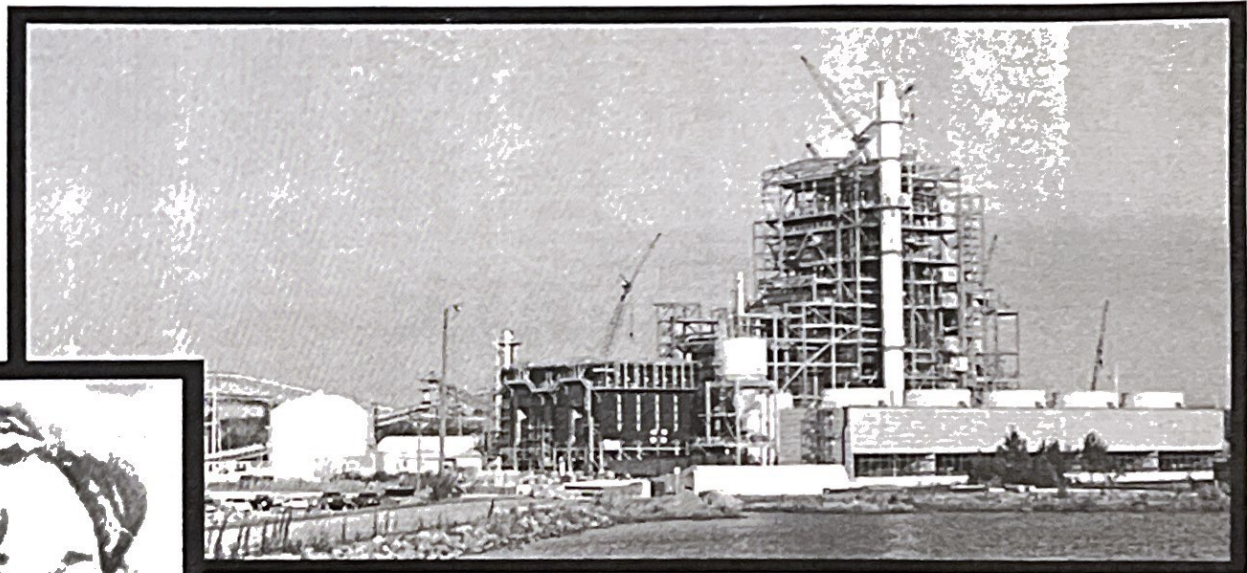


Deerhaven
Generating
Station



Pegeen Hanrahan

Paying the Price

by Cynthia Barnett

Posted 11/2/2012

Updated 6 yearss ago

In 2009, when the Gainesville City Commission entered into a 30-year contract to buy up all the electricity generated by a private, 100-megawatt biomass plant, it seemed like a win-win for the economy and environment alike.

“Energy decisions are made over the long term, and this is a long-term project for the city,” says former Gainesville Mayor Pegeen Hanrahan, who championed the utility’s alternative energy portfolio.

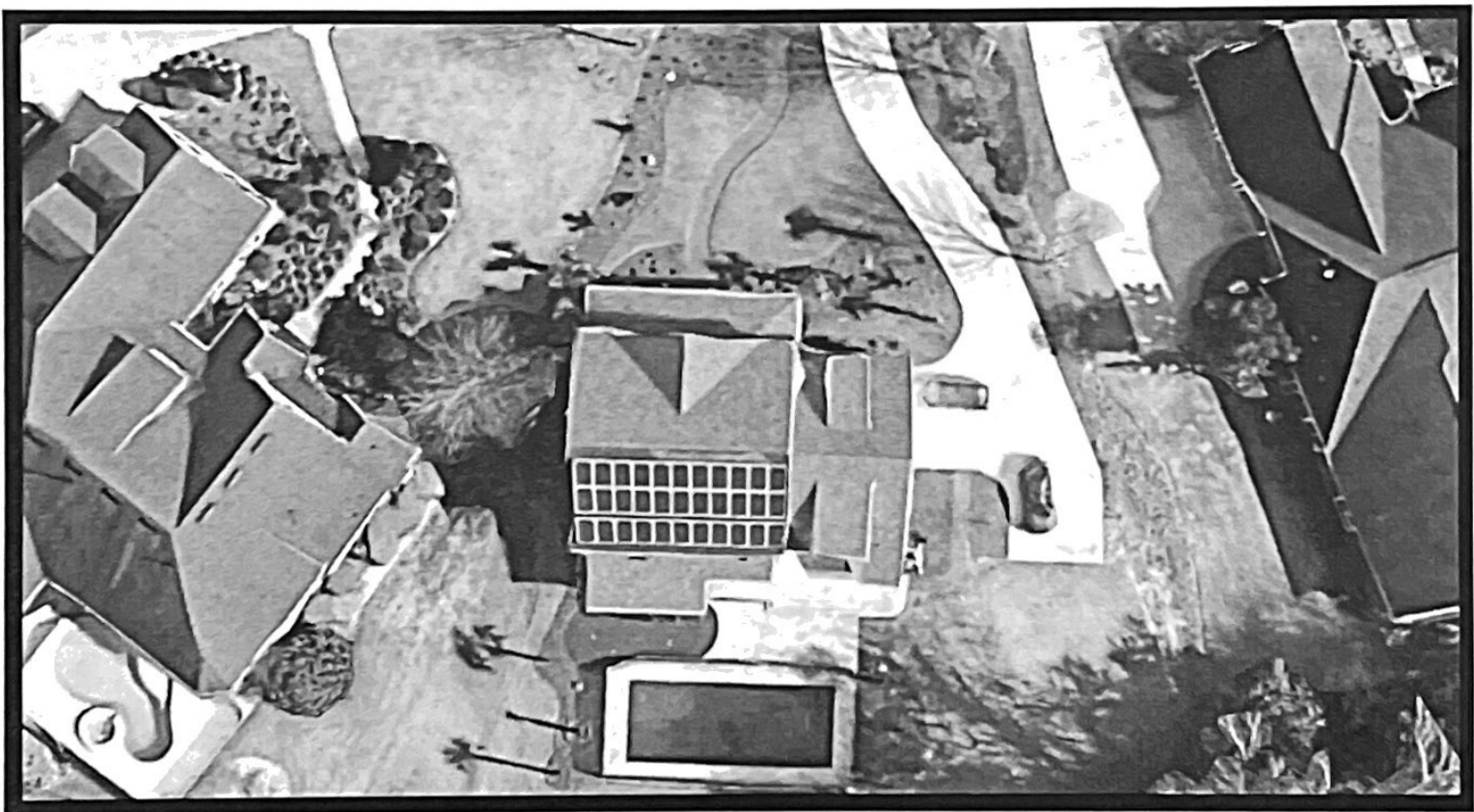
Gainesville Regional Utilities, the city-owned utility that serves 92,000 customers, had originally planned a new coal plant. But public concerns over coal, as well as the specter of cap-and-trade taxes at the federal level and an anticipated requirement from the state that utilities balance energy portfolios with renewables, pushed the utility to alternatives. Gainesville ultimately settled on the biomass plant — to be fueled by a million tons a year of wood residue from the area’s considerable forestry industry and municipal wood waste — along with one of the most progressive solar programs in the nation.

American Renewables, a joint venture of Baycorp Holdings, Energy Management and Tyr Energy, won the bid to build the \$394-million Gainesville Renewable Energy Center, now under construction off U.S. 441, about eight miles north of downtown.

Supporters thought it would provide long-term stability in energy costs. But natural gas prices have fallen 20% since 2009, burning a hole in that assumption.

When the city approved the deal, the utility expected to be able to use half of the energy and sell the rest on the market, hiking the average monthly bill by \$10.56. Meanwhile, with neither federal cap-and-trade nor a state renewable energy standard having materialized, GRU will have among the highest energy rates in the state.

Florida Trend



**REVIEW OF THE GRU SOLAR FEED IN TARIFF (FIT)
APPLICATION PROCESS**

JULY 2011



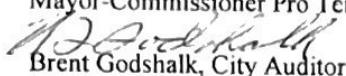
**CITY AUDITOR'S OFFICE
CITY OF GAINESVILLE, FLORIDA**

City of
Gainesville

Inter-Office Communication

July 25, 2011

TO: Audit, Finance and Legislative Committee
Mayor Craig Lowe, Chair
Mayor-Commissioner Pro Tem Thomas Hawkins, Member

FROM: 
Brent Godshalk, City Auditor

SUBJECT: Review of the GRU Solar Feed In Tariff (FIT) Application Process

Recommendation

The Audit, Finance and Legislative Committee recommend that the City Commission:

- 1) Accept the City Auditor's report; and
- 2) Instruct the City Auditor to conduct a follow-up review on recommendations made and report the results to the Audit, Finance and Legislative Committee.

Explanation

On May 5, 2011, the City Commission referred to the City Auditor a review of the 2011 GRU Solar Feed In Tariff Application Process. Discussions at the time of the referral indicated a desire to obtain independent and objective information to help the City Commission better understand the issues involved, so that if necessary, the process can be improved for the future.

The position of City Auditor is established by the Gainesville City Charter and reports directly to the City Commission. This structure provides the City Auditor's Office with the level of independence necessary for the objective and effective completion of audits of City organizations, programs and activities. All audits completed within the Office are conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States. These standards require auditors to operate ethically and professionally; and to possess and maintain the knowledge, skills and experience necessary to complete any audit assignment undertaken. All auditors within the Office have extensive experience completing a variety of audits and hold multiple professional certifications.

The attached report provides a summary of the review procedures completed during our review and provides recommendations for improvement in the solar FIT application process. We have prepared recommendations related to improving communication with prospective applicants, clarifying the administrative policies and procedures associated with this program, and considering the eligibility of city employees and officials for future participation in the program. Each of these recommendations has been discussed with GRU management and the City Attorney's Office.

We request that the Committee recommend the City Commission accept our report and instruct the City Auditor to conduct a follow-up review on recommendations made and report the results to the Audit, Finance and Legislative Committee.

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OBJECTIVES, SCOPE AND METHODOLOGY

In accordance with a May 5, 2011 City Commission referral, the City Auditor's Office initiated a Review of the GRU Solar Feed in Tariff (FIT) Application Process. The primary objectives of this audit are to evaluate the system of management control within GRU related to the assessment and selection of solar FIT applications and to provide the City Commission with an independent assessment of the solar FIT application process. Our procedures included reviewing the policies and procedures developed to administer the GRU solar FIT application process, reviewing relevant documents associated with the process, interviewing GRU staff members responsible for administering the process and drawing conclusions from the information reviewed. The scope of our review was generally for the 2011 GRU solar FIT application process. Our review has been conducted with certain limitations, discussed in greater detail later in our report, based on the existence of a pending claim filed with the City and the advice of the City Attorney.

As for all of our audits, we conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Based on the results of our review, we believe that opportunities exist for GRU to implement improvements to the solar FIT application process. We have prepared recommendations related to improving communication with prospective applicants, clarifying the administrative policies and procedures associated with this program, and considering the eligibility of city employees and officials for future participation in this program. Each of these recommendations has been discussed with GRU management and the City Attorney's Office. These recommendations can be found in the following sections of this report.

BACKGROUND INFORMATION

In 2006, the City of Gainesville initiated an increased commitment to conservation and to generation from renewable resources. A significant part of this commitment came through the promotion of solar photovoltaic (PV) rebate and net metering programs, which were designed to provide customers with financial incentives for installing solar PV systems. In 2008, GRU began to communicate with the City Commission a desire to overcome shortcomings of these programs through implementation of a new Solar Feed in Tariff program, modeled after such programs utilized effectively throughout Europe.

GRU Solar FIT Application Process Initiated in 2009

After extensive public discussions, the initial GRU solar FIT program was structured so that GRU would contractually purchase 100% of the net energy produced by installed PV systems at a fixed rate per kilowatt-hour for a contract period of 20 years. When the program started in March 2009, a capacity limit of four megawatts (MW) was approved by the City Commission to be effective for each calendar year during which the program is active. Capacity limits were quickly filled by interested participants, with successful applicants placed in a "capacity queue" over an eight year period from 2009 through 2016, maintaining the annual capacity limits previously established.

Three deadlines were established in the capacity queue to expedite active projects and eliminate stalled and abandoned projects from the queue. The stated intent of these deadlines was to allow available capacity to be reallocated in a fair and efficient manner if an applicant is unable to complete a project in a timely manner. The first deadline involved obtaining GRU engineering approval of the applicant's facility within 60 days after project activation. Project activation was to be initiated by the applicant and

was required to occur by March 31 of each queue year. Upon GRU engineering approval and the applicant's agreement to pay any invoiced costs, a Feed in Tariff Solar Energy Purchase Agreement (SEPA) was signed and executed by the applicant (as "Seller") and GRU (as "Buyer"). Applicants then had 60 days from the date of SEPA execution to purchase necessary equipment to construct the facility and 120 days from SEPA execution to complete construction of the project and enter into operation. GRU guidelines indicated that time extensions could be granted under extenuating circumstances if requested prior to the termination date of the requirement.

Contractors in the first year queue ran into unexpected problems that significantly slowed their process. This included obtaining financing, equipment and parts to complete the process. Extensions were granted and continued for several months. Ultimately, GRU offered two contractors, who had been awarded significant queue capacity and continued to have financing and equipment issues, the opportunity to be granted an additional extension in exchange for a return to the queue of a portion of their originally awarded capacity. The returned capacity would then be placed back in the queue allowing an opportunity to further develop and refine the GRU solar FIT program.

Development and Implementation of the GRU Solar FIT Application Process for 2011

As they listened to concerns expressed by local contractors, residents and the City Commission, GRU worked to refine the solar FIT program and application process. In June 2010, GRU held a workshop with developers and contractors to obtain their feedback regarding potential changes to the solar FIT program.

In July 2010, GRU provided the City Commission with a progress report and provided recommendations regarding proposed changes to the solar FIT program. Established objectives were to ensure that reserved capacity was real, to reduce and recover administrative costs, to promote job growth and to provide opportunity for installation of smaller systems, while still allowing for large systems. Changes proposed to take effect for 2011 included a required processing fee and capacity reservation deposit for larger systems, a streamlined review process, and a move to an annual capacity reservation and construction cycle, while grandfathering in those still in the original capacity queue. At this time, capacity available for new FIT participants in 2011 was estimated at approximately 2.3 MW.

Solar FIT Light Application Process

In August 2010, GRU presented administrative policy changes to the City Commission regarding a portion of the GRU solar FIT program entitled "FIT Light." Management indicated that these changes were designed to address requests:

- from the City Commission to better accommodate smaller-sized and residential solar systems; and
- from local solar industry representatives to consider policies that would help them maintain an even workflow throughout the year.

FIT Light objectives were established to provide more continuity for solar contractors, to maximize the number of individuals able to participate and to continue reserving capacity for larger installations. In addition to existing FIT requirements established by GRU Administrative Guideline 8.29, additional eligibility restrictions were placed on FIT Light projects. All systems had to be 10 kilowatts (kW) or less and only one system was allowed per location per customer.

GRU indicated that the FIT Light Program would start on October 1, 2010 and end January 17, 2011 and would assign a maximum of 400 kW of capacity available in the 2011 FIT queue. GRU indicated that all remaining FIT capacity, estimated at 1.6 MW if all 400 kW was used in the FIT Light Program, would be

made available for the 2011 FIT program in January 2011. GRU anticipated that these two policy changes would accommodate residents and businesses desiring to participate in the FIT program.

Solar FIT Application Process

GRU Administrative Guideline 8.29 provides a program overview and procedures for implementing the 2011 solar FIT application process. The guideline sets forth eligibility and participation requirements, discusses the earlier implemented Fit Light Program, and sets forth detailed process steps necessary for a seller to remain qualified for the solar FIT Program. The guideline also set forth a listing of the documents necessary for a complete application submittal.

According to the guideline, applications are to be received beginning the third business day Monday each January. At the conclusion of the first week, if applications exceed capacity available, then a lottery system is used to randomly select those applicants awarded a solar FIT project, subject to later execution of a SEPA. If capacity is not reached at the end of the first week, then subsequent completed applications are accepted on a first come, first serve basis until available capacity for that year is filled.

To ensure that applicants are serious about participation in the program, a processing fee of \$500 for systems 10kW or less and \$1,200 for systems exceeding 10kW is required to be remitted with the application. In addition, a capacity reservation deposit fee of \$30/kW is required for systems exceeding 10kW of system output capacity. GRU indicated in presentations to the City Commission that fees would be returned to applicants not selected in the lottery process or rejected due to an incomplete application. Fees paid by applicants are not returned if the applicants do not proceed after being selected in the lottery.

Documents required by Guideline 8.29 include the FIT application form, a sketch of the proposed system, proof of property ownership or right to use the property, proof of installer qualifications, completed GRU vendor form, completed IRS Form W-9 for federal tax reporting, and proof of required insurance coverage.

Lottery Process for 2011 Solar FIT Application Process

To ensure there was no appearance of favoritism in the selection process, GRU contracted with Florida Survey Research Center (FSRC) to develop a method utilizing randomly generated numbers from a statistical programming technique. According to FSRC, this process provides every applicant an equal chance of being selected.

The FSRC first included all residential applications, randomly sorting the applications by assigned number and then selecting the applications until the total kW of projects selected reached 200 kW, including the final applicant causing the total to exceed 200 kW. Any remaining residential or solar FIT Light applicants were then entered into the larger solar FIT applicant pool and the same process occurred. Projects were randomly sorted by assigned number and selected until the remaining 2.5 megawatts of capacity was reached. The FSRC then provided GRU with a listing of the projects selected for the two selection processes.

2011 and Future Solar FIT Capacity

In 2011, 2.7 MW of returned capacity was ultimately made available for the second generation of the GRU solar FIT program. An additional 400 kW of capacity was awarded through the FIT Light program in late 2010. In subsequent years, available capacity will vary depending on the amount of capacity previously awarded, but later returned to the queue.

Events Surrounding the City Commission Referral to the City Auditor

GRU began receiving several public records requests and telephone inquiries regarding the 2011 solar FIT application process shortly after the selection of those eligible. GRU indicated that most of the inquiries were in regard to a contractor who submitted multiple solar FIT applications, some of which focused on systems to be installed on buildings owned by the School Board of Alachua County (SBAC).

GRU indicated that the contractor for these projects contacted GRU on January 11, 2011, just before GRU began accepting applications for the 2011 solar FIT application process. The contractor asked if he could submit documentation for several Limited Liability Companies (LLC's) for leased roof projects with the SBAC after the lottery process was completed. GRU indicated that their representative told the contractor that he believed this was a reasonable request, but that the company would need to submit the LLC information within two weeks of the lottery notification or they would lose their allotment.

GRU indicated that this exception was provided because their representative did not believe this to be a material issue relative to the application/lottery process and because this exception involved SBAC projects. GRU believed this flexibility was reasonable based on Administrative Guideline 8.29, which states:

GRU reserves the right to offer Government and nonprofit projects flexibility in the application requirements and construction schedules to compensate for constraints imposed on them by their RFP and purchasing rules.

During the City Commission meeting of May 5, 2011, several individuals spoke under the Citizen Comment section of the agenda, each indicating they had participated in the 2011 GRU solar FIT process and expressing concerns about how the process was managed. The individuals specifically indicated that rules established by GRU for this process were not followed by some of the participants, providing them a competitive advantage and costing those that followed the rules substantial earnings, had they been selected for the program.

City Commissioner Thomas Hawkins made a motion to refer the issue to the City Auditor for review, indicating a desire to receive independent and objective information to help the City Commission better understand the issues involved, so that if necessary, the process can be improved for the future. He also indicated that the City Commission should follow the guidance of professional staff and the City Attorney related to any issues raised regarding possible compensation for past problems.

Legal Complications Regarding the City Auditor's Review

At the outset of our review, we met with the City Attorney to discuss legal issues involving our review. We were informed that some of the solar FIT applicants not selected had obtained legal representation, were threatening litigation and had filed a claim with GRU. Based on the existence of the pending claim and the advice of the City Attorney, the City Auditor's Office has generally limited the procedures completed since receiving the City Commission referral to the "Audit Survey" phase of our review. This phase of our audit included:

- Reviewing relevant reports and other documents which provide descriptions of services and operations in order to become familiarized with the GRU solar FIT program.
- Interviewing key departmental personnel and knowledgeable persons from other departments or outside City government to gain familiarity with policies and practices, obtain written materials and identify issues or problems.
- Reviewing relevant state statutes and city ordinances to determine whether there appears to be general compliance with these laws.

- Reviewing management controls such as program goals and objectives, written policies and procedures, and management reports relevant to this program.
- Conducting preliminary tests of a small sample of solar FIT application packets in order to gain familiarity with operating practices, identify risks or potential findings, and gain a better understanding of further detailed compliance testing necessary to complete our review.

The next phase of our review, "Audit Fieldwork," would involve a much more detailed level of analysis and testing of the GRU solar FIT application process, including the collection of sufficient and appropriate audit evidence necessary to support any additional findings, conclusions or recommendations for improvements in the process. Obviously, restricting our review to the Audit Survey phase has limited our ability to review all components of the solar FIT application process. However, we believe the information we have gathered to date provides us with an opportunity to communicate and bring greater clarity to the City Commission and the public regarding some of the issues raised that resulted in this referral.

ISSUE #1

Solar FIT Application Requirements and Exceptions

Discussion

As noted previously in our report, GRU obtained City Commission approval in 2010 to implement changes to the solar FIT program. GRU recommendations were based in part on lessons learned from the initial solar FIT application process implemented in 2009 and from input gained through discussions with local solar contractors and developers in 2010. GRU Administrative Guideline 8.29 provided detailed eligibility and participation requirements, as well as a listing of documents necessary for a complete application submittal.

GRU has indicated that on January 11, 2011, a local solar contractor contacted a GRU representative responsible for implementing the solar FIT application process. This was approximately one week prior to the time GRU began accepting applications for the 2011 solar FIT application process. The contractor asked if he could submit documentation for several Limited Liability Companies (LLC's) for leased roof projects with the School Board of Alachua County (SBAC) after the lottery process was completed. GRU indicated that their representative told the contractor that he believed this was a reasonable request, but that the company would need to submit the LLC information within two weeks of the lottery notification or they would lose their allotment.

GRU indicated that this exception was provided because their representative did not believe this to be a material issue relative to the application/lottery process and because this exception involved SBAC projects. GRU believed this flexibility was reasonable based on Administrative Guideline 8.29, which states:

GRU reserves the right to offer Government and nonprofit projects flexibility in the application requirements and construction schedules to compensate for constraints imposed on them by their RFP and purchasing rules.

While the solar FIT application process is not a typical competitive purchasing process, the end result of a successful application is execution of a standard offer contract whereby GRU agrees to purchase 100% of the net energy produced by the resulting PV system at a fixed rate for a period of 20 years. The GRU Purchasing Procedures Manual includes a section regarding bid responsiveness and exceptions or clarifications to bid requirements, which states:

A responsive bid is a bid which conforms in all material respects to the requirements set forth in the bid documents. While the City may waive any non-material requirements, there are some items which cannot be waived without severely impacting the competitive bid process. If during bid evaluation, the user department has any doubt as to the materiality of any exception or clarification taken, Utilities Purchasing and/or the Utilities Attorney shall be consulted before acceptance of a bid. Similarly, no bid shall be rejected without such consultation. If the apparent low bid is found to be nonresponsive, a written determination of nonresponsiveness, setting forth the basis of the finding, shall be prepared by the purchasing representative or the Utilities Attorney.

Conclusion

Based on the results of our review, it appears that GRU representatives provided clarifications or exceptions related to the 2011 solar FIT application process, which were subsequently relied upon by one of the applicants for the program. GRU management indicated that this exception was provided because their representative did not believe this to be a material issue relative to the application/lottery process and because this exception involved SBAC projects. They have also indicated to us during interviews that the

LLC and W-9 information required by the current application guidelines are more important at the point of executing the SEPA than at the time of application.

GRU did not communicate the clarifications/exceptions granted to an applicant to other potential applicants. We believe that a process of notifying potential applicants of clarifications/exceptions provided is important for maintaining a level playing field for all potential applicants, similar to processes used by the City's purchasing departments regarding additional information or addenda to competitive bidding processes.

Recommendation

We recommend GRU management:

- Establish a process for notifying potential applicants for future solar FIT application processes of clarifications/exceptions provided to other potential applicants. Consideration should be given to establishing a deadline, like is typically implemented for competitive bidding processes, after which no further clarifications or exceptions will be provided. Additionally, information disseminated to potential applicants for future processes should communicate clearly that potential applicants are responsible for monitoring the GRU website for clarifications or exceptions that could affect application submissions.
- Consider transferring administration of future solar FIT application processes to the GRU Purchasing Department, since this process is similar to other competitive bidding processes administered routinely by this department.
- Evaluate whether or not to require the submission of W-9 and associated LLC information during future application processes. According to GRU management, these documents are not necessary components of the process until after the lottery selection process has been completed. Allowing applicants to wait to submit these documents upon execution of a SEPA would help to reduce possible expenses incurred by applicants during future application processes.

ISSUE #2

Providing a Clear Definition for Government and Nonprofit Projects

Discussion

As noted in Issue #1, GRU management indicated that a decision was made to allow exceptions in the application requirements for an applicant because GRU representatives did not believe the exceptions to be a material issue relative to the application/lottery process and because the exceptions involved SBAC projects. GRU also indicated that their administrative guidelines had outlined GRU's desire to be flexible with government projects. As a result, GRU granted exceptions allowing the applicant to submit documentation for several limited liability companies (LLC's) up to two weeks after the lottery selection process.

The projects that have received public focus at recent City Commission meetings involve a local solar contractor for which the exceptions were granted. The contractor submitted multiple applications under the names of individual yet to be registered LLC's for each solar project planned for 11 Alachua County public schools. These applications generally involved leased space on roofs of select Alachua County school buildings where the contractor would install solar electric equipment for the purpose of generating electricity for sale through the GRU solar FIT program. In return, the SBAC would receive monthly payments from the tenant under 20 year lease agreements for each project.

Due to legal concerns previously mentioned, we have only reviewed a few of these applications to date, noting that each application packet included required W-9 forms. However, for the projects on SBAC properties, the W-9 forms were completed in the name of yet to be registered LLC's. Each packet also included a letter from the Executive Director of Facilities for Alachua County Public Schools indicating he had been authorized by the SBAC to develop 20 year leases with the LLC's to be designated by the contractor.

GRU Administrative Guideline 8.29 states "GRU reserves the right to offer Government and nonprofit projects flexibility in the application requirements and construction schedules to compensate for constraints imposed on them by their RFP and purchasing rules." However, the GRU Administrative Guideline does not provide a specific definition for what constitutes a Government or nonprofit project.

Although the SBAC, the property owner and lessor for each project, is clearly a government entity; the actual applicant and owner of the proposed PV system during the lease period for each of these projects, is a private entity. Since GRU did not provide clarity in their Administrative Guidelines regarding what constitutes a government project, reasonable people could disagree on whether or not these projects in question are government or private projects.

Conclusion

In our opinion, a clear definition of what qualifies as a Government or nonprofit project subject to flexible application requirements is needed in GRU's Administrative Guideline 8.29 to help prevent future disagreement regarding this issue.

Recommendation

We recommend GRU management clarify Administrative Guideline 8.29 to include a specific definition of what constitutes a government or nonprofit project. This clarified language should address specifically whether lease arrangements for private businesses to install solar projects on government or nonprofit properties is included.

ISSUE #3

Submission of Multiple Applications for Individual Properties

Discussion

GRU records indicate that applications for 136 projects were received for the 2011 solar FIT application process. Of these 136 applications, 55 were ultimately selected for participation through the random selection process established. Approximately 200 kW of capacity was assigned first to 30 residential applications selected and then the remaining 2.5MW of capacity available was assigned to 25 projects from the general selection of projects, including residential and non-residential projects.

Of the 136 applications submitted, 80 submittals were associated with one solar contractor. Of those 80 applications associated with this contractor, 37 of the applications submitted were proposed for location at 11 separate SBAC properties, with two to five applications submitted for each school. Of the 37 applications, ten were selected in the lottery.

One emphasis of concern voiced by some of the other solar FIT applicants appearing before the City Commission is that proposing multiple projects on single parcels presented an unfair advantage to this contractor, as it provided greater opportunities of having some of the applications selected. It does not appear that any other applicant submitted multiple applications for an individual parcel.

GRU Administrative Guideline 8.29 clearly indicates a "limit of 300 kW of roof or pavement mounted systems per parcel per year." However, the guidelines for the solar FIT application process do not require applicants to limit the number of solar projects submitted for an individual parcel of land. While there is such a rule included in the solar FIT Light section of the guidelines, one of the main goals of the FIT Light portion of the program was to maximize the number of individuals able to participate. None of the solar FIT applications exceeded the 300 kW maximum per parcel allowed through the administrative guidelines.

Conclusion

In our opinion, GRU Administrative Guideline 8.29 only prohibits applicants from submitting multiple projects on an individual parcel for the solar FIT Light portion of the program, not for the general application process. The general process only limits those projects to 300 kW per parcel per year and makes no mention of a limit on the number of projects per parcel.

Recommendation

In order to minimize apparent confusion among applicants regarding different limitations imposed on the GRU FIT Light and general FIT application processes, we recommend GRU clarify Administrative Guideline 8.29 to add a statement that submitting multiple projects per parcel of land is allowed for applicants for the general FIT program, as long as the established limit of 300 kW of roof or pavement mounted systems per parcel per year is not exceeded.

ISSUE #4

City Employee and Official Eligibility to Participate in the GRU Solar FIT Program

Discussion

The Solar Energy Purchase Agreement (SEPA), which results from successful application and acceptance into the GRU solar FIT program, is a binding agreement between GRU as “Buyer” and the “Seller”. The Seller identified in the SEPA agreement agrees to “sell and deliver or cause to be delivered” to the Buyer “100% of the Solar Energy and Environmental Attributes generated by the Facility.” The Facility is the “Seller’s solar electric generating equipment which produces solar energy subject to the SEPA.” SEPA definitions also indicate that the Facility is owned by the Seller, who will operate and maintain it “at the Seller’s sole cost and expense.”

The City’s Personnel Policies and Procedures, Code of Ethical Standards Section VII entitled “Contracts with the City” states:

Except for publicly recorded salary and benefits, no employee may receive any additional personal financial benefit (income, goods or service, or increase in equity or other value) from any transaction of the City, including contracts for construction and transactions for the sale or purchase of goods, services or real estate, except those indirect and incidental public benefits and conveniences accruing to all citizens under similar circumstances.

City of Gainesville Ordinance Section 2-146 entitled “Personal interest prohibited” states:

Except for negotiated compensation package, salary, or wage, no officers, or employees shall have any personal interest in the profits of, nor derive any benefit from any contract, job, work, or service for the municipality.

Similarly, Florida Statute Section 112.313 entitled “Standards of conduct for public officers, employees of agencies, and local government attorneys,” subsection 3 “Doing Business With One’s Agency” states in part:

Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer’s or employee’s own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator’s place of business or when such offices are on property wholly or partially owned by the legislator.

Later in this chapter, an exemption is provided in Section 112.313(12)(c) for “the purchase or sale for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.” Based on the wording of the exemption, it is not completely clear from the text of Section 112.313 whether execution of SEPA’s with City employees and/or officials would constitute a violation of Florida Statutes.

GRU indicated that no prohibition against City employees or officials from participating in the solar FIT program existed. Although one solar FIT application was submitted by a public official in 2011, the project was not selected in the lottery process and did not move forward to execution of a SEPA. The official later removed his application from consideration.

Conclusion

In our opinion, the SEPA differs from rebates and net metering programs in that it is a binding contract to sell 100% of the net energy produced by the Seller to GRU. Accordingly, we believe that GRU solar FIT program administrative guidelines should be amended to specifically address the eligibility of City employees and officials in the program.

Recommendation

Prior to implementing any future solar FIT application processes, we recommend GRU management:

- Evaluate whether it is desirable to allow for the eligibility of City of Gainesville/GRU employees and/or officials in the solar FIT program.
- Modify Administrative Guideline 8.29 to specifically address City of Gainesville/GRU employee and official eligibility.

If a desire to move forward with accepting future applications from City employees and/or officials exists, legal guidance should be obtained to clarify the intent of the exemption provided in Florida Statute 112.313(12)(c) regarding the purchase or sale of "any utilities service." Additionally, efforts would need to be undertaken to amend City Ordinances and Personnel Policies to allow specifically for employees to participate in this program and to execute a SEPA with the City.

MISSION ACCOMPLISHED



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Part 2