Latvian name.

23 BY MS. LaHART:

24 Q. Okay. Rick Bachmeier, Yolanta Jonynas?

25 A. Yeah.

1 Q. Who else?

2 A. Rob Klemans, Heidi Lannon.

3 Some of these people changed during that time
4 period. Diane Wilson, Roger Westphal. That's it.

5 Q. Okay. Did Jim Stanton or, I'm sorry, John Stanton
6 work for you?

7 A. No. He was my peer.

8 Q. I'm going to hand you, I only have one copy of it,
9 but it's an e-mail from Jonathan Cole to Ms. Waratuke. The
10 subject is GRU meeting with Jonathan Cole. It's dated
11 Monday, October 29, 2012, and it's a list of meeting dates
12 and locations and conference calls.

13 Can you look at that?

14 Apparently, Mr. Cole went through his calendar and
15 perhaps his invoices, and these are the meeting times and
16 locations that he came up with at which the Power Purchase
17 Agreement was negotiated. Does that seem about right to you?

18 A. Well, there were meetings in 2008 and 2009. I can't
19 confirm the dates and the times.

20 Q. Can you confirm the locations?

21 A. Well, let's see, there's one in Boston.

22 A meeting in New York.

23 Q. Did you go to New York?

24 A. You know, we -- several times for bond rating agency
25 kinds of business, but I don't remember if Jonathan Cole was

1 with us in New York or not.

2 Q. Okay. Fair enough.

3 This indicates that there was a September 8th and
4 9th -- that September 8th and 9th there were all-day meetings
5 in Boston. Did you attend that meeting?

6 A. September 8th and 9th.

7 Q. That was of 2008.

8 A. Yes.

9 Q. Okay. Approximately how many meetings were held at
10 which the two parties sat down to negotiate the details of
11 the contract?

12 A. May I look at your list?

13 Q. You may.

14 MS. WARATUKE: Just for clarification, are we
15 talking about calls or physical face-to-face meetings?

16 MS. LaHART: Physical face-to-face meetings.

17 MS. WARATUKE: Okay.

18 BY THE WITNESS:

19 A. That would suggest there was maybe seven.

20 Q. Does that seem about right to you?

21 A. Seems about right.

22 Q. Tell me what happened at those meetings.

23 MS. WARATUKE: I'm going to object to the form of
24 the question.

25 MS. LaHART: Okay. You can go ahead and answer the

1 question.

2 MS. WARATUKE: Yeah. I mean, you can answer it. I
3 object to the form of the question, but you can go ahead
4 and answer if you can.

5 THE WITNESS: What does that mean, the form?

6 MS. WARATUKE: Go ahead and answer.

7 THE WITNESS: It's too broad?

8 BY MS. LaHART:

9 Q. It means she doesn't like my question, but you have
10 to answer it anyway.

11 A. Usually we would have set an agenda, and we would
12 work through the agenda, and at Gainesville Regional
13 Utilities we use a technique that's called interspace
14 bargaining where you're not so much putting out positions as
15 you are explaining, let's say, it was an added schedule
16 issue, explaining, you know, "Well, here's what I'm worried
17 about," and then the other side would say, "Here's what we're
18 worried about."

19 So everybody would explore the issues, and that's
20 what would happen. We would talk about everything and try to
21 work up solutions that make sense to everybody.

22 Q. Did those meetings result in recommendations that
23 were later communicated to the city commission?

24 A. Yes.

25 Q. How were those recommendations communicated to the

1 City?

2 Was that done in a public forum, or was it done in
3 one-on-one meetings with the commissioners?

4 A. Well, that was the general manager's job, and --

5 Q. It was the general manager's job to communicate the
6 recommendations to the city commission?

7 A. Yes. They were his recommendations. It was the
8 recommendations were conveyed both ways, personal
9 conversations, and I remember there was a lot of discussion
10 related to fuel supply that I believe was actually addressed
11 in public meetings.

12 Q. Did you ever meet one-on-one with any of the
13 commissioners?

14 A. Me by myself?

15 Q. No. I meant did you ever attend a meeting at which
16 there was only one commissioner?

17 A. Yes. Sometimes Bob would have me come along as, you
18 know, in case he needed to ask questions or get some more
19 details than he had.

20 Q. Which commissioners do you recall meeting with Bob?

21 A. Boy, over the years we worked together, I probably
22 met with every commissioner on a wide range of issues besides
23 just GREC.

24 Q. Okay. I'm only asking about the Power Purchase
25 Agreement and meetings that you had with commissioners

1 regarding the Power Purchase Agreement. Which ones do you
2 recall meeting with?

3 A. Over the course of the negotiation and then coming
4 in with the contract for ratification, I probably met with
5 Bob with every one of the commissioners.

6 Q. Give me a time frame when that happened,
7 approximately.

8 Was that more towards the end of the negotiations
9 when you were getting ready to make a recommendation to the
10 city commission?

11 Excuse me, when Bob was getting ready to make a
12 recommendation to the city commission.

13 A. Boy, I really couldn't tell you because there was
14 just so much else going on at GRU. There's always meetings
15 going on.

16 Q. Fair enough.

17 A. I can't remember a meeting where you went and it was
18 just one topic.

19 Q. "I don't remember" is a perfectly valid answer to a
20 deposition question. I tell my witnesses that when I'm
21 preparing them for deposition all the time.

22 Mr. Regan, I have in my hot little hands several
23 e-mails that you either wrote or received.

24 MS. WARATUKE: Thank you.

25 MS. LaHART: Can you share with Mr. Dee so I can let

1 the witness have a set?

2 MS. WARATUKE: I can probably look off the witness's
3 set --

4 MS. LaHART: Okay.

5 MS. WARATUKE: -- with the witness, if you don't
6 mind.

7 BY MS. LaHART:

8 Q. Mr. Regan, some of these documents I'm going to ask
9 you to maybe answer some questions that I have about them,
10 and some of them I'm just going to ask you to confirm that
11 it's an e-mail that you sent or received. The reason that
12 I'm doing that is that I'm authenticating the document for
13 the record so I can defeat Mr. McDermott's motion for summary
14 judgment.

15 MR. McDERMOTT: Will you start with 22 just so we
16 can keep them in sequence? Does that work for you?

17 MS. LaHART: Sure.

18 MR. McDERMOTT: Okay. Thanks.

19 (Thereupon, Plaintiff's Exhibit 22 was marked for
20 Identification.)

21 BY MS. LaHART:

22 Q. The first one is an e-mail from you dated -- well,
23 it looks to me like it's an e-mail from you dated Monday, May
24 19, 2008.

25 Could you identify this? When I say this, we'll

1 refer to it as Exhibit 22.

2 A. Well, what I have before me looks like a copy of an
3 e-mail that I sent on the date you see it.

4 Q. Okay. Can you tell me who Dave Beaulieu is?

5 A. Dave Beaulieu?

6 Q. Beaulieu.

7 A. Yeah.

8 Q. Is that how you say that?

9 A. Yeah. It's a French word.

10 He's the assistant general manager responsible for
11 energy delivery, which also includes metering, transmission,
12 substations.

13 Q. Okay. If you'll turn to the next page of that
14 Exhibit 22.

15 A. My document doesn't say Exhibit 22.

16 MS. WARATUKE: Well, we're marking it as Exhibit 22.

17 BY MS. LaHART:

18 Q. Just going to have to take my word for it,
19 Mr. Regan.

20 A. So are we talking about the next page of the
21 May 19th one?

22 Q. Yes.

23 A. Okay. Okay.

24 Q. It appears to be another message from you to
25 Mr. Hunzinger with lots of folks copied on it. It's an

1 e-mail --

2 A. Okay.

3 Q. -- that says, "Hey Everyone! Bob and I developed
4 this overall approach for subject matter experts we need to
5 have involved in the Nacogdoches negotiations. We are
6 interested in your reaction or suggestions."

7 And it identifies you and Mr. Stanton as the project
8 managers. It says that Mr. Manasco will interface with
9 Orrick on some topics.

10 Under Forest Stewardship Standards, it says, "Ad Hoc
11 Committee."

12 Can you tell me what you meant by that?

13 A. Joe Wolf is the GRU -- was the -- well, he still is
14 a GRU forester who was assigned to work with me on the fuel
15 supply part of this project because of his training as a
16 forester, but we also -- he knew a number of professionals in
17 the forestry industry and also concerned and environmental
18 people that he thought we should ask questions of and have
19 discussions with and to gather information to better inform
20 the overall process.

21 Q. Was there an ad hoc technical committee created?

22 A. Yeah.

23 Q. Do you know who was on that?

24 A. I know a few --

25 Q. I realize --

1 A. I know a few names, and I also know the companies
2 they are with. Do you want me to share with you what I can
3 remember about that?

4 Q. Sure.

5 A. There was a fellow named Josh Dickinson who was very
6 active in forming -- well, actually, he's -- I guess he was
7 chairman of the board of something called the Forest -- the
8 Forest Stewardship Council.

9 There was a guy named Bob Simons who is a landowner
10 and forestry, a grower, a tree grower, also very involved in
11 all kinds of environmental issues that I don't even -- back
12 from my North Central Florida days as an environmental
13 activist who was very concerned about being sure that
14 whatever happens is sustainable.

15 There was a guy named Tony Wallace who is in this
16 business, forestry. There was a fellow from Plum Creek, who,
17 obviously, is a big grower. I can't remember his name.

18 Now, Joe was the one who held the meetings and spent
19 most of the time talking to those individuals, so I don't
20 remember more than that at this time.

21 Q. Okay. And are forest stewardship standards part of
22 the Power Purchase Agreement?

23 A. They are.

24 Q. Were there any recommendations that came out of this
25 ad hoc technical committee that were passed onto the city

1 commission?

2 A. Joe and I worked up, I guess you would call them,
3 white papers.

4 Q. Uh-huh.

5 A. And passed that around, you know, to people at GREC,
6 and then we would give them to Bob and say here's what we
7 think would make sense, and then, you know, we'd show up at
8 regional utility committee meetings, you know, where Bob was
9 there, and then he would introduce us and have us present the
10 white papers, so they're, basically, his recommendations to
11 that subcommittee of the city commission, who then in turn
12 make a recommendation to the full commission, and the RUC
13 meetings were public meetings, publicly noticed and
14 everything else.

15 Q. Did you ever have any conversations about publicly
16 noticing the negotiations with Nacogdoches?

17 A. No. They weren't public meetings.

18 Q. You say, "They weren't public meetings." How do you
19 know that?

20 A. Because --

21 Q. And just because you didn't notice them, that means
22 they're not public?

23 A. No. It's because we were performing tasks in the
24 process of developing a PPA for Bob. We -- you know, he was
25 going to be the one that made the recommendations to the city

1 commission.

2 And I am familiar with public law in this area
3 because of having been involved with thinking about how to
4 set up the radio management advisory committee, which is a
5 publicly noticed entity.

6 You look like you don't know what I'm talking about.

7 Q. I don't have a clue.

8 A. One of the things that was under my purview was
9 something called GRUCom, telecommunications. One of the
10 services that GRUCom provides to the community is public
11 safety radio, which is what police and firemen use,
12 ambulances use public safety radio, and because all of the
13 agencies in the county participate in that system and so
14 there are decisions that need to be made, we formed something
15 called a radio management board, and that board is a publicly
16 noticed entity. So, you know, in the process of creating
17 that, I became fairly familiar with Florida law.

18 But that board had sort of autonomy of its own to
19 make recommendations to elected officials, which is why it
20 was set up that way.

21 MS. LaHART: Could we go to the next document in the
22 stack that we'll mark Exhibit 23?

23 (Thereupon, Plaintiff's Exhibit 23 was marked for
24 Identification.)

25 BY MS. LaHART:

1 Q. Can you identify that for the record?

2 A. Well, it's an e-mail with your name on it, but from
3 me to Richard Bachmeier copying Sontag. Let's see, what's
4 the date? August 15th.

5 MS. WARATUKE: What's the date? 8. Okay.

6 THE WITNESS: Trying to see what this is about.

7 BY MS. LaHART:

8 Q. Can you explain to me what this is?

9 A. We were getting all kinds of people calling us up
10 purporting to have a deal of a lifetime. This is one of
11 them, and I could take some more time, but, apparently, the
12 numbers just were very similar to the many -- the IOU
13 utilities in Florida are all required to sign contracts with
14 anybody who offers anything at a -- and this is another one
15 of those things that is a never going to happen.

16 It's like saying, "I'll sell you a new Porsche for
17 \$5,000." Well, you say you can, but let's not waste any
18 time.

19 Q. Can you tell me if this has anything to do with the
20 biomass plant?

21 A. Looks like he was just saying that he could --

22 Q. When you say "he," you mean Lorne Bradley?

23 A. Well, PolyGeneration. Railex, PolyGeneration.

24 Delivered all in, capital, everything, for less than
25 6 cents a kilowatt hour.

1 Q. Did this have anything to do with the Power Purchase
2 Agreement?

3 A. I think what it was is that word was out on the
4 street, in the community that we were pursuing a biomass
5 project.

6 Q. Uh-huh.

7 A. And this was, obviously, August 15, 2008, so that
8 was after the time when it was known that we were negotiating
9 such a thing, and the feeding frenzy had started.

10 Q. So the feeding frenzy, you mean there were other
11 folks that were hoping to beat GREC out?

12 A. Oh, yes.

13 Q. But the City had already accepted an RFP at that
14 point.

15 A. That's right.

16 Q. So why would they -- why did they think they would
17 have a chance?

18 A. I can't explain their motives.

19 Q. Okay. Just wanted to make sure I wasn't missing
20 something.

21 Can you turn to the next document, please? Would
22 you identify this for the record?

23 A. It's September 10, 2008, from myself to, looks like,
24 the Nacogdoches -- I guess at this point it's GREC
25 negotiating team.

1 Q. And there was an attachment, correct?

2 A. There is an attachment here, but the attachment,
3 I'll have to take your word for it, that it came with this
4 e-mail.

5 Q. Well, it says, "Attachments: Follow-up Issues
6 September 8, 2008."

7 Is that what the attachment says?

8 A. It says, "Critical Issues September 8th."

9 Q. Did you draft this list?

10 A. Well, it looks like it.

11 Q. Can you tell me why it was stamped "Confidential"?

12 Who were you keeping it secret from?

13 MS. WARATUKE: Object to the form of the question.

14 Go ahead and answer it.

15 A. Gee, I don't -- I don't remember.

16 Q. Was it your opinion when you drafted this that it
17 was somehow exempt from the public records law?

18 A. Whoever stamped it apparently thought so. I just
19 don't -- you know, I don't have a stamp that looks like that.
20 I suppose you could do that in Word. I just -- I'm just
21 pulling a blank here.

22 There was a lot of terms and conditions that we were
23 discussing that were redacted, eventually became redacted.
24 They were deemed confidential as I was advised by our
25 attorney.

1 Q. Which attorney advised you of that?

2 A. Skip Manasco.

3 Q. As part of the development of the Power Purchase
4 Agreement from back in May of 2008 when you started working
5 on the agreement until it was ratified by the City, were
6 there times in the context of these all-day or two-day
7 meetings where the parties separated into subteams to work on
8 particular issues?

9 A. We would call that caucus, and, yeah, that probably
10 happened a few times.

11 Q. Tell me what particular subjects you remember having
12 smaller group discussions about.

13 A. I can't remember.

14 Q. You can't remember any?

15 A. (Witness shakes head.)

16 Q. Did you ever participate in a subgroup like that?

17 A. Oh, sure, but it's all part of a big blur of four
18 years ago.

19 Q. Well, were there particular subjects that you were
20 responsible for under the terms of the Power -- under the
21 negotiations?

22 Mr. Stanton told me that there were a few things
23 that were kind of his babies. Did you have things that were
24 more -- you took ownership of more than Mr. Stanton did?

25 A. Yes.

1 Q. What were those?

2 A. Although I will say that it is my nature to care
3 about the whole thing, so I have, obviously, read and
4 discussed with everybody different things, but my areas were
5 more the fiduciary aspects rather than the operational
6 aspects or the technical aspects, although I was watching all
7 that stuff very carefully because they do work hand in hand.

8 And, obviously, the fuel --

9 Q. Fuel pricing?

10 A. Fuel procurement standards and stuff like that.

11 Q. What about the fuel pricing?

12 A. How the pricing was handled in the contract, yes.

13 Q. I'd like to go over some of what you apparently
14 identified as issues back in September of '08. The first one
15 says, "What's the best way to index plant costs and what's a
16 fair starting value?"

17 And it appears that it's assigned to Black & Veatch.
18 How do you say that?

19 A. Veatch.

20 Q. Veatch, right. Black & Veatch or Burns &
21 McDonnell's -- and McDonnell.

22 Black & Veatch was a consultant that was doing some
23 work for the City; is that right?

24 A. During that time frame, we had standing contracts,
25 what they call continuing engineering services contracts with

1 both of those firms.

2 I remember talking to parties of both sides and
3 winding up hiring another consultant named Fred Haddad to
4 work with that part of it.

5 Q. Whose decision was it to hire Fred Haddad?

6 A. It was mine.

7 Q. And why did you pick Fred?

8 A. Because of I knew that he had negotiated similar
9 deals between Orlando Utilities and Southern Power Company to
10 deal with exactly the issues that we had to deal with here,
11 which is that between the time of contract signature and
12 there was a landmark -- I forget what the exact title of it
13 was. Prices had to float with the market when we strike up a
14 -- they call strike the price at a certain point, and so we
15 had to come up with a fair way to float with the market
16 during that interval.

17 Q. You raised as an issue what would be the benefit of
18 not rolling operation and maintenance in fixed capacity
19 costs. Tell me a little about what you meant by that.

20 A. Well, we wound up keeping them separate, and the
21 reason was that we were trying, you know, striving -- when I
22 say we, I mean as a whole team. You know, this was kind of
23 our marching orders. We were to keep the pricing as stable
24 as possible, and there were parts of O & M that probably no
25 power supplier were going to take the full cost risk on it,

1 chemicals and things like that, things that -- and so that
2 was what that was about, is how to structure the contract to
3 deal with variable O & M versus fixed O & M.

4 THE COURT REPORTER: I'm sorry. Your voice drops a
5 little bit. If you'll keep it much louder for me --

6 THE WITNESS: A little louder?

7 THE COURT REPORTER: -- because it's a little
8 technical.

9 THE WITNESS: There's variable O & M, fixed O & M,
10 and how to handle those costs, how to structure the
11 contract in a way that was fair to all parties.

12 And I guess -- I guess at that time GREC wanted to
13 roll it all into one number that would have to be
14 somewhat indexed, and we wound up not going there.

15 BY MS. LaHART:

16 Q. How was the decision to not go there made?

17 A. Well, typically it would be a discussion with Bob.

18 Q. Only Bob?

19 A. No. There might be other people in the room
20 depending on what it was.

21 Q. Who else do you recall discussing this issue with?

22 A. Undoubtedly, John Stanton. Rick Bachmeier was in
23 most of the conversations like that. Probably Skip.

24 Q. Tell me more about issue No. 6, "What's a fair test
25 of capacity?" What was that issue?

1 A. Well, when you build a power plant, there's many
2 different complicated systems working together, and you know
3 what the ratings are for all the pieces and parts, but then
4 you have to test the plant to see what it really produces.

5 And so although on paper, you know, we still don't
6 really know what GREC will be, but it was going to be a
7 hundred megawatts net, very different than gross, and it may
8 wind up being 98, may wind up being 102, but there's a point
9 at which it's not acceptable. It could be too low because
10 our long-term expansion plan calls for a hundred megawatts
11 because of the units we're going to be retiring and things
12 like that, or it could be too high. Whoa, we don't want to
13 be on the hook for that much power because we don't need that
14 much power.

15 And so how you test a unit to find out what its
16 rating is is rather involved because it takes -- I don't want
17 to give you a lesson on power plant engineering, but I'd be
18 glad to if you'd like.

19 Q. Another day.

20 A. Okay. And that was an area which John Stanton
21 definitely was a subject matter expert.

22 Q. Okay. Did John Stanton make any recommendations to
23 you regarding what a good way to test the capacity would be?

24 A. I believe they wound up being accepted by Bob and
25 entering the contract.

1 Q. Do you know if there were testing methodologies that
2 were not recommended to Bob?

3 A. No. I don't know. I just pretty much said, Well,
4 here's a guy who's done this all over the world for many,
5 many power plants, and here's how he thinks it ought to be
6 done. This is probably it. That was his bag.

7 Q. Mr. Stanton's bag?

8 A. Uh-huh.

9 Q. Now, there are three items, three issues on this
10 list that are apparently assigned to you and Mervis. Who is
11 Mervis?

12 A. Ari Mervis. He was a gentleman employed by
13 Nacogdoches and GREC. He was a lawyer, and he was the point
14 person for coordinating the negotiations on their side of the
15 house.

16 Q. Did you have conversations with Mr. Mervis about the
17 three items on this list?

18 A. Undoubtedly.

19 Q. How did those conversations take place? Were they
20 in person or by phone?

21 A. We had a lot of phone conversations, so probably by
22 phone.

23 Q. And based on those conversations, did you make
24 recommendations to Mr. Hunzinger?

25 A. Yes.

1 Q. Were there --

2 A. And I'm sure he made recommendations to his side of
3 the house as well.

4 Q. Mr. Mervis did?

5 A. Yeah.

6 Q. Were there things that you and Mr. Mervis discussed
7 that you ultimately did not recommend to Mr. Hunzinger?

8 A. There were times when, you know, I wasn't going to
9 give -- you know, he wanted the shirt off our backs. I
10 wasn't going to recommend that to Bob, so of course.

11 MS. LaHART: For the record, that was Exhibit No.
12 24.

13 (Thereupon, Plaintiff's Exhibit 24 was marked for
14 Identification.)

15 MS. LaHART: Does anybody need a break yet?

16 THE WITNESS: I could use some water.

17 MS. LaHART: Okay.

18 THE WITNESS: My throat is a little gravelly.

19 (Thereupon, a brief recess was taken.)

20 (Thereupon, Plaintiff's Exhibit 25 was marked for
21 Identification.)

22 MS. LaHART: All right. Back on the record.

23 BY MS. LaHART:

24 Q. The next document, the next exciting document for
25 you to turn your attention to is a September 18th e-mail. It

1 appears to be from you. Do you recall sending this e-mail?

2 A. This e-mail appears to be from me forwarding a
3 rather extensive e-mail, it looks like, from Joshua Levine.

4 Q. You are sort of announcing to your team that Joshua
5 is your new primary contact on the PPA?

6 A. Yeah.

7 Q. Can you turn to the next document?

8 MR. DEE: Was the last one 24, or did you not
9 introduce that?

10 MS. LaHART: The last one was 25.

11 MR. DEE: I mean 25. Okay.

12 THE WITNESS: I'm sorry. Where are we?

13 MS. WARATUKE: There isn't a question pending, so
14 just wait.

15 (Thereupon, Plaintiff's Exhibit 26 was marked for
16 Identification.)

17 BY MS. LaHART:

18 Q. I'm just trying to remember what I thought was so
19 interesting about this e-mail, but I think if you turn to
20 page 3 --

21 A. Is this the September 25th?

22 Q. Yes.

23 A. Okay.

24 Q. September 25th. It's an e-mail from yourself to
25 Mr. Levine. Heads up on some issues that Skip has noticed --

1 has noted.

2 Did you indeed send this e-mail to Mr. Levine?

3 A. On page 3?

4 Q. Page 3 of Exhibit 26.

5 A. Yeah. That appears to be from me.

6 Q. You were essentially passing on some comments from
7 Skip Manasco to Joshua Levine, correct?

8 A. Right.

9 MS. LaHART: Thank you.

10 Next document would be Exhibit 27.

11 (Thereupon, Plaintiff's Exhibit 27 was marked for
12 Identification.)

13 BY MS. LaHART:

14 Q. Can you identify this for the record?

15 A. This is an e-mail I received from Joshua Levine.

16 Q. Yes.

17 A. On September 26th.

18 Q. It says, "Hello Ed, Attached to this e-mail is a
19 memo that you requested we draft."

20 Can you explain to me why you asked them to draft
21 that memo?

22 A. Yeah. We were pursuing a termination for
23 convenience, I guess, and we were falling out of our chairs
24 with the big numbers that were coming in and --

25 Q. Tell me what you mean by that.

1 A. \$32 million or \$30 million or something like that.

2 Q. That's what GREC was telling you would be the cost
3 of a termination for convenience clause?

4 A. Right.

5 Q. It would be the cost that the City would have to pay
6 if they decided to invoke that clause. Is that how --

7 A. Exactly.

8 Q. Am I understanding that correct? Okay.

9 A. And -- but it was more than that.

10 I'm sorry for eating this candy.

11 Q. No, that's all right.

12 A. I would characterize the -- having that in a
13 contract would also have an effect on the pricing you would
14 get -- that they would get for construction and financing of
15 the project, and this was sometime after we first -- we -- we
16 had kind of all gone over it as a group, and we -- and, you
17 know, we knew that this was important, and I thought it would
18 be good to have in the record something that documents the
19 reasons they gave us for the numbers they produced.

20 Q. Okay.

21 A. So that's why I asked for it.

22 Q. So if I'm understanding what you have told me, if
23 there was a termination for convenience clause, it could have
24 affected Nacogdoches or GREC's ability to get financing for
25 the project, and they might not have been able to get

1 financing on as favorable of terms?

2 A. Which then would turn into our cost.

3 Q. And that's something that was deliberated among the
4 parties, by both parties?

5 A. Yes.

6 Q. Was it discussed extensively?

7 A. Yeah. I would consider it to be pretty, what I
8 would call, something of a sticky wicket.

9 Q. Did you ever consider moving to the next -- in other
10 words, was there a ranking of entities that had submitted
11 requests for proposal?

12 Did you ever consider going to No. 2 since you
13 couldn't negotiate a termination for convenience clause with
14 No. 1?

15 A. The next in line, I think, was Covanta.

16 Q. Was what?

17 A. Covanta.

18 Q. Covanta.

19 A. Who develops waste energy projects.

20 Q. That's what is commonly known as garbage burners?

21 A. Yep. And I was privy to the pricing which they had
22 redacted in their proposal, and there was no point going
23 there.

24 As was everybody else on the team, especially
25 Mr. Hunzinger.

1 Q. Did you ever discuss it with the team (indicating)?
2 International symbol for team.

3 A. I'm sure we did.

4 (Thereupon, Plaintiff's Exhibit 28 was marked for
5 Identification.)

6 BY MS. LaHART:

7 Q. The next exciting document in your stack we'll call
8 Exhibit 28. Can you identify that for the record?

9 A. It looks like you sent us a -- this is an e-mail
10 dated September 26th from Josh Levine to myself and everybody
11 else transmitting another draft of the proposed PPA.

12 Q. It specifically references your plan. That's why I
13 thought you were so important in this negotiations team.

14 A. Well, in this case, Ed's plan was how to administer
15 a review so that we could report to our general manager in a
16 timely manner.

17 Q. All right. Perhaps I read too much into it, then.
18 Exhibit 28.

19 MR. McDERMOTT: The next one, is that the -- I'm
20 sorry. The next one is what, 28 or --

21 MS. LaHART: Yes.

22 MR. McDERMOTT: -- 29?

23 THE WITNESS: We just finished 28.

24 MS. LaHART: We did?

25 MR. McDERMOTT: Yeah, we did.

1 MS. LaHART: See, math was not my forte. If I was
2 any good at it, I wouldn't have had to go to law school.

3 All right. We'll call the next one Exhibit 29,
4 then.

5 (Thereupon, Plaintiff's Exhibit 29 was marked for
6 Identification.)

7 BY MS. LaHART:

8 Q. Can you identify this record?

9 A. It's from John Stanton to GRU people about GREC.

10 Q. I think one must have gotten missed in the copying
11 because my next one is an October 8, 2008, e-mail from --

12 MR. McDERMOTT: Here it is.

13 MS. LaHART: Oh, I'm sorry, it got attached. Sorry.
14 So this is Exhibit 29.

15 MR. McDERMOTT: The second page is a separate one.

16 MS. WARATUKE: Wait for the question. Okay?

17 THE WITNESS: Okay.

18 BY MS. LaHART:

19 Q. The question is, would you identify this for the
20 record?

21 A. It's an e-mail from Rita Strother, oh, on behalf of
22 Skip Manasco dated October 8th.

23 Q. And it's suggested changes to the Power Purchase
24 Agreement, correct?

25 A. Yep.

1 (Thereupon, Plaintiff's Exhibit 30 was marked for
2 Identification.)

3 BY MS. LaHART:

4 Q. Okay. I think we're up to Exhibit 30 now.

5 A. Is there a question?

6 Q. Could you identify this for the record?

7 A. This is a --

8 Q. I thought by now it was implied.

9 A. An e-mail from John Stanton to GRU people, and he's
10 apparently transmitting some of the sections that he was
11 primarily responsible for.

12 And since it was very technical, he was the one who
13 would draft it up, and I guess Jonathan Cole would legalese
14 it or something like that. That's what it seems to be.

15 Q. You were copied on this e-mail, correct?

16 A. Uh-huh. Yes.

17 Q. I believe Mr. Stanton told me that it was Mr. Cole
18 who was responsible for taking draft language and integrating
19 it into the Power Purchase Agreement; is that correct?

20 A. Correct. That's what I was terming legalizing it.

21 MS. LaHART: Legalizing it. Okay.

22 I think paperclipped and what shouldn't have been
23 paperclipped to that would be Exhibit 31.

24 And I think that really actually wasn't supposed to
25 be in there at all, so never mind. A lot of paper in my

1 office lately.

2 The next document we'll mark Exhibit 32.

3 MS. WARATUKE: 31 if you weren't going to use that
4 last one.

5 MS. LaHART: I was not. That was a mistake.

6 MS. BEATY: The stapled one was 30.

7 MS. WARATUKE: Right, and then this would be 31.

8 (Thereupon, Plaintiff's Exhibit 31 was marked for
9 Identification.)

10 BY MS. LaHART:

11 Q. Could you identify Exhibit 31 for the record,
12 Mr. Regan?

13 A. It's a memo from me to Josh dated November 17th.

14 Q. You were responding to an e-mail that was sent to
15 you by Mr. Levine; is that correct?

16 A. Yep.

17 Q. And then on page 3, is that an e-mail from you to
18 Mr. Levine?

19 A. Yep, dated November 12th.

20 MS. LaHART: Thank you.

21 The next document we'll mark as Exhibit 32.

22 (Thereupon, Plaintiff's Exhibit 32 was marked for
23 Identification.)

24 BY MS. LaHART:

25 Q. I'll ask if you can identify this record -- document

1 for me.

2 A. It's an e-mail dated November 25th from myself to
3 Ruth Martin.

4 Q. Who is Ruth Martin?

5 A. My administrative assistant.

6 Q. Your secretary? Essentially your secretary?

7 A. Yes.

8 Q. This references a consulting contract that regarded
9 the biomass plant, correct?

10 A. Right.

11 Q. What was it for?

12 A. Well, it was -- it actually harkens back to one of
13 our earlier exhibits, which was what would our construction
14 dates be, and they don't tell you anything unless you pay
15 them some money, so I gave them a task authorization to come
16 back with a recommendation, which didn't fully meet our
17 needs.

18 Q. When you say --

19 A. It wound up being --

20 Q. I'm sorry, I don't mean to interrupt, but when you
21 say "they," who do you mean?

22 A. Black & Veatch --

23 Q. Okay.

24 A. -- engineering firm. Although I'm sure they
25 provided useful information.

1 Q. Well, I hope so.

2 Page 2, there's an e-mail from yourself to Ann
3 Ferland.

4 A. Yeah.

5 Q. Does she work for R.J. (sic) Beck?

6 A. Wait a minute. Did I say this is Black & Veatch?

7 Q. You did.

8 A. I'm wrong. This is -- this is R.W. Beck.

9 Q. R.W. Beck?

10 A. Right.

11 Q. Okay.

12 A. Yes, she does.

13 Q. November 18th you e-mailed Ann and said "The purpose
14 of this e-mail is to authorize R.W. Beck to assemble the
15 information described below" --

16 A. Right.

17 Q. -- "as we discussed over the phone."

18 Were there other consultant companies that you had
19 considered to do that work?

20 A. Yeah, Black & Veatch.

21 Q. Why did you pick R.W. Beck?

22 A. I don't think I -- we actually wound up working with
23 Fred Haddad --

24 Q. Okay.

25 A. -- with R.W. Beck, and Black & Veatch, they had

1 continuing engineering contracts. R.W. Beck used to be our
2 engineer of record for our bond trustees and stuff like that,
3 so they knew a fair amount about us. So it was a --

4 Q. Now, let me try this another way, then.

5 Why did you authorize R.W. Beck to do this
6 particular work that you asked for for a fee not to exceed
7 \$7,500?

8 A. Because it was my understanding they had the
9 expertise to do it.

10 MS. LaHART: Fair enough.

11 Exhibit 33.

12 (Thereupon, Plaintiff's Exhibit 33 was marked for
13 Identification.)

14 BY MS. LaHART:

15 Q. Did Beck --

16 A. This one looks like it's Black & Veatch.

17 Q. Before you go onto that, I wanted to ask a follow-up
18 question on the --

19 MS. WARATUKE: There's no question pending, so wait
20 until she asks it. Okay?

21 THE WITNESS: All right.

22 BY MS. LaHART:

23 Q. On the exhibit that I just asked you about, my
24 question is whether R.W. Beck provided any sort of work
25 product in response to this e-mail.

1 A. Yes.

2 Q. Specifically what was it?

3 A. I remember it being a letter report.

4 Q. Do you remember the gist of it?

5 A. It was a discussion of the various factors that go
6 into pricing a power plant, and it didn't make any firm
7 recommendations. That's what I remember, but I could be
8 wrong.

9 Q. Okay. The next document is Exhibit 33. It's a
10 string of e-mails.

11 Go back to page 6. If you wouldn't mind looking
12 through this e-mail string and familiarize yourself with it,
13 and I want to ask you a couple of questions about it.

14 Can you summarize for me what this exchange was
15 about?

16 A. Well, prior to 2008, I don't remember the exact
17 year, it might have been '06, '07, Black & Veatch had done a
18 study for Gainesville Regional Utilities on generation
19 alternatives and their costs and comparing them, and one of
20 the things that we were doing as we negotiated this contract
21 is we created our own financial models and reverse engineered
22 the deal. How else are you going to know?

23 And so this was about having them take that older
24 study and update the pricing.

25 Q. Can you explain to me how this related to the GREC

1 biomass plant?

2 A. We were looking for reasonable construction costs to
3 compare the proposal to a build-it-yourself option.

4 MS. LaHART: Thank you.

5 Up to Exhibit 34.

6 (Thereupon, Plaintiff's Exhibit 34 was marked for
7 Identification.)

8 BY MS. LaHART:

9 Q. Mr. Regan, if you would, turn to page 2 in the
10 middle of the page.

11 MS. WARATUKE: Do you need a break?

12 THE WITNESS: No, I'm fine.

13 BY MS. LaHART:

14 Q. Sorry. I know this is very tedious.

15 Do you recognize this document? Could you identify
16 it for the record?

17 A. Well, it's a -- it's an e-mail dated Thursday,
18 December 4th, from myself to my assistant, Richard Bachmeier,
19 to -- there was a process ongoing of developing a ground
20 lease, and I wanted to take a look at the marked-up version
21 in a way it would make sense, which meant color, so that's
22 what that was about.

23 Q. And the ground lease is the lease by which GREC has
24 leased from the City of Gainesville the property upon which
25 it's building the power plant; is that correct?

1 A. Uh-huh. That's correct.

2 Q. Is that incorporated into the Power Purchase
3 Agreement or is that a separate document?

4 A. It's a separate document.

5 MS. LaHART: Exhibit 35.

6 (Thereupon, Plaintiff's Exhibit 35 was marked for
7 Identification.)

8 BY MS. LaHART:

9 Q. Are you familiar with this document?

10 A. It appears to be notes from a meeting held
11 December 8th and 9th, 2008.

12 Q. Do you recall being in attendance at that meeting?

13 A. Well, the fact that the list of attendees includes
14 me prompts my memory to a great degree.

15 Q. Fair enough.

16 And does it look to you like these minutes from the
17 meetings or these what's titled Results From Discussion of
18 Revisited Items, are these the subjects that you remember
19 discussing at that meeting in 2008?

20 A. These -- those are the subjects that are -- the
21 notes, so I imagine these are what was -- I don't recall all
22 these things myself personally, but at face value would
23 suggest that this is a summary of topics that were discussed
24 in the December 8th and 9th meeting.

25 Q. Do you recall having received these minutes or these

1 notes from the meeting back in the end of 2008?

2 In other words, is this the first time you are
3 seeing this document?

4 A. I couldn't tell you.

5 Q. Okay.

6 A. But I was very curious -- well, I was very aware and
7 involved with every time there was a meeting like this of the
8 issues and very close to all of these different discussions.
9 I can't remember if I saw this particular piece of paper out
10 of the many, many thousands that go across my desk.

11 Q. But it appears to accurately reflect the topics that
12 would have been discussed at that meeting?

13 A. Yep.

14 MS. LaHART: Thank you.

15 Exhibit 36.

16 (Thereupon, Plaintiff's Exhibit 36 was marked for
17 Identification.)

18 BY MS. LaHART:

19 Q. Would you identify that document for the record?

20 A. It's an e-mail from myself to Josh Levine dated
21 Friday, December 12th.

22 Q. And who is copied on it?

23 A. Richard Bachmeier and John Stanton.

24 Q. It says: Josh, One of the topics that has emerged
25 in our discussions is the question with the value of natural

1 gas as a fuel hedge.

2 When you say "our discussions," to whom are you
3 referring?

4 With whom did those discussions take place?

5 A. I would imagine, and since I've copied Richard
6 Bachmeier and John Stanton, in one of our many discussions,
7 possibly in the bathroom, you know, gee, could we run a plant
8 on natural gas? I'll ask.

9 Q. What was the answer to that?

10 A. That was the answer, Richard Bachmeier and John
11 Stanton.

12 Q. No. What was the answer to the question could we
13 run the plant on natural gas?

14 Not so much?

15 A. Be very inefficient.

16 Q. Okay. Thank you.

17 A. There is probably a price point where you would do
18 it.

19 Q. Really?

20 A. I don't know what it is, though.

21 (Thereupon, Plaintiff's Exhibit 37 was marked for
22 Identification.)

23 BY MS. LaHART:

24 Q. Exhibit 37, the next document, if you could look at
25 the second e-mail that's on page 1. Can I ask you to

1 describe that for the record?

2 A. It's an e-mail from Josh to myself and copying, I
3 guess, really it's subject matter experts both with GREC and
4 Gainesville Regional Utilities dated December 22nd.

5 Q. And it's entitled "GREC PPA issues"?

6 A. Yes.

7 Q. Do you recall seeing the last two pages of that, of
8 Exhibit 37?

9 A. There's a table called Status of GRU/AR Negotiations
10 on GREC?

11 Q. Uh-huh.

12 A. Actually, I do recall this.

13 Q. What do you recall about it?

14 A. That it was a good summary of where we were.

15 Q. Did you get a color copy?

16 A. Not today.

17 Q. Back in December of 2008?

18 A. I probably printed it out in color.

19 Q. Okay. Was this prepared by Mr. Levine?

20 A. Yep.

21 Q. And, for the record, when I say "this," I'm
22 referring to a document entitled Status of GRU/AR
23 Negotiations on GREC.

24 A. Yep. Yes.

25 Q. I'd like to ask you about some of the topics that

1 are included in this list. Mr. Levine seems like a very
2 well-organized person. Is that your impression?

3 A. I think that this matrix is an example of his
4 diligence.

5 Q. I was thinking about trying to hire him away to be
6 my office manager. That's probably not in my budget.

7 For example, under the topic of Performance
8 Security, No. 3, "Development security, old section 13.1
9 gone."

10 Do you see where I'm reading?

11 A. Uh-huh.

12 Q. It says, "GRU agreed to no development security in
13 the PPA."

14 Did that agreement take place at the December 8th or
15 9th meeting? Is that when GRU agreed?

16 A. I couldn't be that specific, but this is
17 dated -- this was long after it. So at the time it was my
18 understanding that, yep, we had agreed to get rid of the old
19 one and had a new one.

20 Q. And is that an agreement that was reached in one of
21 these negotiation team meetings?

22 A. Yes.

23 Q. How about under the next topic, Buy Out
24 Provision/ROFO, can you tell me what -- oh, right of first
25 offer, is that what ROFO means?

1 A. Yes. Right.

2 Q. Right of first offer means that, if GREC decides to
3 sell the plant, the City of Gainesville gets an opportunity
4 to buy it first; is that correct?

5 A. Correct.

6 Q. Under or next in No. 7, it says old section 28.1 is
7 gone, "Parties agreed to eliminate this option; Year 24
8 option remains in PPA."

9 Was the agreement to eliminate that option something
10 that would have been reached during these negotiation
11 meetings?

12 A. My guess would be yes. Probably when we were all up
13 in Boston.

14 Q. Under the heading Contract Language, "Gross
15 negligence," I saw a lot of e-mails back and forth from
16 Mr. Manasco about that term.

17 Is he the one that found that that was acceptable
18 language?

19 MS. WARATUKE: I'm going to object to the form of
20 that question.

21 BY MS. LaHART:

22 Q. Did you understand my question?

23 A. That was a -- that was a Skip issue, and he was
24 working with the AR folks to come up with language that was
25 -- to get to the same place.

1 Q. How about the gross billing option, it says the
2 parties agree not to consider gross billing option at this
3 time, it may be addressed in the future.

4 Was gross billing part of the final Power Purchase
5 Agreement?

6 A. Gross billing refers to the fact that there were
7 a -- there was the buying of power from GREC and GREC buying
8 power from GRU.

9 For -- for example, if they were off-line, they
10 would have to have electricity to do things in the plant.
11 They need electricity to help start the plant.

12 Q. Got you.

13 A. So dealing with that on the billing was just -- we
14 didn't need to worry about that.

15 Q. So that was something that was decided not to be
16 addressed in the PPA at all?

17 A. Yes.

18 Q. And that's an agreement they would have come to at
19 least --

20 A. Although the wholesale power agreement itself I
21 believe is an attachment to the PPA.

22 Q. Okay.

23 A. But the billing was going to be -- you know, the way
24 it was written is there's two separate billing streams, and
25 for a number of accounting and reporting and for kind of

1 reasons, it was better to keep them separate in our mind.

2 Q. So GREC will get a power bill from GRU just like I
3 do?

4 A. Yes.

5 Q. Good.

6 And the decision to do the billing that way was
7 something that was decided upon in these negotiation
8 meetings?

9 A. If I recall correctly, the way it evolved is we
10 never thought -- we didn't even -- you know, here's how we do
11 wholesale power billing. We have separate contracts like
12 that with a number of different entities where we'll be
13 selling power to Progress and maybe from time to time buying.
14 You just keep them separate, and so it never occurred to us
15 not to do that, I don't think.

16 And they said, well, let's do the gross billing.
17 Ah, let's not deal with that.

18 Q. Gross billing would refer to some sort of cost
19 offset?

20 A. Or net billing or something like that. Yeah.

21 Q. Sounds pretty complicated to me, too.

22 A. Yeah.

23 MS. LaHART: What exhibit number are we up to?

24 MR. McDERMOTT: 38.

25 MS. WARATUKE: She's done with 37. Do you want to

1 look at the next one?

2 Do you need a break?

3 THE WITNESS: No.

4 MS. LaHART: I need a break. Can we take five
5 minutes or ten minutes?

6 MS. WARATUKE: Yes.

7 (Thereupon, a brief recess was taken.)

8 (Thereupon, Plaintiff's Exhibit 38 was marked for
9 Identification.)

10 MS. LaHART: All right. Back on the record.

11 BY MS. LaHART:

12 Q. I believe we have worked our way up to exciting
13 Exhibit No. 38. Would you identify this document for the
14 record, please, Mr. Regan?

15 A. It's an e-mail from me just relaying an e-mail from
16 Josh Levine dated January 8, 2009.

17 MS. LaHART: Well, apparently, I didn't think there
18 were any good parts worth highlighting in this one, so
19 we'll move onto Exhibit 39.

20 (Thereupon, Plaintiff's Exhibit 39 was marked for
21 Identification.)

22 BY MS. LaHART:

23 Q. And for the record, could you identify this
24 document?

25 A. It's an e-mail from Jonathan Cole to both GREC and

1 GRU people. "Update on American Renewables" is the title of
2 it.

3 Q. And it looks like he is forwarding an e-mail from
4 you; is that correct?

5 A. He's actually forwarding an e-mail from Josh.

6 Q. You are right. Then why does it say, "Ed, thank you
7 for putting this summary together"?

8 A. Because Josh was responding to one from me.

9 Q. Ah, which is further down on the page. It's an
10 e-mail from you dated Friday, January 16, 2009; is that
11 correct?

12 All the way at the bottom of the page.

13 A. January 16th, yes.

14 Q. What was that e-mail about?

15 A. This is a -- kind of a punch list of items that
16 needed to be cleaned up in the draft PPA.

17 Q. And that cleanup would take place in future
18 negotiating team meetings?

19 A. Not necessarily. Some of these look like just a
20 table of contents needs work, things like that. So that the
21 cleanup, efforts to clean up would then probably be a topic
22 of discussion.

23 MS. LaHART: Exhibit No. 40.

24 (Thereupon, Plaintiff's Exhibit 40 was marked for
25 Identification.)

1 BY MS. LaHART:

2 Q. Would you describe this document for the record?

3 A. It's an e-mail from me, Monday, March 16th, to Fred
4 Haddad copying my assistant and some people that will be
5 working with Fred on the -- on the scope of work.

6 Q. So you accepted his proposed scope for Task 2; is
7 that correct?

8 A. Yes.

9 (Thereupon, Plaintiff's Exhibit 41 was marked for
10 Identification.)

11 BY MS. LaHART:

12 Q. Okay, Exhibit 41. Would you identify this document
13 for the record?

14 A. It's an e-mail from Ed Hoffman to myself, and it's
15 summarizing some of the -- I mentioned to you reverse
16 engineering model. What that really means is us running our
17 own independent models of what the pricing ought to be.

18 Q. So is this sort of a way of cross checking the price
19 proposed by Nacogdoches?

20 A. Uh-huh. Uh-huh.

21 Q. Could we back up to Exhibit 40? It's the e-mail
22 from yourself to Mr. Haddad.

23 What was the work product that Mr. Haddad produced
24 and how did it relate to the Power Purchase Agreement?

25 A. He took the proposals for the indexing that we had

1 on the table, looked them over and compared them to some
2 other indexes and suggested the general direction we should
3 take, but we wanted to look more closely at the indices and
4 in order to pick them for our counterproposal to American
5 Renewables.

6 (Thereupon, Plaintiff's Exhibit 42 was marked for
7 Identification.)

8 BY MS. LaHART:

9 Q. Going onto Exhibit 42. Could you identify this
10 record -- document?

11 A. It's from myself to Jonathan Cole.

12 Q. You were asking Jonathan's input on something.

13 A. Yeah. Jonathan's group had been important in this
14 reverse engineering work to help us understand their cost of
15 capital of the underlying structures, which were very
16 different than would be applicable to a municipal utility
17 such as GRU, and so I wanted his feedback on what Mr. Hoffman
18 had just told me.

19 Q. Do you recall what his feedback was?

20 A. Something along the lines of it looks like Ed's got
21 it.

22 Ed being Ed Hoffman.

23 Q. Right. So if I understand it correctly, Mr. Cole
24 thought that Mr. Hoffman had adequately reversed engineered
25 the --

1 A. The issue.

2 Q. -- the issue.

3 A. Which is --

4 Q. The reasonableness of the price proposed by GREC?

5 A. Right, and what happens to the production tax
6 credit.

7 MS. LaHART: Okay. Exhibit 43.

8 (Thereupon, Plaintiff's Exhibit 43 was marked for
9 Identification.)

10 BY MS. LaHART:

11 Q. Do you recognize this document?

12 A. It's from myself to Mr. Hunzinger and Mr. Bachmeier
13 dated March 27th.

14 Q. And you were passing onto Mr. Hunzinger and
15 Mr. Bachmeier an e-mail from Jason Peters?

16 A. Yes. He knew that I had approached Seminole with an
17 option to -- with the idea of would you like to be an
18 off-taker for the unit, GREC, and I wanted him to know what
19 the outcome of that discussion had been.

20 Q. And the outcome of that discussion was that it was
21 too expensive?

22 A. Right. They were buying landfill gas in the \$90
23 range, so --

24 Q. And you were proposing to sell the power generated
25 by the biomass plant at 120?

1 A. Correct. It was the power and the capacity.

2 (Thereupon, Plaintiff's Exhibit 44 was marked for
3 Identification.)

4 BY MS. LaHART:

5 Q. Next document is Exhibit 44. Would you identify
6 this document for the record and explain what it is?

7 A. It's an e-mail from myself to Fred Haddad dated
8 April 8, 2009, and what it is is we had written up our
9 proposed index a certain way, and they were tweaking the
10 words, I guess you could say, and going through some example
11 calculations.

12 Q. So you are asking him to include something in his
13 proposal. Can you specifically explain to me what it is that
14 you are asking him to include?

15 A. Let's see. There's a date when a contract is
16 signed, and then I think it was called Notice of
17 Commencement, which would be when all the permits and
18 financing were in hand, at which point all of the pricing
19 that was going to be fixed for the next 30 years would be
20 fixed.

21 The -- when you go into what's called an EPC
22 agreement, engineer, procure and construct, which is what
23 American Renewables did to build GREC, this business that
24 we're in has -- is really a lot about managing risks for
25 commodities like metals and fuels and all those different

1 things.

2 So because you don't know how long a time period is
3 between signing the contract and getting all your permits and
4 financing, how long that would be, nobody is going to set a
5 price that far in advance because they can't lock in their
6 commodity hedges and everything else until they can make a
7 deal, and they can't make a deal until you have the
8 financing.

9 So between then, we had to agree, come up with a
10 mutually agreeable method to index the pricing of the
11 proposal to manage that risk in a way that was acceptable to
12 both parties, so that's what -- that's what that whole
13 discussion was about.

14 MS. LaHART: Okay. Thank you.

15 Let's go to the next exhibit. Actually, I don't
16 have to use this one. If you could pull that out.

17 (Thereupon, Plaintiff's Exhibit 45 was marked for
18 Identification.)

19 BY MS. LaHART:

20 Q. If you could go to an e-mail from Fred Haddad to you
21 on April 23rd. We'll mark that one Exhibit 45, and ask you
22 if you could describe it, explain it.

23 A. It's an e-mail from Fred to myself and Richard
24 Bachmeier, and I had asked him because of his expertise to go
25 through the contract and point out things --

1 THE COURT REPORTER: I'm sorry. You're turning your
2 head.

3 THE WITNESS: Oh, sorry.

4 And I had asked him to go through the proposed PPA
5 and identify anything that he thought we might want to
6 worry about.

7 BY MS. LaHART:

8 Q. What was done with his recommendations, his areas of
9 concern?

10 A. I went through it with him and discussed how we were
11 dealing with those risks. I don't remember actually changing
12 any -- mostly had questions about those things, and it was a
13 good discussion to have.

14 Q. Did you communicate any of his concerns to
15 Mr. Hunzinger?

16 A. I believe I did.

17 Q. How did you communicate them?

18 A. Probably verbally.

19 Q. When did you do that?

20 A. In that time frame, we were spending a lot of time
21 together.

22 Q. So you don't remember?

23 A. Pardon me?

24 Q. You don't remember?

25 A. I don't remember exactly a time or place or

1 anything.

2 MS. LaHART: Just a couple more.

3 MS. WARATUKE: You promise?

4 MS. LaHART: I promise. And I do mean a couple,
5 exactly two.

6 These were exhibits from Mr. Stanton's deposition.

7 MS. WARATUKE: I'm sorry, so let me just -- I lost
8 focus for a minute. So the last exhibit was 45.

9 MR. DEE: 45.

10 MS. WARATUKE: Is this part of anything
11 (indicating)?

12 MS. LaHART: I'm not going to ask him about that.

13 MS. WARATUKE: Okay. Because I -- okay, here, so
14 that's nothing. Okay.

15 MS. LaHART: Well, I wouldn't say it's nothing, but
16 I'm not going to ask him any questions about it.

17 MS. WARATUKE: Okay.

18 BY MS. LaHART:

19 Q. Could you look at the document that's entitled
20 Exhibit 3 or has been marked as Exhibit 3?

21 A. Okay.

22 Q. Do you recall having seen this agreement before?

23 A. Seen this agenda?

24 Q. Yes.

25 A. Yes.

1 Q. And how about the minutes that are attached, meeting
2 notes?

3 A. I'm pretty sure I've seen these.

4 Q. Do you know who prepared these notes?

5 A. I'm not sure. This would not have been my work
6 because I don't usually do things verbatim like that.

7 Q. Would it have been Mr. Bachmeier?

8 A. I really couldn't say.

9 Q. Would you review these meeting notes just briefly?

10 A. Is there a significance to the things that are dark?

11 Q. You know, that's the way the document was when I
12 received it, so I can't answer that question. I didn't
13 darken them.

14 A. It looks like all the action items got highlighted.

15 Q. Not by me.

16 A. Could you direct me to some particular area of
17 interest? This is --

18 Q. No. I just --

19 MS. WARATUKE: I think she wanted you to review it,
20 Ed, is what she said.

21 BY MS. LaHART:

22 Q. I want you to review the document because my next
23 question is going to be does this -- is this an accurate --
24 are these meeting notes accurate to the best of your memory?

25 Does this appear to be the items that were discussed

1 and the gist of the discussions?

2 A. Yes.

3 Q. Thank you very much.

4 The last one, Exhibit No. 4, could you identify that
5 document for the record?

6 And I apologize. I was running out of toner.

7 A. It is an e-mail from Rick Bachmeier, July 30, 2008,
8 to --

9 Q. Whole bunch of people, including yourself, right?

10 A. Including people from GREC scheduling a meeting and
11 the meeting notes.

12 Oh, so these look like his notes.

13 All right. How could be scheduling a meeting?

14 No, it occurred, and here are the meeting notes.

15 This looks like the same document that I was just looking at
16 as Exhibit 3.

17 Q. Okay. So the minutes that are -- I keep calling
18 them minutes. The meeting notes that are attached to
19 Exhibit 4 are the same ones that were attached to Exhibit 3?

20 A. Yes.

21 MS. LaHART: Okay. I don't think I have any more
22 paper that I'm going to ask you to look at. I do have a
23 few more questions.

24 Oh, I lied. I'm sorry.

25 MS. WARATUKE: Okay. This would be No. --

1 MR. McDERMOTT: 46.

2 MS. WARATUKE: Okay.

3 (Thereupon, Plaintiff's Exhibit 46 was marked for
4 Identification.)

5 BY MS. LaHART:

6 Q. Mr. Regan, what I'm handing you are slides No. 14
7 and 15 from the PowerPoint presentation that you gave to the
8 city commission when the city commission ratified the Power
9 Purchase Agreement.

10 Do you remember giving that presentation?

11 A. Yep. It was, what, May 9th or May 7, 2009. I don't
12 remember the exact date.

13 Q. I don't, either.

14 MS. BEATY: 12th.

15 MS. LaHART: May 12th?

16 MS. BEATY: I think.

17 BY MS. LaHART:

18 Q. I'm going to hand you Exhibit 46, ask you if that --
19 those look like the slides that you used that were part of
20 your PowerPoint presentation?

21 A. Yep.

22 Q. Could I have that back? I only have one copy.

23 Can you tell me what the -- what the bullet points
24 are on these two slides? What were you intending to
25 communicate to the city commission with these?

1 A. In May of 2008, the city commission had given
2 authority to negotiate a contract to the general manager, but
3 through time there were some changes to the contract that the
4 general manager felt were material and, therefore, the city
5 commission needed to be made aware of them to ratify the
6 contract.

7 And so he asked me on his behalf to prepare a
8 presentation going through the changes and the reasons behind
9 those changes.

10 So this is not the complete list of all changes,
11 these two pages, but this does represent -- this does talk
12 about pricing changed and the term changed and how we
13 restructured the pricing to make it a pay for performance
14 instead of a typical Power Purchase Agreement, and, also, the
15 right of first offer, and a capacity guarantee, which was
16 not -- those were all different than in the beginning of the
17 process.

18 Q. How did the price change?

19 A. It went up.

20 Q. Did you have discussions about the price increase
21 with members of the negotiating team?

22 A. Everybody on the team was very concerned about that.

23 Q. Who did you speak with regarding the price increase
24 specifically?

25 A. Mostly with the general manager. Spent a lot of

1 time on that.

2 Q. Who else?

3 A. I was with him when he discussed it with
4 commissioners.

5 Q. Did you discuss it with any of the individual
6 members of the team other than Mr. Hunzinger?

7 A. Oh, yeah. We were all in the same room from time to
8 time. That was, you know, why we were doing the reverse
9 engineering and why we were tracking all these indices and
10 all that kind of stuff. One of the reasons why.

11 Q. Did you ever participate in any discussion regarding
12 the fact that the Power Purchase Agreement was not negotiated
13 with Nacogdoches but within a different entity, GREC?

14 A. That never seemed to be a problem. I don't remember
15 it being an area of concern. I know when it happened and our
16 attorney knew it. Everybody knew it. It went from being a
17 two-party consortium, BayCorp and EMI, to a three-party
18 consortium.

19 Q. Did you prepare that PowerPoint presentation?

20 A. I did.

21 Q. Why was the fact that the termination for
22 convenience clause was not in the Power Purchase Agreement
23 not included in your presentation?

24 A. I guess it was old news. May have been an omission
25 on my part.

1 Q. Had it ever been discussed in public that you are
2 aware of?

3 A. What was discussed in public?

4 Q. The elimination of the termination for convenience
5 clause, as opposed to in private meetings with the individual
6 commissioners?

7 A. I never discussed it in public.

8 Q. Do you know --

9 A. But I didn't go to all meetings at all times.

10 MS. LaHART: Okay. I don't have any more questions,
11 but I think my client does, so I'm going to have to
12 confer with her for a couple of minutes, and we can wrap
13 this up.

14 MS. WARATUKE: Okay. And just to save time, just,
15 you know, do you have a problem if Tim and I both clarify
16 areas within the thing, or do you want us to compare
17 notes and just have one of us ask?

18 MS. LaHART: I would prefer you do that.

19 MS. WARATUKE: Okay.

20 MS. LaHART: Just because I'm jealous that I don't
21 get to have Akerman Senterfitt as my cocounsel.

22 MS. WARATUKE: Okay. Fair enough.

23 (Thereupon, a brief recess was taken.)

24 BY MS. LaHART:

25 Q. Just a couple more questions, Mr. Regan.

1 What did you do to prepare for your deposition
2 today?

3 A. Well, gosh, seems like an awful long time ago I got
4 a copy of your, I guess, complaint.

5 Q. Uh-huh.

6 A. And Liz here had me come down and discuss what you
7 do in a deposition.

8 MS. WARATUKE: Okay. I'm just going to tell you
9 don't talk about anything specific that we discussed.

10 MS. LaHART: He's not a GRU employee anymore.

11 MS. WARATUKE: Well, he is a GRU employee whenever
12 the events that occurred in this, so I'm still claiming
13 attorney-client privilege in this.

14 So, I mean, he was high-ranking GRU whenever this
15 all happened. As far as I'm concerned, that privilege
16 still carries with him, so don't go into anything
17 specifically that we discussed --

18 THE WITNESS: Okay.

19 MS. WARATUKE: -- or that I might have shared with
20 you, or so on and so forth.

21 BY MS. LaHART:

22 Q. Did you review any documents before -- in
23 preparation for your deposition?

24 A. I've looked at my notes.

25 Q. You looked at your notes from the --

1 A. I have this green notebook from when I was an
2 employee, which I believe they were copied and given to you
3 guys a long time ago.

4 MS. LaHART: That could be.

5 Okay. I have no more questions.

6 CROSS-EXAMINATION

7 BY MS. WARATUKE:

8 Q. I do have a couple of follow-up, Mr. Regan.

9 I'm going to ask you again to look at Exhibit 24,
10 because you misspoke whenever you answered the question.

11 Exhibit 24 is an e-mail from you to whom?

12 A. To Bob Hunzinger, John Stanton, Bachmeier, Richard
13 Bachmeier, Skip Manasco, and Jonathan Cole.

14 Q. Okay. Those --

15 A. That's the GRU --

16 Q. Team?

17 A. Team.

18 Q. They are not the GREC team as you testified?

19 A. Did I say that?

20 Q. You did.

21 A. I'm sorry.

22 Q. In fact, that's the GRU team; is that correct?

23 A. That's the GRU team.

24 Q. Okay.

25 A. I apologize.

1 Q. Okay. And I think at another point, too, I'm not
2 sure it was made exactly clear, when you were talking about
3 e-mails going back and forth between you and Josh Levine,
4 was Josh Levine the primary contact from the GREC side?

5 A. Yes. But not for all issues. Sometimes they said,
6 okay, John and Len.

7 Q. Thank you.

8 You were asked a series of questions and shown a
9 series of e-mails between yourself and Mr. Haddad.

10 A. Right.

11 Q. Independent of the biomass contract, did you have
12 authority under city policies and procedures to contract with
13 experts who might provide you information that you need?

14 A. Yes.

15 Q. Okay. And what was that authority up to?

16 A. \$25,000.

17 Q. Okay. Now, --

18 A. You meant spending authority?

19 Q. Right.

20 A. Right.

21 Q. Okay. And when you got the information from
22 Mr. Haddad that you had asked him to evaluate for you, was
23 the information and the analysis that you got from Mr. Haddad
24 given to Mr. Hunzinger?

25 A. Yes.

1 Q. Physically was your office close to Mr. Hunzinger's?

2 A. Yes. We were on the same floor. He was right down
3 the hall.

4 Q. During the time in which the biomass Purchase Power
5 Agreement was being negotiated, would you pop in to see him
6 on issues that might arise or questions that you might have?

7 A. Yes.

8 Q. Would you also pick up the phone and call him?

9 A. Yes, and vice versa.

10 Q. Was it a fairly common occurrence during this time
11 period?

12 A. Yes. Sometimes he'd drop in on me.

13 Q. I'm going to ask you to go back and look at Exhibit
14 37.

15 Was it 37?

16 And you were asked a series of questions about
17 different items on this list and the status of those items.
18 One of them is some language in regard to gross negligence.
19 Do you see that item?

20 A. I do, No. 11.

21 Q. Okay. And in response you were asked -- you had
22 indicated that this was an issue that, quote, Skip had; is
23 that correct?

24 A. Correct.

25 Q. Do you have any personal knowledge as to what

1 discussions that Skip may have had with Mr. Hunzinger in
2 regard to this language?

3 A. Not -- no.

4 Q. Okay. You just know that, since it was a legal
5 issue, that that would have been within Skip's review?

6 A. Left it in Skip's capable hands.

7 Q. Do you have any knowledge to the effect that it was
8 Skip that made any decisions on that as opposed to
9 Mr. Hunzinger?

10 A. Skip's constant method of operation was to make
11 recommendations to Bob.

12 (Thereupon, brief discussion held off the record
13 between counsel.)

14 MR. DEE: What are you looking for?

15 MS. WARATUKE: Something that Tim just made a copy
16 of. Is this it here?

17 Yes, it is. Okay.

18 MR. McDERMOTT: Yeah.

19 MS. WARATUKE: Do you mind if we just make this the
20 next sequentially numbered exhibit and not start it as a
21 defendant's exhibit?

22 MS. LaHART: That's fine.

23 MS. WARATUKE: Okay. So the next exhibit number
24 would have been?

25 MR. DEE: 46.

1 MS. WARATUKE: 36?

2 MR. DEE: Forty. 46.

3 THE COURT REPORTER: Wasn't 46 the PowerPoint
4 presentation?

5 MS. LaHART: Yes. Actually, it is.

6 MS. WARATUKE: It is.

7 MR. DEE: Excuse me.

8 MS. LaHART: So it would be 47.

9 MS. WARATUKE: Okay. So that's 47.

10 THE WITNESS: Does somebody want this (indicating)?

11 MS. LaHART: The court reporter.

12 (Thereupon, Plaintiff's Exhibit 47 was marked for
13 Identification.)

14 BY MS. WARATUKE:

15 Q. Okay. I'm going to show you, Mr. Regan, what's been
16 marked as the next exhibit, which is Exhibit No. 47. This is
17 an e-mail from you to Bob Hunzinger dated May 14, 2008; is
18 that correct?

19 A. That's correct.

20 Q. Okay. And in that e-mail you proposed to head up
21 the negotiating team for the contract. I would report to
22 John Stanton on this, with final authority resting in you.

23 Did you subsequently have a conversation with
24 Mr. Hunzinger between this e-mail, which is Exhibit 47, and
25 the e-mail that is out a few hours later, which is Exhibit

1 No. --

2 MR. McDERMOTT: Exhibit No. 22. It's part of 22.

3 BY MS. WARATUKE:

4 Q. Which is the e-mail that begins on page 2 of Exhibit
5 No. 22.

6 A. Dated May 14th?

7 Q. Yes.

8 A. Okay.

9 Q. Can you look at the times?

10 A. Yep. Two hours difference.

11 Q. Okay. Did you have a conversation or a meeting with
12 Mr. Hunzinger between those two e-mails?

13 A. Yes.

14 Q. Okay. And did you -- and at that time did you put
15 forth your recommendation as to how the teams should be set
16 up?

17 MS. LaHART: I'm going to object to the form of the
18 question. I've been letting you lead him through the
19 nose, but this is getting a little ridiculous.

20 BY MS. WARATUKE:

21 Q. Okay. Did you have a meeting or a conversation with
22 Mr. Hunzinger in between the time of those two e-mails?

23 A. Yes.

24 Q. And did you make a recommendation and have a
25 discussion with Mr. Hunzinger in regard to the process?

1 A. Well, in the e-mail of May 14th, stamped 3:24 p.m.,
2 I suggested that a hierarchal relationship would be put into
3 place with me being supervised by John Stanton.

4 And Bob got back to me almost right away because we
5 knew we had a meeting coming up or something and we had to
6 get this figured out. And he says, "No, no, I don't want to
7 do it that way; I want you to be peers with different areas
8 of expertise."

9 Q. Okay. When you would go to Mr. Hunzinger, for
10 example, with the materials and the recommendations from
11 Mr. Haddad and you would talk to him about the information
12 that you had been provided by the consultants, did
13 Mr. Hunzinger appear to listen to the advice and
14 recommendations that you gave him?

15 MS. LaHART: Objection as to form.

16 BY MS. WARATUKE:

17 Q. Go ahead, answer.

18 A. Can you repeat the question? I got distracted by
19 the objection to form.

20 MR. McDERMOTT: Lynn, can you read it back?

21 THE WITNESS: Can you repeat the question?

22 MS. WARATUKE: She's going to read it back.

23 THE WITNESS: Oh, okay.

24 MS. WARATUKE: So pay attention.

25 (Thereupon, the question referred to was read back

1 by the reporter.)

2 THE WITNESS: Yes.

3 BY MS. WARATUKE:

4 Q. While you and others provided advice and
5 recommendation as to the terms of the Purchase Power
6 Agreement, who made the ultimate decision on the terms of the
7 Purchase Power Agreement?

8 A. That was Bob, the general manager.

9 Q. Was he at the -- all the face-to-face meetings that
10 you had with the people from GREC on the other side?

11 A. There were a few times when the answer is yes with
12 explanation.

13 Q. Go ahead.

14 A. Every time that it was, I guess, what you might call
15 a big powwow where there was a couple of people from GREC and
16 a couple of people from our side, Bob was there.

17 There were times when Josh would be coming through
18 town and we would meet and do things or else maybe Len would
19 meet with some of the staff relating to the design of the
20 transmission system and stuff like that, but every time it
21 was a substantive conversation where decisions were going to
22 have to be made, yes, he was there.

23 MS. WARATUKE: Okay.

24 (Thereupon, brief discussion held off the record
25 between counsel.)

1 MS. WARATUKE: Right. As soon as I find it mixed up
2 in all of this paperwork.

3 BY MR. WARATUKE:

4 Q. Okay. Mr. Regan, you were asked a question about a
5 summary of some, I guess, a summary of some notes that had
6 been taken at a meeting that occurred in Boston on or about
7 September 8th and 9th of 2008, and that is Exhibit No. --
8 that was Exhibit No. 3 to Mr. Stanton's deposition.

9 And you did testify to this, but let me ask you
10 again. You did not -- were not involved in taking the notes
11 from this; is that right?

12 A. I did not take the notes.

13 Q. Okay. And you looked it over generally; is that
14 correct?

15 A. That's right.

16 Q. Now, I'm going to draw your attention specifically
17 to the second page of that document where it reads
18 "Termination Prior to Notice of Commencement," and I'm going
19 to read for the record underneath what it states.

20 And it says:

21 "Required by Commission action

22 "Ed R: Once permits are obtained, we reach a
23 milestone called 'Notice of Commencement.' GRU City
24 Commission conditioned approval of moving forward with an
25 option to terminate prior to or at the Notice of

1 Commencement. Regardless of chance that GRU would
2 exercise this, we need to have something in the contract
3 to address the issue."

4 Is that -- is that accurate in its entirety?

5 MS. LaHART: Objection as to form.

6 A. Well, this is probably me speaking rough draft,
7 which I tend to do, but I was bringing up the issue of staff
8 had been instructed to negotiate what eventually I think
9 became called a termination for convenience.

10 Q. Is it accurate --

11 A. And so when I say "the conditioned approval of
12 moving forward with an option," that's not correct.

13 Q. Is the statement here "Required by commission
14 action" accurate as well?

15 A. That we were required to negotiate it, I would say
16 yes.

17 MS. WARATUKE: Okay. I don't have anything else.

18 MS. LaHART: I've got a couple of follow-up
19 questions.

20 REDIRECT EXAMINATION

21 BY MS. LaHART:

22 Q. I think your testimony is that you discussed the
23 information or you discussed Mr. Haddad's reports with
24 Mr. Hunzinger; is that correct?

25 A. That was my statement, yes.

1 What do I do with these (indicating)?

2 MS. WARATUKE: Nothing.

3 THE WITNESS: Okay. All right.

4 BY MS. LaHART:

5 Q. Did you give any confidential information to
6 Mr. Haddad?

7 A. I did.

8 Q. What category of information?

9 A. He had to look at the PPA.

10 Q. And what in the PPA was confidential?

11 A. Pricing, terms and conditions.

12 Q. It was GRU that paid for Mr. Haddad's reports,
13 correct?

14 A. That's correct.

15 Q. Do you recall whether there was anything in the
16 agreement between you -- between GRU and Mr. Haddad regarding
17 confidential information?

18 A. There's a standard contract, form of contract that
19 we use for these kinds of conditions, and it has to do with
20 ownership of information.

21 MS. LaHART: Nothing further.

22 MS. WARATUKE: I don't have anything. We'll read,
23 though.

24 THE WITNESS: I don't remember because I did -- can
25 I elaborate on my answer?

1 MS. WARATUKE: If you have to to make it complete.

2 THE WITNESS: Yeah. I don't remember. I did a fair
3 number of NDAs.

4 BY MS. LaHART:

5 Q. What's an NDA?

6 A. Nondisclosure agreements, because we were talking to
7 a couple of other utilities. I may have given one or had
8 GREC -- because they were between GREC and the other
9 counterparty. I don't remember if Fred actually wound up
10 executing one of those or not, but if he did, it would not
11 have been in my files.

12 MS. LaHART: Okay. Thank you.

13 (Thereupon, the deposition concluded at 4:00 p.m.)
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CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF ALACHUA)

I, the undersigned authority, certify that the
witness, EDWARD J. REGAN, JR., P.E., personally appeared
before me and was duly sworn.

WITNESS my hand and official seal this 29th day
of November, 2012.

LYNN MARIE DURSCHER, RPR, CRR
Notary Public -
State of Florida

Personally Known _____

OR Produced Identification XX
Type of Identification Produced:
Florida Driver's License

REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)

COUNTY OF ALACHUA)

I, LYNN MARIE DURSCHER, RPR, CRR, Court Reporter, certify that I was authorized to and did stenographically report the deposition of EDWARD J. REGAN, JR., P.E.; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 29th day of November, 2012.

LYNN MARIE DURSCHER, RPR, CRR,
Court Reporter **

E R R A T A S H E E T

This is to certify that I, EDWARD J. REGAN, JR.,
P.E., have read the foregoing transcription of my testimony
In Re: GAINESVILLE CITIZENS CARE, INC., Plaintiff, vs. CITY
OF GAINESVILLE, et al., Defendant, Case No.
01-2012-CA-001346, given on November 13, 2012, and find the
same to be a true and correct transcription of said testimony
with the following changes (if any):

PAGE LINE SHOULD READ:

REASON:

Under penalties of perjury, I declare that I have read
the foregoing document and that the facts stated in it are
true. _____

Date EDWARD J. REGAN, JR., P.E. **