From: Ray Washington
To: Citycomm
Cc: Dl_utility Advisory Board; Bielarski, Edward J; Locke, Justin M; Brown, Thomas R; Holt, Carlos L
Subject: GREC behind the scenes
Date: Sunday, March 05, 2017 11:28:36 PM

Commissioners,

This, soon, will be the week that was.

By Friday, GREC front-man James Gordon will have signed today's latest version of a behind-closed-doors verbally-negotiated non-binding Memorandum of Understanding. Or he will not.

If he does sign it, the fast-track public "vetting" of the proposed $725 million GREC buyout deal, such as it will be, will commence. If he does not sign it, GRU General Manager Ed Bielarski may find himself staring down the gun barrel of Gainesville-style utility governance politics as one or more new City Commissioners take office and a challenging 2018 fiscal year budget process looms. Mr. Gordon understands this.

Even as Mr. Gordon has managed to bind the City's utility executives, in-house counsel and financial advisor to an agreement to keep details of all verbal negotiations secret from this Commission, Utility Advisory Board and the public, GREC's legal hired guns and factotums (paid with GRU customer money) have done their homework on Commissioners, GRU executives and some citizens.

Nearly a year ago, GREC's Tallahassee lawyer Jay Lavia had delivered to City Clerk Kurt Lannon (copy to City Attorney Nicolle Shalley) a public records request for all post-2014 documents or other records in any way relating to GREC or its

power plant that Mr. Bielarski had received from or provided to 22 named individuals (including some of you, and me), all City or GRU counsel (including Winston & Strawn) and a Gainesville wood waste recycling company driven to bankruptcy by GREC's refusal to honor the terms of a 10-year-wood supply contract. Attorney LaVia and members of his law firm had teamed up with GRU's City Attorney's office counsel seven years ago to suppress as a GREC "trade secret" a February 2009 external report commissioned by GRU to analyze GREC's billion-dollar fixed payment increase ultimately approved by the City Commission. That report (the so-called "Haddad" report) paid for by GRU customers, but kept secret from Gainesville residents' City Commissioner representatives, had analyzed GREC's proposed going-forward construction-cost adjustment index and applied it backward to the period between GREC's binding proposal in 2008 and February 2009 and concluded that if the financial terms of the binding proposal were to be altered, GRU fixed cost payments to GREC should be reduced, not increased.

GREC has benefitted from later records demands that included personal and family information about Mr. Bielarski and his GRU leadership team, even as GREC has, so-far, successfully resisted GRU arbitration discovery requests for GREC plant manufacturing, construction, repair, maintenance and operation records – or succeeded in having such GRU discovery rights delayed, with the concurrence of the City Attorney. The latest revised versions of the as-yet-unsigned Memorandum of Understanding – both the $750 million Friday amended version, and today's $725 million amended version – contain new Section 7 (arbitration "dispute") concessions, requiring GRU to file

documentation with the arbitrator to effectuate a formal stay with respect to future filing of discovery motions, or already filed discovery motions that relate to matters to be resolved at evidentiary hearing (i.e., not resolved by non-evidentiary summary judgment). This language may not have been deemed by Mr. Gordon sufficient to fully waive GRU's discovery rights.

Mr. Gordon is the beneficiary of this Commission's rejection of the Navigant Consulting Recommendation #17 (that future negotiations be recorded so as to avoid the risk of repetition of the past GREC negotiating fiascos). The public will never know anything about the discussions that resulted in the MOU memorializations now on the table, or not on the table, depending on whether Mr. Gordon signs or continues to negotiate in the shadows. The Utility Advisory Board is forever prohibited from learning about the back and forth negotiations that have taken place between and among Mr. Bielarski and his team and Mr. Gordon and his team and Ms. Shalley (though not Winston & Strawn counsel, who have apparently not signed a non-disclosure agreement and therefore have been kept in the dark about the recent negotiations). Members of this Commission will also never know, unless you are willing to sign a non-disclosure agreement that restricts your performance of your duties to the public.

Meanwhile, the clock is ticking on the week that soon will be the week that was. An electric rate hike seems likely, unless the City-Attorney-supervised GRU-GREC arbitration process results in significant rulings in GRU's favor before the budget process concludes. This is unlikely, in my view, not so much because of the merits or lack of merits of the competing 14 arbitration claims (about which I have views that I have kept to myself), but

because GRU's discovery rights remain unexercised. Mr. Gordon understands this. Do you?