

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

GAINESVILLE CITIZENS
CARE, INC.

Plaintiff,

Case No.: 012012CA001346

Division:

vs.

CITY OF GAINESVILLE
d/b/a
GAINESVILLE REGIONAL UTILITIES

Defendant.

**FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiff, GAINESVILLE CITIZENS CARE INC., by and through
undersigned counsel, sues Defendant CITY OF GAINESVILLE, and alleges:

INTRODUCTION

This is an action to enforce the Florida Government-in-the-Sunshine Law
("Sunshine Law") against the City of Gainesville seeking declaratory and injunctive
relief for violations of open-meetings laws.

An advisory committee created by the GRU General Manager Robert

Hunzinger ("Hunzinger") negotiated and recommended the terms of a long-term \$3 to \$4 billion dollar power purchase agreement (PPA) between Gainesville Renewable Energy Center, LLC ("GREC") and the City of Gainesville d/b/a Gainesville Regional Utilities ("GRU").

The negotiation meetings were not open and noticed to the public, and minutes of those meetings were not made available for public inspection. Accordingly, the agreement that resulted from negotiations conducted in violation of the Sunshine Law is void ab initio.

The final terms of the PPA that was negotiated in closed door meetings in violation of the Sunshine Law were significantly changed from the original Binding Proposal that had been accepted by the City Commission in May of 2008. Those changes include a substantial increase in GRU's annual payments to GREC, lengthening the duration of the PPA from 20 to 30 years, and removal of a "back door out" or "termination for convenience clause" that the City Commission had directed be included in the agreement.

The Plaintiff seeks a declaration that certain acts of the City Commission are void ab initio for violating the Sunshine Law and injunctive relief barring the implementation of the agreement or expenditure of public funds to facilitate implementation of the agreement that resulted from activities that occurred in

violation of the Sunshine Law.

JURISDICTION

1. This Court has jurisdiction pursuant to Art. I, Sec. 24(b), Fla. Const.; Art. V, Sec. 20(c)(4), § 286.011(2) Fla. Stat.

2. Venue lies in Alachua County, Florida, because the acts for which suit is brought have occurred or are occurring in Alachua County, Florida, and Defendant is located within Alachua County, Florida.

PARTIES

3. Plaintiff GAINESVILLE CITIZENS CARE INC. ("CITIZENS") is a Florida not-for-profit corporation whose mission is public education and public advocacy for issues of concern to the citizens of the greater Gainesville community.

4. Defendant CITY OF GAINESVILLE is a Florida municipal corporation.

5. On or about May 12, 2008 the CITY OF GAINESVILLE authorized GRU General Manager Robert Hunzinger ("Hunzinger") to negotiate an agreement between GRU, a City of Gainesville owned utility, and Nacogdoches Power, LLC .

6. On or about May 12, 2008, the CITY OF GAINESVILLE directed Hunzinger to ensure that a “back door out”, alternatively referred to as a "termination for convenience clause," be negotiated into the agreement. The termination for convenience clause would have allowed GRU to cancel the agreement up until a point after the site certification, before the commencement of construction.

7. Contrary to the CITY OF GAINESVILLE'S direction that Hunzinger negotiate the agreement, Hunzinger instead appointed an advisory committee, headed by GRU Assistant General Managers Ed Regan and John Stanton, and delegated to the committee the task of negotiating and recommending the agreement to Hunzinger.

8. Between May 2008 and April 2009 the advisory committee conducted negotiations with representatives of Nacogdoches Power, LLC in numerous meetings at which terms of the agreement were deliberated both in Gainesville, Florida and in Boston, Massachusetts.

9. None of the advisory committee meetings were noticed or open to the public.

10. The Defendant had a duty under Art. I, §24(b), Fla. Const., and §286.011, Fla. Stat. to provide reasonable notice to the public of the meetings

of the advisory committee.

11. The Defendant had a duty to conduct the meetings in such a manner that the meetings were open to the public in an accessible location.

12. Upon information and belief, no minutes were kept of meetings of the advisory committee.

13. The Defendant had a duty to ensure that minutes of the meetings of the advisory committee were taken and made available to the public.

14. The agreement that was ultimately presented to Hunzinger for his signature on behalf of the CITY OF GAINESVILLE contained substantial changes from the binding proposal. These changes were discussed privately with individual members of the City Commission by Hunzinger or by members of the advisory committee, and were then brought before the City Commission for ratification on May 7, 2009. Among the changes negotiated by the advisory committee, agreed to by Hunzinger and ratified by the City Commission were elimination of the termination for convenience clause, the addition of a provision prohibiting the public from viewing important aspects of the agreement until after 2043 and an increase the duration of the agreement by ten years. Some, but not all, of these changes were made known to the public prior to the City Commission crystallizing

the decisions by ratification vote on May 7, 2009.

COUNT I

15. Plaintiff repeats paragraphs 1 through 14 as if fully set forth herein.

16. This is an action against the CITY OF GAINESVILLE for violations of the Government-in -the-Sunshine Law under Art. I, § 24(b), Fla. Const. and § 286.011 Fla. Stat.

17. An advisory committee of the CITY OF GAINESVILLE has met and discussed official business and matters at which the public business of the CITY OF GAINESVILLE was transacted or discussed without providing advanced notice of its meetings to the public.

18. The advisory committee of the CITY OF GAINESVILLE negotiated the terms of an April 29, 2009 agreement ("Power Purchase Agreement for the Supply of Dependable Capacity, Energy, and Environmental Attributes from a Biomass-Fired Power Production Facility") that was ultimately brought before the Gainesville City Commission for approval on May 7, 2009.

19. The activities of the advisory committee in negotiating the April 29, 2009 agreement were unlawful, and the CITY OF GAINESVILLE

approval of the agreement unlawfully negotiated was unlawful.

20. CITIZENS has retained undersigned counsel to represent it in this action.

21. CITIZENS is entitled to recover attorney's fees and costs in connection with this proceeding pursuant to § 286.011(4), Fla. Stat.

WHEREFORE, CITIZENS requests for the following relief:

A. A declaration that all unnoticed meetings and discussions of the advisory committee resulting in recommendations ratified by THE CITY OF GAINESVILLE were held in violation of the Sunshine Law.

B. A declaration that the April 29, 2009 Power Purchase Agreement for the Supply of Dependable Capacity, Energy, and Environmental Attributes from a Biomass-Fired Power Production Facility between Gainesville Renewable Energy Center LLC and The City of Gainesville, Florida d/b/a Gainesville Regional Utilities is *void ab initio*;

C. An order enjoining the CITY OF GAINESVILLE from implementing the agreement or expending any additional public funds or incurring public debt to facilitate implementation by the CITY OF GAINESVILLE of the April 29, 2009 Power Purchase Agreement for the Supply of Dependable Capacity, Energy, and Environmental Attributes from a Biomass-Fired Power Production Facility between

Gainesville Renewable Energy Center LLC and The City of Gainesville, Florida
d/b/a Gainesville Regional Utilities;

- D. Reasonable costs and attorneys fees; and
- E. Such other relief as may be just and proper.

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By _____
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