

Legislative #
150849

AMERICAN ARBITRATION ASSOCIATION

Gainesville Renewable Energy Center, LLC,)	
)	
Claimant,)	AAA Case No.
v.)	01-16-0000-8157
)	
The City of Gainesville Florida,)	
d/b/a Gainesville Regional Utilities)	
)	
Respondent.)	
)	

GREC ARBITRATION DEMAND

The Gainesville Renewable Energy Center, LLC (“GREC”) files this arbitration against the City of Gainesville, Florida (the “City”), doing business as the Gainesville Regional Utilities (“GRU”), under the terms of a 30-year Power Purchase Agreement (“PPA”).¹ In reliance on the terms agreed to in the PPA, GREC invested hundreds of millions of dollars to design, build, operate, and maintain a 102.5 megawatt biomass-powered facility in Gainesville (the “Facility”). Between when the PPA was signed in 2009 and when the Facility was built and started operating in October 2013, the energy markets experienced a substantial and sustained drop in the cost of natural gas. This caused the short-term price of electricity generated from natural gas to drop, and to remain, lower than the price of electricity generated by the biomass Facility. This economic change caused GRU to experience “buyer’s remorse” and regret entering into the PPA. Rather than honor its contractual obligations, GRU has engaged in improper actions designed to evade those obligations, to develop “leverage” over GREC to “extract” concessions, and to force GREC to renegotiate the contract or sell the Facility to the City at less than its market value.

This arbitration concerns the most recent of those “leveraging” efforts, namely, an effort

¹ The arbitration provision in §24.2 of the PPA provides, in part, as follows:

Any controversy, dispute or claim between [GREC] and [GRU] arising out of or relating to [the PPA], or the breach thereof, shall be settled finally and conclusively by arbitration according to the Rules of the American Arbitration Association then in effect, unless the parties mutually otherwise agree. . . .

by GRU in breach of the PPA and the covenant of good faith and fair dealing to force GREC to take an unnecessary twenty-day maintenance outage in April 2016. GRU seeks to force GREC to take this outage so that GRU can avoid paying GREC certain "Available Energy" payments required under the PPA for the twenty days of the outage. The daily Available Energy Payment amount is approximately \$194,709.

GREC does not lightly allege that the City and GRU seek to exert improper "leverage" on GREC. To the contrary, City Commissioners and the GRU General Manager have made repeated public statements to this effect. Indeed, the City Commissioners' public statements encouraged GRU to seek and exert "leverage" in order to force GREC to grant concessions under the PPA, to renegotiate the PPA, or to sell the Facility to the City. This arbitration is the third time in just three years where GRU has forced GREC to counter those improper "leveraging" efforts simply to enforce what are GREC's clear contract rights. The disputes raised by GRU have in each case been meritless. In 2013, an arbitrator rejected an effort by GRU to force GREC to sell the Facility to the City by granting GREC's dispositive motion to dismiss GRU's claims without an evidentiary hearing. And, in December 2015, after maintaining a very public position for four months regarding application of a certain "Construction Cost Adjuster" provision in the PPA, GRU abandoned that meritless position within 72 hours of GREC's filing of an arbitration demand, conceding all the substantive relief that GREC had sought in its claim.

Now, for the third time in as many years, GRU has forced GREC to bring this claim to rectify GRU's most recent "leveraging" effort in breach of the PPA. Here, GREC seeks relief, including a declaration that, under the contract, GRU has improperly refused to recognize the written annual maintenance plan, which GREC timely provided to GRU under §10.4.1(a) of the PPA and in which GREC identified that it did not need, and would not take, a maintenance outage from April 9 to 29, 2016 (the "**April Outage**"). GREC also seeks a declaration that GRU must pay GREC for all "Available Energy" for that twenty-day period. Further, GRU has anticipatorily breached the PPA by: (a) refusing to recognize GREC's proper contractual notice

that it will not take the April Outage; and (b) threatening that, if GREC does not take the April Outage, GRU will nevertheless treat GREC as if it were in a fictitious outage during that period and not pay GREC Available Energy amounts that are due under the PPA.

Under the pricing structure in Appendix III of the PPA, if GRU elects to dispatch the Facility at less than its full output in any month, GRU remains contractually obligated to pay GREC monthly charges for "Available Energy." Specifically, Available Energy is the amount of energy "that could have been generated by the Facility and delivered to the Delivery Point had the Facility been dispatched at 100% ... but that was not generated due to dispatch instructions from [GRU]." In other words, the PPA requires GRU to pay GREC for: (a) Energy Products that GREC physically delivers to GRU at the Delivery Point; and (b) Available Energy charges when the Facility is available to deliver Energy but GRU has directed GREC not to operate the Facility and not to deliver Energy.

Here, GRU's position is that, if the April Outage does not occur (and the Facility remains available for dispatch by GRU), then GRU will (i) not dispatch the Facility and (ii) will nonetheless "consider GREC in a Planned Maintenance outage." By doing this, GRU creates the fiction that GREC is in an outage and therefore not "available" for those 20 days. The reason GRU seeks to create this fiction is simple: GRU seeks to avoid its clear contractual obligation during that period to pay GREC the required amounts for Available Energy.

GRU's actions here violate the PPA and the covenant of good faith and fair dealing in that they are clear efforts to improperly manipulate outage forecasting and scheduling provisions in order to deprive GREC of its contractual payment rights under the PPA. The PPA contradicts GRU's effort to force GREC to take the unnecessary outage and to withhold Available Energy payments. No PPA provision requires GREC to take a maintenance outage. The reason that no outage is needed is because, starting in late August 2015, GRU ordered the Facility into "reserve shutdown" mode which meant that the Facility did not operate. Because has not operated, there is no need for a 2016 maintenance outage. GRU has now sought to manufacture a fictional outage "requirement" by ignoring GREC's contractual "written annual maintenance plan"

submitted on October 14, 2015 under Section 10.4.1(a) of the PPA that clearly stated that there would be no such outage. Section 10.4.1(a) of the PPA requires GREC each year, by no later than October 31, to submit to GRU a written maintenance plan containing a “forecast” of planned maintenance for the following calendar year (the “**Annual Maintenance Plan**”).² GREC did exactly that on October 14, 2015, noting that GREC would not take a maintenance outage in 2016. Specifically, GREC’s October 14 Annual Maintenance Plan gave GRU notice that (i) GREC “plans no Maintenance or Planned outages in 2016” and (ii) no maintenance outages are necessary in 2016 because GRU has elected to keep the plant in “reserve shutdown.”

No provision of the PPA requires GREC to take a planned maintenance outage, allows GRU to order GREC to take a planned maintenance outage, or gives GRU any authority to “approve” or “reject” a decision by GREC to include or not to include a planned maintenance outage in its annual maintenance plan. After GREC submitted the October 14 Annual Maintenance Plan, GRU acknowledged its receipt. By timely complying with the PPA requirement to submit that written Annual Maintenance Plan on October 14 pursuant to Section 10.4.1(a) of the PPA, GREC established its right not to take a maintenance outage in 2016. GRU had no right under the PPA to approve or disapprove of GREC’s Annual Maintenance Plan or to force GREC to take a planned maintenance outage in 2016.

Furthermore, GRU’s own actions confirmed GREC’s rights to set its 2016 maintenance outage schedule (with no outages) as set forth in its October 14 notice. To be clear, GRU had no authority under the PPA to “approve” or “deny” GREC’s Annual Maintenance Plan upon GREC’s timely submission in October 2015. But even if GRU were to argue that “approval” was required, it was given here. John Stanton was GRU’s Energy Supply Officer, and, in that

² Notably, Section 10.4.1(b) allows GREC multiple instances to adjust such forecasts of planned maintenance, with GREC to notify GRU’s Scheduler: (i) not less than 7 days prior to any Planned Maintenance “of the timing, expected duration and the impact upon the quantity of Energy to be delivered;” (ii) prior to entering the outage, of “the latest information regarding the timing, the rate at which the Facility will be removed, or ramped down, from service, expected duration and the expected impact upon the quantity of Energy to be generated; and (iii) during a Planned Maintenance of “any changes to the expected duration of the Planned Maintenance outage.”

capacity was responsible for GRU operational issues. On October 15, he expressly acknowledged receipt of GREC's October 14 Annual Maintenance Plan. A copy was also sent to Eric Walters, GRU's Director of Business, Fuels, and Power Operations. No one from GRU responded to that notice by raising any issue whatsoever for the next four months, when, as discussed below, GRU General Manager Ed Bielarski manufactured a supposed right to treat GREC's October 14 Annual Maintenance Plan as a "request" and manufactured a non-existent and supposed right to "deny" that request.

Further, on February 3, 2016, Mr. Stanton clearly informed GRU officials in writing that: (i) GREC's not taking the April Outage was "clearly approved [by him] on behalf of GRU"; (ii) that such approval was express and "was not just implied approval"; and (iii) even if an outage prior to the October 14 Annual Maintenance Plan had been contractually scheduled, the PPA "does not say that GRU can prevent [GREC] from canceling an outage." Mr. Stanton also correctly noted that, under the PPA, GREC is not "required to get approval from GRU to cancel a Planned Outage." Further, in February 2016, GRU counsel informed the GRU General Manager in writing that she had spoken to Mr. Stanton and "confirmed that he approved" GREC's not taking the April Outage. GRU's attempt now to take a contrary position is pretextual and masks GRU's transparent effort to once again exert "leverage" in order to deny GREC its clear contract right to receive Available Energy payments.

This improper effort as to the April Outage is just the latest in a series by GRU to exert improper leverage in order to force GREC to give up clear contract rights due to changed economics. The PPA was signed in 2009 with stable long-term pricing for energy under the PPA intended to serve as a hedge against future volatility in the price of energy generated from fossil fuels. After the contract was signed, however, natural gas prices dropped significantly and caused a drop in the short-term price of power purchased from gas-fired facilities to levels currently below the variable cost of the long-term pricing under the PPA. As a result, GRU now seeks to avoid the contractual commitments it made in the PPA. Courts routinely reject attempts to renegotiate contracts when market shifts occur that are contrary to the expectations of a party.

In fact, in the specific context of long-term power contracts like this one, the Supreme Court did exactly that when it rejected efforts by purchasing utilities after an unexpected market shift, similar to GRU's efforts here, to abrogate PPAs with long-term pricing that had been negotiated years earlier to hedge against energy-price spikes during an energy crisis. Justice Scalia, ruling for the Court, stated:

Markets are not perfect, and one of the reasons that parties enter into wholesale-power contracts is precisely to hedge against the volatility that market imperfections produce. That is why one of the [Federal Energy Regulatory Commission's] responses to the energy crisis was to remove regulatory barriers to long-term contracts. **It would be a perverse rule that rendered contracts less likely to be enforced when there is volatility in the market By enabling sophisticated parties who weathered market turmoil by entering long-term contracts to renounce those contracts once the storm has passed,** the Ninth Circuit's holding would reduce the incentive to conclude such contracts in the future. Such a rule has no support in our case law and plainly undermines the role of contracts in the [Federal Power Act's] statutory scheme.

Morgan Stanley Capital Group, Inc. v. Public Utility Dist. No. 1 of Snohomish County, 554 U.S. 527, 532-33 (2008) (Scalia, J.) (emphasis added). Under the same clear rationale, the PPA should be enforced here and the arbitrator should reject GRU's efforts to exert leverage on GREC in violation of the PPA, which efforts by GRU are designed to avoid GRU's clear payment obligations under the contract in order to extract economic concessions.

I. FACTS

A. GREC, GRU, and the Genesis of the Biomass Facility

1. GREC is a Delaware Limited Liability Company formed in order to build, maintain, and operate the 102.5 megawatt biomass-fired power production Facility located in Gainesville that sells power to the City, acting through GRU, under the PPA. The Facility utilizes clean waste wood generated from forestry and land clearing activities and mill residue to produce renewable energy.

2. The City of Gainesville is located in Alachua County, Florida. The City owns GRU, a utility that, in turn, owns several power generating (and other) facilities, and provides

electric, natural gas, water, wastewater, and telecommunications services to about 93,000 retail and wholesale customers.

3. In October 2007, after completing a 5-year energy planning process to promote renewable energy and diversify its energy sources, the City, through GRU, issued a request for proposals (“RFP”) to develop a biomass-fueled generation facility.

4. The City did not want to own a new biomass facility. Rather, it structured the deal through a PPA that placed all risk attendant to development and ownership of that facility onto a third party: GREC.

5. By structuring the deal this way, the City avoided -- indeed, shifted onto GREC -- the substantial risks involved in designing, developing, financing, constructing, and operating a new biomass facility. In addition, by structuring the deal this way, GRU also indirectly benefitted from pricing under the PPA that reflects federal incentives that were available to GREC, as the owner of the Facility, that would not have been available to GRU, as a tax-exempt municipal entity, had it been the owner of the Facility.

6. The City entered into the PPA for numerous reasons, including: (a) to provide a long-term hedge against expected increases in volatile fossil fuel prices; (b) to diversify the City’s power sources; (c) to prepare for the end of the useful lives of GRU’s aging Deerhaven coal facilities; (d) for environmental benefits; (e) to prepare for expected government regulations on carbon dioxide emissions; and (f) to promote sustainable economic development in Gainesville.

7. Also motivating GRU’s decision to enter into the PPA were state efforts in Florida to implement a Renewable Portfolio Standard that could require utilities to have a certain percentage of their electric resource portfolio be renewable energy or, failing that, purchase Renewable Energy Credits to meet their minimum percentage requirement.

8. GRU negotiated the PPA to also receive all available “Environmental Attributes” such as, for example, Renewable Energy Credits, carbon offsets, and other “emissions credits or other environmental credits” associated with the Facility.

9. The parties structured the PPA to best position the Facility to receive benefits (with commensurate PPA price reductions) under the federal American Recovery and Reinvestment Tax Act of 2009, consisting of one of the following: (a) a cash grant from the U.S. Treasury Department equal to 30% of the eligible capital cost of the project; (b) a 30% investment tax credit; or (c) production tax credits.

10. The City touted the many benefits of the Facility in an article in a GRU publication titled, *GRU and American Renewables Partner to Bring Biomass Energy to Gainesville* (May 7, 2009), including as follows: “By using biomass materials, a local renewable resource, this facility will promote our energy independence, add diversity to our fuel supply and shield customers from anticipated increasing fossil-fuel prices.”

11. In order to obtain the necessary regulatory approval for the Facility, on September 18, 2009, GRU and GREC filed with the Florida Public Service Commission (“FPSC”) a “Joint Petition to Determine Need for Gainesville Renewable Energy Center in Alachua County pursuant to Section 403.519, F.S. This regulation requires the FPSC to consider “the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, [and] whether the proposed plant is the most cost-effective alternative available....”

12. In granting the jointly filed petition, the FPSC acknowledged the reliability and economic hedge benefits of GRU’s decision to pursue a biomass project and concurred with GRU’s position that GREC was the “least cost” biomass generator that was commercially available, as follows:

The record indicates that the Gainesville City Commission fully considered the impact of the GREC project would have on the GRU system when it rendered its unanimous decision to approve the project. It focused on the ability of biomass to provide baseload energy, and it also considered the ability of GREC to provide a hedge against future carbon legislation, given GRU’s current coal heavy fuel mix. As part of its policy to encourage the development of renewable resources, the Gainesville City Commission directed GRU to solicit proposals for baseload renewable resources, eventually resulting in the selection of the GREC Project.

We find that the GREC Project can reasonably be considered the least cost biomass generator commercially available.[³]

B. The Parties' Commitments in the 30-Year Power Purchase Agreement

13. The City and GREC signed the PPA in April 2009. The City Commissioners unanimously approved the PPA in May 2009. An accurate copy of the PPA is attached as Exhibit 1.

14. The PPA was negotiated extensively over a period of about one year by sophisticated parties on both sides who were advised throughout by experienced counsel and professional consultants.

15. The PPA required GREC to design, finance, build, operate, and maintain the Facility.

16. GREC relied on the terms in the PPA to obtain several hundred million dollars to finance the Facility and to undertake the risk inherent in designing, building, operating, and maintaining the Facility and in fulfilling its obligations under the PPA for its 30-year term.

17. Under the PPA, the City agreed to purchase all the capacity, power, and Environmental Attributes generated by the Facility. The PPA requires GRU to make payments to GREC for Available Energy regardless of whether GRU elects to order the Facility into operation (as defined in Schedule I of the PPA).

18. During negotiations, the market price of power generated by fossil fuel facilities was high because of the then-high price of fossil fuels, the price of which was projected by GRU to continue to rise substantially over the 30-year term of the PPA.

19. GRU's long-term price projections during negotiations showed that the pricing of biomass-produced power under the PPA would likely be more expensive than fossil-fuel-produced power in the initial years, but would remain relatively stable over its 30-year term and

³ In re: Joint petition to determine need for Gainesville Renewable Energy Center in Alachua County, by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC, Docket No. 090451-EM, Order No. PSC-100409-FOF-EM, Issued June 28, 2010, at p. 17 (the "FPSC Order")(emphasis added).

not escalate with the expected increases in fossil fuel power. The FPSC Order specifically stated that “[t]he Gainesville City Commission was aware that the GREC Project would have an initial rate impact” and that GRU’s cost analyses filed with the Commission showed that “[i]n the beginning years, the GREC PPA was more expensive than some of the alternative units in certain scenarios” but “the LCOE [*i.e.*, levelized cost of energy] analysis demonstrated that over the 30-year term of the PPA, the GREC Project resulted in the lowest LCOE....” FPSC Order, at 10, 26.

20. At least recently, however, these GRU economic projections turned out to be wrong. Natural gas prices plummeted, causing a substantial drop in the short-term cost of power generated from natural gas and short-term power markets in general. But the cost of power generated from the Facility has generally remained as projected, and should remain stable through any potential future increases or volatility in fossil fuels markets over the remaining term of the PPA.

21. Given the currently low price of natural gas, GRU currently can buy, and is buying, power on the energy market at prices lower than the variable costs it would otherwise pay for biomass-sourced energy under the PPA.

22. GRU has ordered GREC into reserve shutdown mode where the Facility remains available to produce Energy, but is not running and is not producing or delivering Energy to GRU.

23. It is the current disparity in short-term prices for gas-fired power versus the long-term price of biomass-fired power under the PPA that has caused the City to have “buyer’s remorse” and to want to force a renegotiation of the pricing of the PPA. The City’s actions here also ignore the many other benefits GRU obtained, some of which were noted above in Paragraph 6, that it bargained for and that drove its decision to enter into the PPA.

24. Maintaining adequate and committed electrical resources to serve all its utility customers is a regulatory requirement for utilities like GRU.

25. It is customary in power purchase agreements in the industry for utilities to secure long-term contractual supply commitments from power suppliers and, in exchange, to make long-term commitments to pay for that supply.

26. Long-term purchase and payment commitments also are critical in order for privately owned entities like GREC to obtain the financing necessary to design, build, operate, and maintain power facilities.

C. City Officials Criticize the PPA and Seek to Force Renegotiation

27. After signing the PPA in 2009, but before the Facility was placed in service in October 2013, certain City Commissioners began criticizing the PPA because natural gas prices had dropped to such an extent as to reduce the short-term price of gas-fired power below the variable costs of the long-term biomass-fired power under the PPA.

28. City officials and candidates publicly stated their intent to develop and exert “leverage” on GREC to force a renegotiation of the PPA or to otherwise abrogate the contract.

29. For example, just before the 2013 mayoral election, now-Mayor Ed Braddy promised: “As mayor, my first goal is to get us out of the overpriced contract [with GREC].... At a minimum, we should renegotiate.” Ed Braddy, Op-Ed., *Getting back to basics is right for present and future*, The Gainesville Sun, April 10, 2013.

30. In November 2012, City Commissioner Todd Chase wrote the following to the GRU General Manager:

I have asked on numerous occasions that this contract be renegotiated to help address the dramatically different [economic] landscape we are operating within now. . . . [A]s we all know too well, [GREC does] not HAVE to do anything. You see, they have a contract Let me be very clear. There is not a single company, institution, group, or person who I mention above who HAS to . . . do anything about this. GRU and its customers are contractually obligated to this commitment.

See Chris Curry, Testy Emails Fly Over Biomass, The Gainesville Sun (Nov. 14, 2012).

D. GRU Filed (and Quickly Lost) a Meritless Arbitration that Sought to Force GREC to Sell the Facility to the City

31. When its earlier demands to renegotiate the PPA in late 2012 failed, GRU filed an arbitration in December 2012 (“**2012 Arbitration**”) claiming a right to force GREC to sell the Facility to the City through a “right of first offer” in the PPA.

32. But that purported right of first offer did not apply on the facts presented; the City’s true purpose in filing that arbitration was to force GREC to renegotiate the PPA or to sell the Facility to the City at a fire sale price.

33. In August 2013, the AAA arbitrator rejected the City’s claims, finding the City’s allegations meritless and granting GREC’s motion to dismiss the 2012 Arbitration -- all without even holding any evidentiary hearing.

E. City and GRU Officials Continued to Criticize the PPA and Publicly Announce Efforts to Seek Leverage to Force Renegotiation

34. After losing the 2012 Arbitration, the City continued to look for ways to exert leverage and force concessions from GREC through renegotiating the PPA or forcing a sale of the Facility to the City.

35. Notes from a GRU in-house lawyer concerning discussions with an outside law firm in December 2013 suggested creating problems for GREC by “messing w/ their cashflow” in order to “create problems for Seller”.

36. These GRU notes also stated that one way to “mess with” GREC’s cashflow would be to delay or withhold parts of monthly payments that GRU owes GREC.

37. The City hired Ed Bielarski as the new General Manager of GRU in June 2015.

38. The City hired Mr. Bielarski amidst substantial public criticism of the PPA.

39. During the public interview process for the General Manager position, Mr. Bielarski boasted to City Commissioners about his experience with “mug-a-nug”, which he mentioned explicitly in the context of the GREC PPA. He explained that “mug-a-nug” refers to actions by a utility (such as GRU) to deploy tactics against a “nug” -- or Non-Utility Generator,

such as GREC -- in order to “wreak havoc” on the non-utility generator so as to wrest concessions from it.

40. After hiring Mr. Bielarski as the GRU General Manager, the City Commissioners immediately encouraged GRU to deploy efforts to extract concessions from GREC.

41. At the July 20, 2015 City Commission meeting (the “**July 2015 City Meeting**”), Mr. Bielarski and City representatives admitted their desire to create and exert “leverage” on GREC in order to force GREC to renegotiate the PPA and make concessions to GRU and the City.

42. At that July 2015 City Meeting, Mr. Bielarski publically stated the following regarding efforts to force a renegotiation of the PPA by finding ways to exert “leverage” on GREC:

Unfortunately, most of the heavy lifting recommendations here are ones where there needs to be leverage on the part of GRU and the City of Gainesville to extract any kind of resolution. You know, at this point, I’m looking for areas that afford us that type of leverage. Bringing someone to the negotiation table is very complex. [emphasis added]

43. At the July 2015 City Meeting, the following City Commissioners made the following similar statements:

- a. Commissioner Goston stated: “Where is the real motivation for [GREC] to come back and renegotiate with us? So, we have to create . . . an environment where it becomes conducive for GREC to want to come back.”
- b. Commissioner Wells stated regarding lower PPA costs and forcing renegotiation of the PPA: “value going forward means maximum leverage for the future. The general manager talked about how you develop leverage for our customers, for our utility.”
- c. Commissioner Carter stated regarding renegotiation: “these people [meaning GREC] are screwing our citizens and they have no reason to negotiate cause the contract is so one-sided....”
- d. Commissioner Goston said: “we need to do whatever necessary to get GREC to come back to the negotiating table....Why should GREC ever want to come back voluntarily?”
- e. Commissioner Wells said, referring to GREC and the PPA: “I want leverage to change our situation.”

44. In letters that Mr. Bielarski sent to GREC in 2015, Mr. Bielarski again indicated the City's desire to renegotiate the PPA.

F. In December 2015, GRU Forced GREC to File the CCA Arbitration By Manufacturing A Meritless New Interpretation; GRU Then Quickly Capitulated -- Within 72 Hours -- After GREC Filed its Arbitration Demand

45. Soon after hiring its new General Manager (Mr. Bielarski) GRU began several efforts -- which continue to the present -- to deprive GREC of various of its contract rights, to "mess with" its cashflow, and to exert "leverage" on GREC and otherwise economically harm GREC.

46. City and GRU officials have publicly stated their intent to engage in these actions, including as just set forth in the paragraphs above.

47. GRU's effort regarding the explicit cost adjustment formula in the PPA, called the "Construction Cost Adjuster" (or CCA for short), was one of these efforts. It was an egregious effort given that it contradicted: (a) the plain CCA language in the contract; (b) the clear purpose of the CCA to hedge against increases in equipment costs; (c) GRU's own explicit confirmation of the CCA in 2011 through a professional consultant who reviewed the CCA; and (d) GRU's own application of the CCA for 20 consecutive months during which GRU properly applied the CCA in order to pay GREC's invoices from the start of Facility operations in late 2013 until August 2015.

48. But in August 2015, GRU reversed course on the CCA after it manufactured a "new" interpretation that contradicted the clear PPA terms that GRU had explicitly confirmed and had applied every month for almost two years.

49. After manufacturing this "new" interpretation, GRU announced it publicly and used it publicly (and unfairly) to denounce GREC and to inaccurately accuse GREC of having overcharged the City by \$985,804.

50. Based on this “new” CCA interpretation, GRU demanded repayment of the \$985,804, with interest, and unilaterally applied this new interpretation to GREC’s monthly invoices by short-paying each invoice going forward by about \$55,000 per month.

51. Between September 2015 and December 2015, GREC sent Mr. Biclarski and GRU several letters explaining, in detail, how GRU’s new interpretation was clearly wrong. GRU ignored these letters and the facts they set forth.

52. By letter dated December 3, 2015, GREC, through its President, Jim Gordon, requested that GRU immediately end its improper CCA leveraging efforts, pay the overdue CCA amounts, and withdraw its false demand for \$985,804 in alleged overcharges. Mr. Gordon’s letter closed with the following, after noting that GRU had then already had more than three months to review the CCA matter and correct its improper actions based on its meritless new interpretation:

It is long past time for GRU to acknowledge that it wrongfully accused GREC of the CCA overcharges by paying to GREC the CCA amounts that GRU has wrongfully withheld, together with the interest on those amounts that GRU has caused the public to incur at your direction. If you fail to do so by December 18, you will leave GREC no choice but to file for arbitration to recover all the damages GRU’s conduct, under your leadership, has caused GREC. These damages will include GREC’s costs and fees in having to enforce our clear contract rights under the PPA.

53. GRU did not correct its improper actions after this final effort by GREC to avoid having to take the dispute to arbitration.

54. Bent on extracting leverage, GRU maintained its refusal to pay GREC the overdue CCA amounts, did not retract its false public accusation that GREC had overcharged GRU, and did not withdraw its demand that GREC “repay” it \$985,804 in alleged overcharges.

55. In fact, GRU responded by indicating that it would continue to press its new CCA position prospectively by announcing that it would reduce its payment for GREC’s most recent invoice for November by \$55,826 for the alleged CCA overcharge.

56. Left with no choice, GREC, on December 21, 2015, filed its Arbitration Demand with the AAA to resolve the CCA dispute. As of that date, GRU had publicly accused GREC of overcharging GRU and GRU had withheld from GREC over \$223,000 in CCA payments and threatened to withhold approximately \$55,000 each month going forward.

57. Then, early in the day on December 24 -- less than 72 hours after GREC filed its AAA demand -- Mr. Bielarski telephoned Mr. Gordon and capitulated. Specifically, Mr. Bielarski promised Mr. Gordon that, if GREC withdrew its AAA Demand, GRU would pay GREC all CCA amounts withheld, cease withholding CCA amounts prospectively, and drop its claim that GREC had overcharged GRU by GRU \$985,804.

58. Seeking to position himself favorably in the public eye and in his efforts improperly to exert "leverage" on GREC, Mr. Bielarski, in a December 24, 2015 letter purporting to memorialize his discussion with Mr. Gordon, inaccurately characterized his capitulation as to the AAA arbitration as somehow part of GREC's "agreement to enter into discussions surrounding GRU's potential purchase of the GREC facility." This effort confirms GRU's meritless CCA effort as just another ploy undertaken in an effort to exert "leverage" on GREC to renegotiate the PPA or sell the Facility to the City.

59. Mr. Gordon quickly corrected Mr. Bielarski's effort in a response dated December 24, stating:

I wanted to clarify something you mentioned in your letter to me this morning. As I said in our brief call this morning, GREC is always willing to discuss matters of mutual interest or concern with GRU. However, we made no connection between the Construction Cost Adjuster (CCA) dispute and any other matters of mutual interest. These are independent discussions and should be treated separately.

G. In February 2016, GRU Manufactured Another Meritless Dispute and Breached the PPA By Purporting to Force GREC to Take an April Outage and Declaring GRU's Refusal to Pay for Available Energy During that Time

1. GRU's Reliable Energy Supply Obligation, Energy Generating Resources, and Outage/Energy Supply Scheduling

60. GRU is responsible for supplying energy to about 93,000 customers in the Gainesville area.

61. GRU obtains energy from four principal plants that tie into GRU. In all, these plants have nine power generating units.

62. The GREC Facility is one of those plants; it has one generator and supplies Energy, Capacity, and Environmental Attributes to GRU, all as defined in the PPA.

63. GRU owns two plants -- "Deerhaven 1" and "Deerhaven 2" -- that have a total of five coal-fired generating units that supply GRU.

64. GRU also owns the J.R. Kelly plant, which has three gas/oil-fired generating units.

65. In addition, GRU buys power from a solar generating facility.

66. Finally, GRU buys power on the open energy market.

67. GRU is obligated to ensure a reliable energy supply to its customers from its various sources.

68. In order to provide this reliable energy supply, GRU must coordinate generation from its various sources: Deerhaven 1, Deerhaven 2, J.R. Kelly, GREC, and the solar facilities identified above. These are jointly referred to herein as the "Facilities."

69. One method GRU has employed in order to coordinate these resources and ensure an adequate supply of energy has been to ensure that the Facilities stagger their planned maintenance outages so that, as far as reasonably possible, the Facilities do not take outages at the same time.

70. A tool that GRU has employed for many years in order to achieve this end is the use of two non-contractual forecasting schedules that it has called the "10 Year Outage

Schedule” and the **“Rolling 12 Month Outage Schedule.”** The labels GRU has put on these two schedules has varied somewhat from time to time.

71. GRU asks each facility to provide forecasts on a continuing basis in order to update and revise these two schedules, and GRU periodically distributes updated versions to the Facilities.

72. GRU also continually updates and revises each month its rolling 12-month forecast of planned outages pursuant to the requirements of the Florida Reliability Coordinating Council (“FRCC”), with the FRCC Handbook providing that a new Generator Maintenance Outage Report for the region is developed monthly by FRCC staff, and that “Individual operating entities [such as GRU] submit planned generator outage information by the 25th of each month. This information should include data for the next 12 months.” *See* FRCC Handbook, Data Sharing and Modeling, Coordination and Communication Requirements at 11.

73. GRU uses the two forecasting schedules for long-term outage and energy supply planning purposes. Both purposes -- energy supply and outage planning -- go hand in hand in the sense that, when a facility is in an outage, it cannot supply energy. Similarly, when a facility is not in an outage, it remains available to supply energy. The greater the number of Facilities that are available at any given period of time, the more reliable GRU’s ability to supply the required energy to its customers.

74. By maintaining the two forecasting schedules, GRU seeks to ensure that the Facilities do not take outages at the same time such as would jeopardize GRU’s energy supply obligations to its customers.

75. There is no PPA provision that mentions these two forecasting schedules or the outage coordination process.

76. There is no PPA provision that requires GREC to submit forecasts of outages for the Rolling 12 Month Outage Schedule or the 10-Year Outage Schedule.

77. Nevertheless, ever since GREC began operations it has provided informal and non-contractual information about planned outages and updates for purposes of these two coordinating and forecasting schedules.

78. It is good utility practice to compile and continually update such forecasting schedules in order to coordinate outages and energy supplies based on the most current information available when these schedules are circulated.

79. It is customary in the energy industry, and good utility practice, for multiple parties to engage in communications for short and long-range forecasting and planning of energy supply resources based on available information that evolves over time.

80. These cooperative communications are informal in the sense that they are non-contractual and do not constitute binding commitments to dates that are forecasted many months, a year, several years, or even 10 years, into the future. Many variable circumstances can change to alter those dates and the need for, and timing and duration of, forecasted outages.

2. GRU Issues Vastly Disparate 2015 Operating Schedules for the GREC Facility

81. In early 2015, GRU issued dispatch forecasts for GREC indicating that the Facility would be operating for substantial periods of time, including 24 hours per day in June, July, August, and September.

82. Based on that operating forecast and the manner in which GRU had dispatched the Facility the prior year (*e.g.*, late 2014 through early 2015), GREC projected substantial Facility operations and so, at that time, forecasted a planned maintenance outage in April 2016.

83. The most significant determinant of whether and when a planned maintenance outage is needed is the number of hours that a facility has actually been operated or run. This follows the same simple rationale that applies to oil changes for cars. Oil change intervals are recommended when cars have been driven about 5,000 miles, whether it takes one month or more than a year to reach that threshold. A car driven only 100 miles does not need an oil change and a plant that has not run typically does not need a maintenance outage.

84. Based on the information that GREC had as of May and June 2015, and specifically in response to email requests from GRU regarding its 10 Year Outage Schedule and Rolling 12 Month Outage Schedule, GREC informed GRU by email that it forecasted the need to take maintenance outages over specific periods in April 2016 and April 2017.

85. These informal and cooperative forecasts were not the formal contractual notice provided via the Annual Maintenance Plan by October 31 of each year under Section 10.4.1(a) of the PPA, which had to be submitted close in time to the start of the new calendar year, namely, no later than sixty days prior to the start of the next calendar year.

86. Several times throughout the year, GRU updated its 10 Year Outage Schedule and its Rolling 12 Month Schedule to reflect the forecasted information provided by the various Facilities.

87. GRU did so not just with information from GREC, but also with outage information -- and changes to the outage information -- relating to the other Facilities, including the two Deerhaven plants and the J.R. Kelly plant.

88. Such long-range and cooperative communications, and such continually revised forecasts based on then-current information, were -- and are -- consistent with good utility practice in order to enable GRU and all the Facilities cooperatively to do long-range planning.

89. As noted above, GRU's operational forecasts for the Facility in early 2015, and its actual dispatching of the Facility in late 2014 and early 2015, indicated that the Facility would run for substantial periods of time in 2015 and 2016.

90. GRU abruptly and dramatically altered this operating forecast starting at the end of August 2015, when GRU ordered GREC into reserve shutdown mode. In short, GRU idled the GREC Facility.

91. Indeed, when GRU issued an operating forecast for GREC for the fourth quarter of 2015 -- October through December -- it showed that GRU would not dispatch GREC at all and that the Facility would generate zero megawatts.

92. GRU's forecasts and operating orders to GREC starting at the end of August 2015 were for GREC to remain in reserve shutdown mode, meaning that the Facility would not run or deliver any Energy to the Delivery Point.

93. To date in 2016, GRU has continued to keep the GREC Facility in reserve shutdown mode.

94. Under the PPA, when GRU elects to dispatch GREC off-line – *i.e.*, when the Facility is in reserve shutdown mode – GREC retains the clear contract right to receive payments for all “Available Energy.” As noted above, this is the amount of energy that the Facility could have generated during each month “but that was not generated due to dispatch instructions from [GRU].” *See supra*, p.3 (quoting and explaining the PPA at Appendix III (“Contract Prices”) and at Schedule 1 (defining “Available Energy”)).

95. Only three short exceptions since late August 2015 have interrupted GRU's reserve shutdown order for GREC.

96. One exception was a surprise weekend “test” that GRU sprung on GREC early on a Saturday morning in September 2015 in an effort to force the Facility to fail certain PPA requirements. But GREC easily passed that test, although GRU refused for some time to acknowledge that fact.

97. The second exception occurred in November 2015 when a GRU-owned Deerhaven facility failed and GRU called on GREC to provide Energy while Deerhaven was repaired.

98. The third exception started early on Sunday morning, March 6, 2016, when GRU, at 6 a.m., again sprung a capacity test on GREC without any advance notice and, further, indicated that, immediately after that test, GREC had to return to its pre-test reserve shutdown mode in which it would not generate any Energy.

99. Just three days earlier, on March 3, 2016, at a public City Commission meeting, Mr. Bielarski told the Commissioners and the public that GRU is “going to keep [GREC] in cold standby until gas prices change.”

100. Except for those three brief exceptions, GRU has deliberately kept the GREC Facility idle, in reserve shutdown status but fully “available” for dispatch by GRU.

3. Due to GREC’s Changed Operating Status, the April 2016 Maintenance Outage is Unnecessary and GREC Gave GRU Clear and Timely Contractual Notice That There Would Be No Such Outage Under Section 10.4.1(a) of the PPA

101. Because GRU ordered GREC into reserve shutdown for such an extended period of time, the Facility has not run and has no need to take a maintenance outage.

102. No provision in the PPA requires that GREC take a maintenance outage at any time.

103. No provision in the PPA authorizes GRU to order GREC to take a maintenance outage.

104. After receiving GRU’s vastly altered dispatch orders and forecasts for the Facility in and after late August 2015, GREC determined that the Facility did not need to take a maintenance outage in April 2016 given the very low operating hours it had incurred and would incur.

105. Accordingly, on October 14, 2015, GREC timely submitted to GRU the written Annual Maintenance Plan for calendar year 2016 required by Section 10.4.1(a) of the PPA. As noted above, this plan had to be submitted no later than sixty days prior to the start of the next calendar year.

106. This Annual Maintenance Plan stated: “Given the current GREC dispatch scenario of remaining in reserve shutdown, GREC plans no Maintenance or Planned outages in 2016.”

107. GREC sent its Annual Maintenance Plan pursuant to the notice requirements of the PPA via letter and by certified mail, in addition to transmitting it by email.

108. On October 15, 2015, GRU acknowledged receipt of the October 14 Annual Maintenance Plan that had been sent electronically. GRU also received two copies of that

Annual Maintenance Plan by certified mail. An accurate copy of that October 14 Annual Maintenance Plan and the certified mail receipts are attached as Exhibit 2.

109. On December 10, 2015, GREC again confirmed to GRU by email that GREC planned no April 2016 maintenance outage, explaining that no such outage was needed based on the limited hours that GREC had run.

110. On February 3, 2016, GREC again reminded GRU by email of the information in its October 14 Annual Maintenance Plan, specifically, that GREC was not taking an April 2016 outage.

111. On February 4, George Demopoulos, the Major Maintenance Leader in GRU's Energy Supply Department, thanked GREC by email, saying, "I appreciate the reminder" regarding the fact that GREC had notified GRU that GREC would not take an April Outage.

112. On February 4, Mr. Demopoulos also sent another email to a long distribution list at GRU and the Facilities that supplied GRU, which stated that "GREC will not be having an outage in April 2016." His email transmitted two schedules -- the Rolling 12 Month Outage Schedule and the 10-Year Outage Schedule -- both of which also indicated that there would be "No April 2016 outage" for GREC. An accurate copy of this GRU email, with both schedules, is attached hereto as Exhibit 3 ("**February 4 GRU Schedules**").

4. Four Months After GREC Submitted its October 14 Annual Maintenance Plan, the GRU General Manager Tried to Force GREC to Take the April Outage in Order to Avoid Paying GREC the "Available Energy" Payments Required by the PPA

113. Starting around February 3, 2016, GRU General Manager Ed Bielarski tried to rewrite the facts to change them in order to deprive GREC of its contractual right to receive Available Energy payments.

114. In response to this effort, John Stanton, GRU's Energy Supply Officer, advised Mr. Bielarski by email on February 3 that: (i) GREC's not taking the April Outage was "clearly approved on behalf of GRU"; (ii) that such approval was express and "was not just implied

approval”; and (iii) that the PPA “does not say that GRU can prevent [GREC] from canceling an outage.”

115. In his February 3 email, Mr. Stanton also stated that he had prepared a “white paper” after he had been asked “several times by GRU employees” to determine “...how bad we [GRU] are hurting GREC by not running them,” clearly reflecting and confirming GRU’s improper and bad faith objective to inflict harm upon GREC.

116. Mr. Bielarski, acting as GRU’s General Manager, devised the plan not to run GREC starting back in late August 2015.

117. In the white paper, dated January 12, 2016, Mr. Stanton explained how the plan of “hurting GREC by not running them” had backfired and may actually benefit GREC because it was “very likely that GREC will make at least as much money by not running” as it would if it were running and delivering Energy.

118. The white paper explained that this was so, in part, because, given GRU’s decision not to run GREC, GREC would not need to take a maintenance outage, and would therefore be available to supply, and to be paid for, more Available Energy than otherwise would have been the case. A copy of that January 12, 2016 White Paper is attached as Exhibit 4.

119. On February 3, Mr. Stanton further advised GRU’s in-house counsel that “[t]he [PPA] language about outages and their approval was drafted by me so I absolutely know the intent,” that “GREC is required to use best Utility Practice to maintain availability/reliability” and that “nowhere” does the PPA give GRU “the right to dictate [to GREC the] means & methods of doing so.”

120. Mr. Stanton also advised Mr. Bielarski by email on February 3 that, rather than jeopardizing GRU’s ability to secure a reliable energy supply, GREC’s not taking the April Outage would increase GRU’s reliable energy supply because, without an outage, GREC would remain available to supply Energy to GRU if needed. Mr. Stanton explained this as follows:

GRU is responsible for maintaining sufficient available capacity (including GREC as we take 100% of the output) to meet NERC/FRCC requirements for

reliability of the Bulk Electric System (BES) and to serve GRU's native load. [GREC's] NOT doing an outage does not negatively impact either [of] those, it supports them.⁴

121. In February 2016, GRU counsel informed Mr. Bielarski, in writing, that she had spoken to the Energy Supply Officer and "confirmed that he approved" GREC's not taking the April Outage.

122. As noted above, GRU published the February 4 GRU Schedules that clearly confirmed GREC's October 14 Annual Maintenance Plan in noting that GREC would not take an outage in April 2016. See Exhibit 3.

123. On February 4, Mr. Bielarski tried to change these facts in order to force GREC to take the April 2016 outage. And Mr. Bielarski undertook this effort in bad faith despite the information set forth above.

124. Specifically, on February 4, Mr. Bielarski sent GREC a letter purporting to respond -- four months later -- to GREC's October 14 Annual Maintenance Plan. In the letter, Mr. Bielarski characterized GREC's October 14 plan as a "change" rather than the contractual "written annual maintenance plan" for 2016 that GREC had properly and timely submitted pursuant to Section 10.4.1(a) of the PPA. On this false basis, Mr. Bielarski purported to deny the "change" in order to force GREC to take an outage for twenty days from April 9 until April 29.

125. In his February 4 letter, Mr. Bielarski: (1) failed to identify any provision in the PPA that permitted him to reject or deny GREC's "written annual maintenance plan" submitted pursuant to Section 10.4.1(a) of the PPA; (2) failed to identify any contractual basis that gave him any authority to force GREC to take a maintenance outage; and (3) failed to identify any

⁴ NERC and FRCC stand for North American Electric Reliability Corporation and Florida Reliability Coordinating Council, Inc. NERC was formed by the electric utility industry to promote the reliability and adequacy of bulk power transmission in the electric utility systems of North America. NERC's mission is to ensure the reliability of the North American bulk power system. The FRCC's mission is to ensure that the bulk power system in Florida is reliable, adequate and secure. The FRCC serves as a regional entity with delegated authority from NERC for the purpose of proposing and enforcing reliability standards within the FRCC Region.

plausible operational reason, consistent with good utility practice, to require GREC to take a maintenance outage in April of 2016.

126. In fact, internal GRU documents from and to Mr. Bielarski reveal that his reason for seeking to force GREC take the April Outage was to avoid paying GREC its contractually required Available Energy payments.” In this regard, Mr. Bielarski told Mr. Stanton the following:

...it is clear that on an operational basis, GRU would not need GREC’s power during the Planned Maintenance outage dates and as such [Mr. Stanton] should have declined GREC’s request to change that plan. Failure to decline GREC’s request would cost GRU customers almost \$3 million in Availability Energy payments.

127. In his February 4 letter to GREC, Mr. Bielarski also announced that, because he was requiring GREC to take the April Outage, if GREC did not give in to his demand and take the outage, GRU would unilaterally “consider” the Facility to be in a fictitious outage, and “GRU will not be paying any related Available Energy charges” for that period, even if the Facility remained fully available for dispatch by GRU.

128. Seeking to deny GREC its contractual right to Available Energy payments that are required by the PPA is not a valid reason to ignore GREC’s Annual Maintenance Plan, to purport to force GREC to take the April Outage, or to deny GREC Available Energy payments for the period of any fictitious outage.

129. Later on February 4, GRU -- through Mr. Demopoulos -- sent an email purporting to “recall” the February 4 GRU Schedules that he had previously circulated, which stated explicitly -- in three documents -- that GREC would not take an April Outage.

130. On February 8, 2016, after altering both the 10 Year Outage Schedule and the Rolling 12 Month Outage Schedule to falsely depict GREC as taking an April Outage, GRU re-circulated those schedules.

131. GRU made these alterations in derogation of the October 14, 2015 Annual Maintenance Plan that GREC had timely and properly submitted pursuant to Section 10.4.1(a) of the PPA.

132. GRU also made these alterations in derogation of several GRU acknowledgements of GREC's Annual Maintenance Plan submitted on October 14, 2015.

133. GREC responded by letter dated February 8, giving formal notice of a dispute under §24 of the PPA and noting that GRU had breached the PPA by improperly trying to force GREC to take an unnecessary April Outage and by declaring that, if GREC did not take the outage, GRU would nonetheless "consider" GREC to be in a fictitious outage and not pay GREC for Available Energy during that 20 day period. GREC requested that GRU cure these breaches and provide assurances of such cure.

134. GRU did not cure these breaches.

135. In a letter dated February 9, GRU refused to provide the requested assurances. GRU also claimed that the Section 24 dispute notice was "premature," apparently under the notion that GRU's clear statements failing to recognize GREC's timely-submitted October 14 Annual Maintenance Plan, and its declaration that it would fail to pay GREC for all Available Energy for the April period, somehow did not constitute a breach or anticipatory breach of the PPA.

136. In a letter dated February 17, GREC explained how the contractual dispute notice was ripe given GRU's breach in failing to recognize GREC's properly-noticed October 14 Annual Maintenance Plan under Section 10.4.1(a) indicating that there would be no April 2016 outage and GRU's declaration that, if GREC did not take the unnecessary outage, GRU would still "consider" the facility to be in a fictitious outage and not pay GREC for Available Energy for that period.

137. GREC's February 17 letter also gave GRU an additional chance to cure its breaches by again asking GRU to provide written assurances recognizing that GREC would take

no outage in April 2016 and assuring that GRU would pay the Available Energy amounts for that period as required by the PPA.

138. GRU refused to provide those assurances and, instead, responded by letter dated February 29, 2016, stating that, if GREC did not take a maintenance outage from April 9 to April 29, 2016, that GRU will consider GREC in breach of Section 10.4.1(a) of the PPA. This was an effort by GRU to force GREC to take an outage during that April period.

139. GRU's actions here to "force" an unnecessary outage or, if GREC does not take the outage, GRU's declaration that it will unilaterally "consider" GREC to be in a fictitious outage and not pay for Available Energy for such period, are in bad faith and part of a pattern of deliberate acts to hurt GREC and extract economic concessions. GRU plainly seeks to require GREC to take the April Outage not for any energy supply reliability purpose -- indeed, having GREC available to supply Energy would increase energy supply reliability -- but, rather, to deprive GREC of its contract right to Available Energy payments.

140. GRU's actions regarding the April Outage have, once again, forced GREC to file for arbitration to enforce its clear contract rights.

II. CLAIMS

Count 1 (Breach of the PPA)

141. GREC incorporates here by reference the allegations contained in all preceding paragraphs.

142. GREC and GRU entered into the PPA, a valid contract.

143. GREC performed all its material obligations under the PPA.

144. GRU violated the PPA, including by trying to force GREC to take a maintenance outage, by refusing to recognize GREC's October 14, 2015 written Annual Maintenance Plan for 2016 indicating that GREC will not take a maintenance outage in April, and by refusing to recognize GREC's contractual right not to take a maintenance outage.

145. GREC has been damaged by GRU's actions, including, but not limited to, the financial uncertainty caused by GRU's anticipatory breach regarding its statement that, if GREC does not take the unnecessary April Outage, GRU will "consider" GREC to be in a fictitious outage and refuse to pay for Available Energy for such period, even if the Facility remains fully available for dispatch by GRU.

Count 2
(Anticipatory Breach of the PPA)

146. GREC incorporates here by reference the allegations contained in all preceding paragraphs.

147. GREC and GRU entered into the PPA, a valid contract.

148. GREC performed all its material obligations under the PPA.

149. GRU committed anticipatory breaches of the PPA by clearly and positively indicating that it would not perform the requirements of the PPA, specifically, by refusing to acknowledge the timely Annual Maintenance Plan under §10.4.1(a), by declaring that, if GREC does not take the outage, GRU would not pay GREC for Available Energy under the PPA for the period of the April Outage, and by threatening to deem GREC in breach of the PPA if GREC does not take the April Outage.

150. GREC has been damaged by GRU's actions, including, but not limited to, the financial uncertainty caused by GRU's anticipatory breach regarding the payment for Available Energy.

Count 3
(Breach of Covenant of Good Faith and Fair Dealing)

151. GREC incorporates here the allegations contained in all preceding paragraphs.

152. GREC and the City, acting through GRU, entered into a contract, the PPA.

153. GREC performed all of its material obligations under the contract.

154. GRU was required to perform under the contract.

155. GRU's actions and omissions unfairly interfered with GREC's receipt of the contract's benefits, and breached the covenant of good faith and fair dealing.

156. GRU's conduct did not comport with GREC's reasonable contractual expectations under the PPA.

157. GREC has been harmed by GRU's conduct.

Count 4
(Declaratory Judgment)

158. GREC incorporates here the allegations contained in all preceding paragraphs.

159. A dispute exists as to the parties' rights under the PPA, including with regard to the April 2016 maintenance outage, the effect of GREC's October 14, 2015 written Annual Maintenance Plan for 2016, GRU's threat to deem GREC in breach of the PPA if it does not take the April Outage, and GRU's declaration that if GREC does not take the April Outage it will unilaterally "consider" GREC to be in a fictitious outage and not pay GREC for Available Energy during the April period, even if the Facility remains fully available for dispatch by GRU.

160. There is an actual and present need for declarations as to the contract, its meaning, and the parties' respective rights under those provisions, including under Section 10.4.1(a) as explained above.

III. RELIEF

For the reasons stated above GREC respectfully requests that the Arbitrator:

1. Declare that GREC is not required to take a Maintenance Outage in April 2016 and that GRU must pay the all Available Energy charges for such month without offset for any amounts relating thereto;
2. Award GREC all damages sustained by GRU's actions;
3. Award interest as provided in §8.6 of the PPA or as otherwise available at law;
4. Award attorney's fees and costs incurred in this arbitration, in an amount to be determined after hearing; and

5. Grant GREC such other, further, and different relief as the Arbitrator may deem appropriate.

**GAINESVILLE RENEWABLE ENERGY
CENTER, LLC,**

By its attorneys,

/s/ Andrew C. Phelan
Andrew C. Phelan
Siobhan E. Mee
Morgan Lewis & Bockius, LLP
One Federal Street
Boston, MA 02110-1726
617.951.8000

Dated: March 10, 2016

CERTIFICATE OF SERVICE

I certify that on March 10, 2016, I caused a copy of the foregoing to be served by electronic mail and Federal Express overnight delivery on Nicolle M. Shalley, counsel for the City of Gainesville, d/b/a Gainesville Regional Utilities.

/s/ Andrew C. Phelan
Andrew C. Phelan