

5/17/17

EXHIBIT APPENDIX

LIST OF EXHIBITS REFERENCED IN AKERMAN LETTER TO MR. HOLT

- A. Washington Memorandum dated March 20, 2017
- B. Washington Memorandum dated March 25, 2017
- C. Memorandum of Shalley to CCOM dated December 19, 2013
- D. Cole email to Manasco dated June 15, 2011
- E. Radson/Manasco email exchanges dated June 30, 2011
- F. Excerpt of Minutes of May 7, 2009 CCOM meeting re its PPA action
- G. McNeill handwritten notes of CAA negotiations of June 3, 2011
- H. Copies of the GRU file jackets in the 'important documents' redwell
- I. GRU "eLINE" dated June 30, 2011
- J. GREC Press Release dated June 30, 2011
- K. Levine email to Hunzinger, et al., re "GREC bank visit – June 1st," dated May 23, 2011
- L. McInnis Affidavit dated April 11, 2017
- M. Email exchanges between attorneys Stephens & Manasco dated June 1 and 2, 2011
- N. Email from Manasco to Cole re negotiations dated June 2, 2011
- O. McNeill handwritten notes of CAA negotiations of June 2, 2011
- P. City's Purchasing Policy (Resolution #060732)
- Q. Official Transcript of the CCOM's May 7, 2009 Meeting
- R. Email exchanges between Hunzinger and Walton dated June 27 and 29, 2011
- S. Unofficial transcript of the CCOM's January 16, 2014 meeting
- T. Legal Opinion, effective June 30, 2011, executed on the letterhead of the Office of the City Attorney for the City of Gainesville, by attorney Manasco, re CAA closing
- U. Copy of executed Consent And Agreement ("CAA"), dated June 30, 2011
- V. City's "Demand for Arbitration" dated December 21, 2012
- W. Construction Report provided by GREC to the City dated October 2012
- X. Mayor Braddy letter to GREC, dated February 12, 2014
- Y. Excerpt of Minutes of January 16, 2014 CCOM meeting
- Z. Minutes of January 29, 2014 Audit & Finance Committee meeting
- AA. Inter-Office Memorandum from City Auditor to Audit & Finance Committee and Mayor dated March 5, 2014
- BB. Excerpt of Minutes of June 19, 2014 CCOM meeting
- CC. Document filed by Citizen Konish, dated 4/15/15
- DD. Excerpt of Minutes of April 15, 2015 CCOM meeting
- EE. Letter to Editor dated October 25, 2013
- FF. McNeill handwritten notes of CAA negotiations of June 17, 2011
- GG. Attorney Lyon email to attorney Waratuke dated November 19, 2013
- HH. GREC "Notice of Construction Commencement" to GRU dated June 30, 2011
- II. Excerpt from CCOM Minutes of meeting of July 16, 2015

A

RAY WASHINGTON
Attorney & Counselor at Law

Reply to:
P.O. Box 6008
Gainesville, Florida 32627

(352) 284-2222
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MEMORANDUM

DATE: MARCH 20, 2017
TO: GAINESVILLE CITY AUDITOR CARLOS HOLT
RE: INDICIA OF FRAUD: "CONSENT AND AGREEMENT"

Background

It has not been yet established whether or not the June 30, 2011 "Consent and Agreement" was fraudulently induced, and therefore voidable, though there is indicia of fraud not yet explored. It has been represented by the City Attorney that the City Attorney's office did not become aware of the existence of the "Consent and Agreement" until the Fall of 2013, which, if true, suggests that the four-year statute of limitations for contract fraud claim to be pursued by the City has not yet passed.

I am aware of no evidence that the City Commission became aware of the existence of the "Consent and Agreement" until it was referenced in a December 19, 2013 City Attorney memorandum to City Commissioners recommending that the City Commission, contrary to the opinion of outside counsel, would be unlikely to succeed in a legal action to void a March 16, 2011 "Equitable Adjustment" settlement signed by GRU CFO Jennifer Hunt (on behalf of GRU General Manager Robert Hunzinger) and GREC CEO James Gordon. The entire reference to the "Consent Agreement" in that December 19, 2013 memo was:

In the course of our inquiry into this matter, this Office also became aware of another document that amended the PPA without City Commission approval. This document is titled a "Consent and Agreement" dated as of June 30, 2011 (attached as Exhibit "G") and appears to have been provided in the context of GREC obtaining financing for the biomass facility. This document assigns a collateral interest in the PPA for the benefit of GREC's lender and makes 10 amendments to the PPA (as set forth in section 5 of the document).

Outside counsel Tim McDermott of the Ackerman law firm in an October 31, 2013 memo to the City Attorney's Office did not address the "Consent and Agreement." However, McDermott's rationale in that memo for suggesting the voidability of the "Equitable Adjustment" he was asked to evaluate applies equally to the "Consent and Agreement."

Specifically, the authority to "implement" the PPA did not vest Mr. Hunzinger with authority to modify or amend the PPA . . .

Additionally, McDermott opined that if GRU Assistant City Attorney Skip Manasco approved the "Equitable Adjustment" believing that the basis of its execution was unfounded "(as we understand to have been the case), but Mr. Manasco approved the document as to 'legality' due to pressure imposed on him by Mr. Hunzinger, that 'approval,' in turn, may have been 'ultra vires' as well."

Mr. Manasco has subsequently acknowledged that in addition to the "Equitable Adjustment" there were other documents he probably should not have signed.

Arguably, the five-year statute of limitations for challenging a "Consent and Agreement" contract provision on grounds other than fraud expired on June 30, 2016. However, neither Mr. McDermott's nor Ms. Shalley's memos evaluated the "Consent and Agreement" on any basis, much less fraud.

"Consent and Agreement"

The "Consent and Agreement" as the City Attorney noted in her memo assigns a collateral interest in the PPA for the benefit of GREC's lender (and also unnamed other parties, which she did not note) and makes 10 amendments to the PPA. But for the terms of the assignment of the "Consent and Agreement" – whatever those terms were, and to whomever it was assigned, neither of which have been revealed by GREC – GRU might have PPA ownership rights in the event of default as represented to the City Commission on May 7, 2009 by GRU Assistant General Manager Ed Regan, with GREC CEO Gordon present and in concurrence.

The PPA contains provisions that under certain circumstances can result in the City to assigning certain rights in the PPA to certain parties.

Section 21.1 of the PPA allows GREC to collaterally assign its interest in the PPA to a lender, but only if GREC first obtains the written consent of the City. Such consent obviously cannot be fraudulently obtained. GREC's 2 ½ year secrecy regarding the existence of the "Consent and Agreement" is indicia of fraud.

Section 20.1 of the PPA requires the City to provide GREC with consents that are reasonably acceptable to the City. But the City cannot make a decision as to whether a requested consent to assignment of the PPA is reasonable without knowing who the assignee is and being able to establish the credit worthiness of the assignee. The "Consent and Agreement" references certain documents of which the City would have had to have been aware in order to make a decision as to what consents were or were not reasonable. The failure of GREC to allow those documents to be reviewed is indicia of fraud.

Section 20.2 requires the City to modify the PPA to accommodate a GREC lender's reasonable and customary requirements, but only if a modification does not materially increase the City's costs or reallocate the risks between the City and GREC. The PPA on June 30, 2011 was collaterally assigned to Union Bank as agent not only for lenders not named in the "Consent and Agreement" but also for non-lender parties identified in a document denominated the "Credit Agreement" that GREC has not made available to the City. The "Consent and Agreement" by its terms increases the City's risks by diminishing the City's ability to limit the assignment of the PPA to individuals or entities who meet the standards set forth in the PPA

The "Consent and Agreement" also memorializes a reduction in Available Energy, a reduction asserted by GREC to have been required as a result of a purported Florida Department of Environmental Regulation regulatory demand. The false claim that an FDEP demand resulted in substitution of SCR pollution control technology for SNCR technology rendered it impossible for the GREC plant to reach a sustained 102.5 MW production level was a basis on which GREC's March 16, 2011 "Equitable Adjustment" settlement had been negotiated.

Other Indicia of Fraud

Although the City Attorney's office does not appear to have informed the City Commission that under Florida's sovereign immunity law the City cannot be required to pay more than \$200,000 under a tort claim, on August 15, 2013 Robert Hunzinger and Jim Gordon executed a settlement agreement that in return for GREC's

agreement to drop a more than \$50 million tortious interference claim the City would, among other things, amend the PPA to:

- (1) suspend the City's Right of First Offer for 66 months (i.e. through February 2019);
- (2) waive for 66 months the City's right to consent to any assignment of the PPA to any person or entity that either itself or an affiliate had five years of any level of power generation experience, either directly or through a third-party contractor, provided that the person or entity, if its long-term credit had been rated, had an S&P credit rating of BBB- or higher;
- (3) require the City to agree to make any and all factual representations reasonably requested by GREC for the purpose of effectuating as sale of GREC or an assignment of the PPA;
- (4) waive the City's right going forward to make any claim for breach of the PPA after 45 days of discovery by any GRU employee directly reporting to the GRU General Manager of facts supporting the claim for breach;
- (5) waive the City's right under the PPA to have arbitration take place in Florida;
- (6) waive the City's right to legal action related to the June 2011 acquisition of 1/6 ownership of GREC by Ron and Dian Fagen, principals of GREC's engineering, procurement and construction contractor.

The August 15, 2013 agreement signed by Hunzinger and Gordon – like the June 30, 2011 “Consent and Agreement” signed by Hunzinger and the other GREC officer with signature authority, Albert Morales – represented that Hunzinger had authority to execute the agreement and purported to waive any right of the City to claim Hunzinger was not authorized to sign the agreement. Unlike the June 30, 2011 “Consent and Agreement,” the August 15, 2013 agreement was required to be approved by four members of the City Commission (in this case at the August 15, 2013 Commission meeting).

At the August 15, 2013 Commission signed by Hunzinger and Gordon was not presented to the City Commission for approval. The City Attorney informed the Commission that although the City attorney's office was generally satisfied with the agreement, it was still researching two of the agreement's provisions. Hunzinger was asked by a Commissioner whether he had signed an agreement. Hunzinger stated that he had not. Neither the City Attorney nor Gordon informed the Commission that Hunzinger's claim was false. Fifteen minutes after the City Commission meeting began and the City attorney's office received an email retracting Gordon's signature. Although neither Gordon nor the City Attorney disputed Hunzinger's false claim that he had not signed an agreement, a few days later, over the weekend, the City Attorney

informed Commissioners that Hunzinger in fact had signed the agreement he had denied signing. Later in August, GRU CFO Jennifer Hunt resigned. In October, Hunzinger resigned. Thereafter the June 30, 2011 Consent and Agreement was purported to have come to the attention of the City Attorney's office, discovered in a paper file maintained by Hunzinger.

In my view further exploration of indicia of fraud that may result in the voiding of the June 30, 2011 "Consent and Agreement" should have taken place long ago, but it should begin now, before another statute of limitations passes.

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MEMORANDUM: TARGETED FORENSIC AUDIT MEETING

TO: CARLOS HOLT, ED BIELARSKI, JR., NICOLLE SHALLEY

DATE: MARCH 25, 2016

My presentation yesterday in the City Auditor's conference room was in the context of the City Commission's direction to the GRU General Manager, the City Auditor and the City Attorney to collaborate on a recommendation for possible targeted areas of forensic audit of the GREC contractual relationship. Given the breadth of possibilities for forensic audit exploration, and the brief time available to me, I limited my discussion to a handful of transactions that I believe give rise to establishing an equitable defense of "fraud in the inducement."

Fraud in the inducement occurs when Party A enters into an agreement, knowing that it is supposed to be a contract and has at least a rough idea what the agreement is about, but the reason Party A made the agreement was because of some false or misleading information that Party B gave to Party A.

The elements required to prove fraud in the inducement are:

1. Party B made an intentional action or statement or omission.
2. The misrepresentation was material to the decision to enter into the contract.
3. Party A reasonably relied on such misrepresentation.
4. Party A suffered some degree of injury, particularly economic harm.

The misrepresentation does not need to be the predominant reason Party A entered into the contract, and it is irrelevant whether Party A would have entered into a contract even without a misrepresentation. Contracts proven to have been fraudulently induced are declared voidable at the innocent party's election. Money damages may be available if there are crossover claims involving a tort cause of action. Below is a restatement of those GREC related actions leading to the PPA provisions that I mentioned yesterday (and a couple that I did not have time to discuss) that provide opportunities through forensic audit to establish fraud in the inducement:

1. On March 24, 2008 City Commission approved weight factors used in evaluating binding proposals due April 11, 2008. What if any misleading actions or statements or omissions did Nacogdoches Power LLC provide or cause that affected GRU's promulgation of these weight factor proposals? (Yes, Nacogdoches was involved behind the scenes in that process.)
2. On April 28, 2008 and May 12, 2008 The City Commission approved GRU's ranking of proposals and authorized GRU's General Manager to negotiate a contract with Nacogdoches Power, LLC. consistent with its binding proposal, directing the GM to ensure the contract contain a back door out at the site certification point and an enforcement mechanism for forest stewardship. What if any misleading actions or statements or omissions did Nacogdoches Power, LLC provide or cause that affected the City Commission's vote?
3. From June 2008 to April 2009 GRU negotiated a contract with Nacogdoches Power, LLC, then American Renewables, LLC, then GREC, LLC. What if any misleading actions or statements or omissions did Nacogdoches Power, LLC, American Renewables, LLC or GREC, LLC provide or cause to be provided to GRU negotiators or individual City Commissioners that affected the outcome of those negotiations?
4. On May 7, 2009 The City Commission discussed and approved the April 11, 2009 executed PPA and authorized the GRU General Manager or his designee to execute such documents and take all steps as may be necessary to implement the terms of the PPA. What if any misleading actions or statements or omissions did GREC, LLC provide or cause that affected the City Commission vote?
5. On March 16, 2011 The GRU General Manager authorized the GRU Chief Financial Officer to enter into a settlement agreement with GREC based on agreement that FDEP and EPA imposed changes in the design and operation of the facility that resulted in specific increased payment obligations by GRU to GREC. What if any misleading actions or statements or omissions did GREC, LLC provide or cause that affected GRU's decision to enter into the settlement agreement?
6. On June 30, 2011 GRU General Manager Robert Hunzinger signed a Consent and Agreement amending the PPA, retroactively abrogating the PPA requirement of operating procedures being in place by May 15, 2011 and giving up substantial protections for GRU, among other changes. What if any

misleading actions or statements or omissions did GREC, LLC provide or cause that affected GRU's decision to sign off on the consent and agreement?

7. From September 2012 to June 2015 GRU's Assistant General Manager for Energy Supply John Stanton signed off on multiple changes in GRU's operating procedures (amendments to the PPA). What if any misleading actions or statements or omissions did GREC, LLC provide or cause that affected John Stanton to agree to the operating procedure changes?
8. In May 2015 GRU's Assistant General Manager for Energy Supply John Stanton directed the GREC facility to enter cold standby during the week prior to GREC's scheduled annual maintenance. What if any misleading actions or statements or omissions did GREC, LLC provide or cause that affected John Stanton to agree to the operating procedure changes?

In the limited time available to me yesterday to discuss targeted forensic audit possibilities I focused primarily on fraud in the inducement events of the sort restated above, and, in that context, mentioned specific misrepresentations that have been made on the record by GREC representatives or agents that I proposed should be further explored through targeted forensic audit means. I do not wish to recite those misrepresentations here and thereby create a public record document that could become available to GREC prior to full exploration of a fraud in the inducement defense by outside counsel in the context of GREC's attempted hurry-up anticipatory breach arbitration demand.

In any event, presumably, the limited proposals I presented yesterday will be evaluated and considered by those who attended yesterday's meeting, along with your own and other ideas before you back to the City Commission with targeted forensic audit recommendations. Feel free to contact me if I may be of further assistance.

Meanwhile, I am proceeding with other efforts, which, as I have previously written and explained, involve a broader range of approaches potentially available for recovering funds GRU already has paid out to GREC and additional approaches for securing economic relief going forward. This work focuses primarily on beneficial-to-GRU interpretation and implementation of specific PPA provisions that do not necessarily require challenges to the validity and enforceability of the PPA. Through public records request and interviews, as time permits, I continue to fill in the matrix I began last spring detailing evidence or lack of evidence necessary or important for going forward with these recovery and relief strategies.

At an appropriate time, I will be prepared to discuss these strategies with Mr. Bielarski, Mr. Brown and Mr. Locke in detailed proposal form.



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners DATE: December 19, 2013
FROM: Nicolle M. Shalley, City Attorney *NMS*
SUBJECT: Equitable Adjustment for Change of Law of the Power Purchase Agreement

Questions

Did the General Manager for Utilities have the authority to sign the "Equitable Adjustment for Change of Law of the Power Purchase Agreement" or did he act outside the scope of his authority (i.e., an "ultra vires" act)? If it was an ultra vires act, should the City bring legal action to seek to invalidate the "Equitable Adjustment for Change of Law of the Power Purchase Agreement"?

Short Answers and Recommendations

It appears from the inquiry conducted by this Office that the execution of the "Equitable Adjustment for Change of Law of the Power Purchase Agreement" was an ultra vires act; however, it is the opinion of this Office that legal action would not likely be successful because the City Commission was provided notice of the "Equitable Adjustment for Change of Law of the Power Purchase Agreement" within one month after its execution, because of certain exception language contained in the City's Purchasing Policy and Procedures and because the document was approved as to form and legality. In the conclusion section below, this Office recommends further action steps to help prevent a similar situation from occurring in the future.

Background

At the conclusion of the Special City Commission meeting on Monday, October 7, 2013, Commissioner Randy Wells asked if the City Attorney had a copy of a memorandum prepared by GRU's outside counsel ("Orrick") regarding the reclaimed water line to the City of Alachua. The City Attorney was not aware of same and advised Commissioner Wells to ask Attorney Lyon with Orrick (who was present at the meeting) about the memorandum. Commissioner Wells did so and Attorney Lyon informed him that Orrick prepared a memorandum regarding a change in law under the Power Purchase Agreement (the "PPA"), but not regarding the reclaimed water line to the City of Alachua. The GRU Utilities Attorney provided a copy of an

Orrick memorandum dated December 20, 2010 (the "Orrick Memo") to the City Attorney, who then provided a copy to Commissioner Wells.

Upon review of the Orrick Memo, the City Attorney discussed same with the Utilities Attorney. The Utilities Attorney was aware of the Orrick Memo and a related document titled "Equitable Adjustment for Change of Law of the Power Purchase Agreement" dated as of March 16, 2011 (the "PPA Amendment") in that the documents were contained in files she obtained from the former Utilities Attorney. However, there was no reason for her to examine or question a transaction that occurred prior to her employment with the City.

The executed PPA Amendment was transmitted to the former Utilities Attorney by letter dated March 30, 2011 from Young Van Assenderp, P.A. (attorneys for GREC). The text of the letter states only that it is transmitting the unredacted PPA, it does not mention the PPA Amendment. However, the PPA Amendment was attached at the very end of the unredacted PPA. The PPA Amendment increases certain of the rates to be paid under the PPA and obligated GRU to pay for the cost of the reclaimed water line to the City of Alachua.

As a result of Commissioner Wells inquiry, this Office began to question how and why the former General Manager for Utilities entered into the PPA Amendment, given that the attorneys for GRU at the time (both in-house and outside counsel) were clearly of the opinion that no change in law had occurred. In particular, this Office sought to determine whether the former General Manager for Utilities acted outside of the scope of his authority in signing the PPA Amendment (i.e., an "ultra vires" act) such that would allow the City to seek to have the PPA Amendment invalidated in a court of law.

From October 2013 to present, attorneys with this Office have reviewed available files and discussed the Orrick Memo and the PPA Amendment with Orrick attorneys, Tim McDermott (outside counsel for the City), Bob Hunzinger (former General Manager for Utilities), John Stanton (General Manager for Energy Supply), Jennifer Hunt (former GRU Chief Financial Officer), Skip Manasco (former Utilities Attorney), Marion Radson (former City Attorney), Lewis Walton (GRU Marketing and Communications Manager), Ed Reagan (former GRU Assistant General Manager for Strategic Planning), JoAnn Dorval (GRU Purchasing Manager) and Mark Benton (City Finance Director). In addition, on Friday, November 8th, the former General Manager of Utilities provided his file on this matter to the Interim General Manager and this Office reviewed that file as well.

Facts and Legal Analysis

Section 3.2 of the PPA provides for an adjustment in Contract Prices if there is a Change in Law, it reads as follows:

"3.2 Change in Law. The parties recognize and agree that the Contract Prices are based on the current regulatory requirements for generating and selling the Products. A "Change in Law" shall be a change in any applicable law, regulation, permit, ordinance, market rule, or order of any governmental or regulating authority, market regulator, court or arbitration tribunal enacted

after the Effective Date where such change in law specifically increases or decreases the actual cost of generating and selling the Products, but it shall not include any such change in law that is not specifically directed toward generating facilities or which just has general economic effects that indirectly increase or decrease Seller's costs, nor shall it include any change in law with respect to Production Tax Credits, Renewable Energy Grant or Investment Tax Credits. If there is a Change in Law, then the Contract Prices shall be equitably adjusted to cover the additional costs, or pass on the additional savings, associated with generating and selling the Products. No claim for extra compensation based on a change in law that results in an increase in Seller's costs shall be presented by Seller or considered by Purchaser unless Seller shall first have provided written notice of such claim to Purchaser. No claim for a reduction in payments shall be presented by Purchaser or considered by Seller unless Purchaser shall first have provided written notice of such claim to Seller. Receipt of such notice shall in no event constitute acceptance by either Party of the validity of such claim for extra compensation. In the event of a dispute over a claim for extra compensation, Seller represents and agrees that it shall promptly and without interruption proceed with the generation of Products while any claim for a change in Contract Prices is being resolved. Seller shall comply with any Change in Law in the most effective commercially reasonable manner."

In June 2010, American Renewables (the predecessor to GREC) began to communicate with GRU staff concerning certain emissions requirements of FDEP that American Renewables believed to constitute a Change in Law. It appears that the former AGM for Strategic Planning agreed that a Change in Law occurred; however the GM for Energy Supply and the former Utilities Attorney disagreed. This Office was unable to determine whether the former General Manager for Utilities believed a change in law occurred. He stated only that he believed the PPA Amendment was necessary at that time to resolve a dispute and keep the project on track. On November 15, 2010, American Renewables sent a detailed memorandum re: Changes in Regulatory Environment to GRU staff (attached as **Exhibit "A."**) In response, the former Utilities Attorney requested an opinion from outside legal counsel regarding whether a Change in Law had occurred. On December 20, 2010, the Orrick Memo was issued (attached as **Exhibit "B"**) and it concluded "[t]he FDEP's decision to require the use of a SCR system does not fall within the change-in-law provision because there was, quite simply, no change in law."

It appears that throughout January and February 2011, American Renewables staff and GRU staff continued to communicate regarding FDEP's regulatory requirements and purported change in law. On March 15, 2011, American Renewables provided a written memorandum to GRU for the purpose of putting GRU on written notice of a claim under Section 3.2 Change in Law of the PPA (attached as **Exhibit "C."**) It appears that on or about that date, American Renewables also provided a draft of the PPA Amendment.

The PPA Amendment appears to be a settlement agreement as it is described in the Whereas clauses as a "full satisfaction of any claims arising out of Changes in Law that have occurred" and contains an entire section titled "Full Satisfaction of Change of Law Claims." However, its effect is to amend the PPA by increasing certain PPA contract prices by \$4.40/MWh and obligating GRU, to the extent not funded by grants received, to fund the cost of connecting the

biomass facility to the reclaimed water system of the City of Alachua. The PPA Amendment was signed effective as of March 16, 2011 by the former GRU CFO (at the direction of and in the absence of the then General Manager for Utilities) and was approved as to form and legality by the former Utilities attorney (attached as **Exhibit "D"**).

The PPA Amendment was not placed on a City Commission agenda or approved by the City Commission. However, one of the Whereas clauses in the PPA Amendment states that by action of the City Commission on May 7, 2009, the General Manager of Utilities has been duly authorized to implement the PPA on behalf of the City and to execute and deliver any instruments in connection therewith. It appears that a copy of the PPA and the PPA Amendment were provided to the City Commission shortly before April 6, 2011 via a memorandum from the GRU Marketing and Communications Manager (attached as **Exhibit "E"**), which stated that the packet to the Commission included "[t]he Equitable Adjustment Agreement to accommodate new state and federal regulations." This Office located an unsigned version of this memo in the file of the former General Manager for Utilities and was unable to determine whether it was actually delivered to the City Commission. However, a GRU e-line news release was sent via email to the City Commission and the news media on April 6, 2011 (attached as **Exhibit "F"**). The news release discusses the un-redacted PPA and briefly mentions the PPA amendment as follows: "GRU was also able to release today an adjustment to the power purchase agreement that addresses negotiated costs associated with recent changes in federal environmental regulations and state permitting requirements. Hunzinger said the changes will have a minimal impact on customers."

Under Florida law, an ultra vires act is one that is unauthorized; beyond the scope of power allowed or granted by a corporate charter or law.¹ Generally speaking, each City Charter Officer derives his authority from the City Charter, from adopted City Policies and Procedures and from specific action of the City Commission. So here, it could be argued that the General Manager derived his authority from: 1) the City Commission action on May 7, 2009 (as stated in the Whereas clause of the PPA Amendment), or 2) the City's Purchasing Policies.

As to 1, the item before the City Commission on May 7, 2009 was the draft PPA that GRU staff had negotiated with GREC. Pursuant to the recommendation for that item, the City Commission received a presentation, approved the executed PPA and "authorized the General Manager or his designee to execute such documents and take all steps as may be necessary to implement the terms of the PPA, including but not limited to filing of all required applications with jurisdictional governmental bodies and agencies; and the lease of and easements over portions of the Deerhaven Generating Station site necessary for the construction and operation of the biomass generating plant." However, a plain dictionary definition of "implement" means to carry out or give practical effect to a decision already madeⁱⁱ, it does not mean to amend the decision, nor does it mean to settle legal claims arising out of the decision.

As to 2, Article III, Section 3.01 of the City Charter vests the Charter Officers with the authority to purchase and contract for services required to perform their assigned duties subject to the rules adopted by the City Commission and grants the Charter Officers the authority to bind the City

for all purchases unless prior approval of the City Commission is required. The City Commission adopted such rules (the "Purchasing Policy") on December 11, 2006 by Resolution No. 060732. Section 7 of the Purchasing Policy states that every purchase in excess of \$50,000 requires approval of the City Commission. Section 7 also provides certain exceptions to that general rule. One of the exceptions is "any adjustment to a contract previously approved by the City Commission . . . which constitutes an addition to the purchase amount of ten (10%) percent or less of the previously approved amount."

In addition, City staff and GRU staff have promulgated Purchasing Procedures to implement the Purchasing Policy. Section 28 of the GRU Purchasing Procedures Manual addresses modifications to contracts and states that "[f]or . . . contracts that have City Commission approval, changes up to 10% above the City Commission approval amount is allowed without additional City Commission approval."

In discussing this exception with both the GRU and City Purchasing Departments, it appears that the 10% exception was intended and has been used for amendments to contracts for which funds were already budgeted (either in a department budget or in project contingency) or for which the department is obtaining City Commission approval of a budget amendment for the increase in the cost of the project. The Purchasing Departments did not believe it was intended, nor has it been used, for contract amendments where no money is budgeted or no budget amendment is sought to cover the increase, such as the PPA Amendment which will require future rate or fuel adjustment increases to cover the increased cost.

Section 7 of the Purchasing Policy requires that reports be made to the City Commission of purchases greater than \$50,000 for which approval of the City Commission is not required pursuant to the Purchasing Policy. To comply with this requirement, GRU Administrative Services issues monthly memoranda to the City Commission.

In this case, the amount of the PPA amendment is approximately \$106.1 million; which exceeds \$50,000; however, since the amount to be paid over the 30 year term of the PPA is approximately \$3.1 billion, the PPA amendment represents an increase of less than 10%. The PPA Amendment was not disclosed to the City Commission in a monthly purchases memorandum. As such, it does not appear that the former General Manager for Utilities was relying on the 10% exception in executing the PPA Amendment without City Commission approval.

It should also be noted that, pursuant to written policy of this Office, all settlements of legal claims that exceed \$20,000 require City Commission approval. So if the PPA Amendment were construed as a settlement, as described in the Whereas clauses and in Section 3, it should have been presented to the City Commission for approval.

Another issue concerns the effect of the former GRU Utilities Attorney approving the PPA Amendment as to "form and legality." Article III, Section 3.03 of the City Charter states that the City Attorney shall endorse contracts, bonds and other instruments as to form and legality. In addition, Section 1 of the Purchasing Policy requires that approval of the City Attorney be

obtained on all written contracts, except where standardized documents approved by the City Attorney's Office are used. However, neither describes the intent or effect of such approval. While the City would argue the purpose is for the City's attorneys to assure the client (the City) that the document is in the proper form and not unlawful, GREC may argue that it relied on that signature as an assurance by the City that the document was properly executed and binding on the City.

In the course of our inquiry into this matter, this Office also became aware of another document that amended the PPA without City Commission approval. This document is titled a "Consent and Agreement" dated as of June 30, 2011 (attached as **Exhibit "G"**) and appears to have been provided in the context of GREC obtaining financing for the biomass facility. This document assigns a collateral interest in the PPA for the benefit of GREC's lender and makes 10 amendments to the PPA (as set forth in section 5 of the document.)

Conclusion and Recommendations

Because the cost of the PPA Amendment exceeds \$50,000 (whether characterized as a contract amendment or a settlement agreement) and was not taken to the City Commission for approval, this Office was initially of the opinion that a sufficient basis existed to file a declaratory action seeking to have the PPA Amendment invalidated as an ultra vires act by the former General Manager for Utilities. However, upon researching the matter further, it is our opinion that GREC would very effectively counter any such claim by the City based on the existence of the Purchasing Policy 10% exception, the written notice of the PPA Amendment that was provided to the City Commission, and that the PPA Amendment was approved as to form and legality.

However, it is up to the City Commission whether it desires to direct the City Attorney to initiate a legal challenge. To that end, with the first post-"commercial operations" payment, GRU staff anticipates placing GREC on notice that the portion of payments attributable to the PPA Amendment are being paid under protest, pending City Commission action on this matter.

This Office has identified a number of process improvements that may help prevent a similar situation in the future. They are as follows:

- 1) Foster a clear understanding that the Utilities Attorney works under the direction of the City Attorney. This recommendation has been fully implemented by the City Attorney and the Utilities Attorney upon the departure of the former General Manager for Utilities and with the cooperation of the Interim General Manager. The Utilities Attorney now has an office within the City Attorney's Office and maintains office hours on location at GRU, similar to the Assistant City Attorneys that serve as the Police Legal Advisor and the CRA Attorney.
- 2) Amend the City Purchasing Policy (and the City and GRU Purchasing Procedures, if necessary) to clarify that the 10% exception applies only when there are budgeted funds to cover the cost of the increase, and/or specify a monetary cap on the exception.
- 3) Amend the City Purchasing Policy to clarify that approval of the City Attorney as to form and legality shall be required on all contracts and that such approval is provided only for

the benefit of this City and is not a representation or warranty made for the benefit of any other party and should not be relied upon for any purpose by parties contracting with the City.

¹ Liberty Counsel v. Florida Bar Board Governors, 12 So3d 183, 191 (Fla. 2009)

² Merriam-Webster online dictionary, <http://www.merriam-webster.com/dictionary/implement>

JC Casarez

From: Cole, Jonathan H. <jcoile@orrick.com>
Sent: Wednesday, June 15, 2011 11:05 AM
To: Manasco, Skip; McNeill, Shayla L; Lyon, Carl F.
Subject: GRU - Consent Update

I had a discussion with Stephens at Cadwalader regarding the consent. The gist of the call was that he wanted to run interference for the banks and negotiate the consent. He wanted to cut back a few things to make the revised consent go over easier with the banks. While we did discuss the consent a bit, I told him to just send it over as is to the Milbank and the banks and only committed that we would make ourselves available as promptly as we could to deal with concerns and issues that they raise. He was disappointed, but I didn't want to negotiate with him on issues that are really the banks issues. That said, he reiterated that he thinks the banks will need a direct damages formulation. He also said that as to GRU having the right to provide fuel, the banks initial desire was to eliminate that right entirely from the PPA. They were apparently uncomfortable from a business perspective with GRU being a fuel source. He suggested that giving them the right to review GUR fuel source contracts was a nice compromise.

Stephens guess that Milbank will want to talk either today or tomorrow.

Regards



NATHAN COLE
Attorney At Law

ORRICK, HERRINGTON & SUTCLIFFE LLP
51 WEST 52ND STREET
NEW YORK, NY 10019-6142

tel 212-506-5038
fax 212-506-5151
mobile 917-673-7107
jcoile@orrick.com
bio | vcard
www.orrick.com

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McNeill, Shayla L

From: Radson, Marion J.
Sent: Thursday, June 30, 2011 5:14 PM
To: Manasco, Skip
Cc: McNeill, Shayla L; Hunzinger, Robert E
Subject: RE: GREC Financing

Categories: Red Category

Skip,

We are all appreciative of your work and dedication to this project and for the extra effort to close this deal prior to your departure. Now enjoy your retirement secure in the knowledge that you have left GRU in excellent shape and condition, and Shayla is ready to take the helm.

*Marion J. Radson
City Attorney
City of Gainesville
(352) 334-5011
Fax (352) 334-2229*

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From: Manasco, Skip
Sent: Thursday, June 30, 2011 2:31 PM
To: Radson, Marion J.
Cc: McNeill, Shayla L; Hunzinger, Robert E
Subject: GREC Financing

Marion,

This morning we participated in the closing of the financing of the GREC, LLC, biomass generator and fund transfers implementing the closing are being exchanged this afternoon. The City/GRU role in the closing was completed with our release of signatures to the consents to collateral assignments of our PPA, interconnection agreement and lease together with the delivery of the certificate of insurance required of GRU under the PPA.. Construction will now proceed in earnest. Bob Hunzinger is getting an advisory message out to the CCom shortly.

Skip
Raymond O. Manasco, Jr.
Utilities Attorney
Gainesville Regional Utilities
P.O. Box 147117 Sta. A-138
Gainesville, FL 32614-7117
352-393-1010
FAX 352-334-2277

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City of Gainesville

City Hall
200 East University Avenue
Gainesville, Florida 32601



Meeting Minutes

Thursday, May 7, 2009

1:00 PM

City Hall Auditorium

City Commission

Mayor Pegeen Hanrahan (At Large)
Mayor-Commissioner Pro Tem Scherwin Henry (District 1)
Commissioner Lauren Poe (District 2)
Commissioner Jack Donovan (District 3)
Commissioner Craig Lowe (District 4)
Commissioner Thomas Hawkins (At Large)
Commissioner Jeanna Mastrodicasa (At Large)

Persons with disabilities who require assistance to participate in this meeting are requested to notify the Office of Equal Opportunity at 334-5051 or call the TDD phone line at 334-2069 at least two business days in advance.

ADOPTION OF THE REGULAR AGENDA

[Play Video](#)

*MOTION: Commissioner Lowe moved and Mayor-Commissioner Pro Tem Henry seconded to adopt the Regular Agenda, as modified.
(VOTE: 7-0, MOTION CARRIED)*

MODIFICATIONS:

- 1. File #081036 - Evaluation of Biomass-Fueled Generation Facility Proposals (Revised ppt. submitted).*
- 2. File #080701 - Summer Heat Wave 2008 Final Report Update - (Withdraw from the agenda).*
- 3. New Item - File #090003 - Approval of Additional HOME Program Funds to Gainesville Community Ministry, Inc. to provide Emergency Relocation Assistance (Add to the agenda).*
- 4. File #080748 - Urban Services Report for Tax Parcel Numbers 07176-020-000 and 07176-020-001 (Idylwild/Serenola Area) - (Continue this item to the June 18, 2009 City Commission Meeting).*
- 5. Mayor's Committee Assignments - (Add to the Regular Agenda).*

CHARTER OFFICER UPDATES

GENERAL MANAGER FOR UTILITIES

[Play Video](#)

081036. Evaluation of Biomass-Fueled Generation Facility Proposals (B)

On May 12, 2008 the City Commission authorized the General Manager to negotiate and execute a purchased power agreement (PPA) for the output of a nominally 100 mega-watt (MW) net power plant, fueled with biomass and located on the Deerhaven Power Plant site. Negotiations have been successfully concluded, but because of adjustments to the initial proposal to reflect changing fuel prices, demand for electricity, and power plant construction costs, the General Manager has decided to advise the City Commission of these negotiated changes, their economic implications and to submit the executed PPA to the Commission for final approval.

[Play Video](#)

General Manager for Utilities Bob Hunzinger, Assistant General Manager for Strategic Planning Ed Regan, and American Renewables Representative Jim Gordon

gave presentations.

Chair Hanrahan recognized Rob Brinkman and Walter Willard who spoke to the matter.

RECOMMENDATION *The City Commission 1) receive a presentation from the General Manager and staff regarding the Power Purchase Agreement (PPA) between the City and Gainesville Renewable Energy Center, L.L.C. for power generated by the nominal 100MW biomass generating plant; 2) approve the executed PPA; and, 3) authorize the General Manager or his designee to execute such documents and take all steps as may be necessary to implement the terms of the PPA, including but not limited to filing of all required applications with jurisdictional governmental bodies and agencies; and, the lease of and easements over portions of the Deerhaven Generating Station site necessary for the construction and operation of the biomass generating plant.*

A motion was made by Commissioner Lowe, seconded by Commissioner Poe, that this matter be Approved as Recommended. The motion carried by the following vote:

Votes: Aye: Craig Lowe, Jack Donovan, Lauren Poe, Scherwin Henry, Jeanna Mastrodicasa, Thomas Hawkins and Pegeen Hanrahan

081036_MOD_Revised_Biomass_ppt_20090507.pdf

RECESS - Approximately 2:45 PM

RECONVENE - Approximately 2:47 PM

CLERK OF THE COMMISSION

081018. Election Date 2010 (NB)

[Play Video](#)

Continued to the next City Commission Meeting (May 21, 2009).

RECOMMENDATION *The City Commission select April 13, 2010, for the 2010 City of Gainesville Election and authorize the City Attorney to draft and the Clerk of Commission to advertise an ordinance.*

Continued

081018_MOD_20090521.pdf

081018_draftordinance_20090604.pdf

CITY MANAGER

GREC

107

\$ Carl Lyon Oreck

3 June 11

TLC w/ Jonathan Cole (212) 506-5038

@ 10 am

Municipal
Financing
Premier
Aim

- loan closing of June 17th
- lead bank Bank of Tokyo Mitsubishi
- banks have some concerns to handle in consent document
- this is very standard b/c its main asset of the borrower for banks to change terms of PPA thru consent agreement

Purchase Option in year 29

now lay is
ground
lease?
not years
from 2009

- buyout option can put tax strain which falls on GREC side of table if PPA were characterized as a lease.
- nuanced \$ has a lot of factors that you don't always see enumerated this way
- could always make offer outside of purchase option
- clause 4 present value going forward. They arguably could say why 13 yr period? shouldn't we look at
 - ↳ this is a low discount rate, so its helpful
- 10% discount rate - could have appraiser choose a rate at the time

safe
harbors

- 4 factor test since its a renewable resource → have tax guys look at it independently of lenders

Damages

- classic way to prove damages, sell it to someone else, \$ damages are diff b/c what sell it for vs. what you thought you could sell it for.

* Ask to make sure there is not second round of tax consent.

are they planning
Are they bringing tax equity in? a tax equity deal? If so, we could get another consent agreement. If they are doing a grant, they don't get tax equity. If doing the grant, have depreciation to monetize.

Appendix IX § 1.6

Capacity test - have to prove they built facility to standards
if not, makes sense to modify K to whatever the facility is producing

banks want to make clear that
(pg. 29) § 25.1.2 Cross Default Clause - GREC's failure; do they have to cure past defaults^{tr} or future defaults only; lenders should be able to foreclose if GREC's not delivering
approx
- 500M to build

GRFC/GRU Lease.

- Standby, Supp. & Startup Power Agmt --

Large Generator Interconnection Agmt

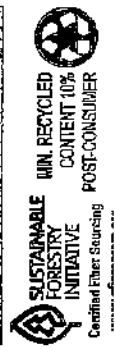
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KEEPING YOU ORGANIZED

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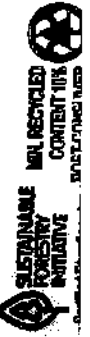
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KEEPING YOU ORGANIZED

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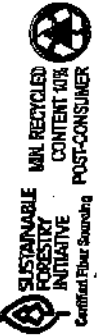




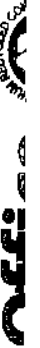
KEEPING YOU ORGANIZED

No. 10384

2-153L



GREC - Letter of Credit



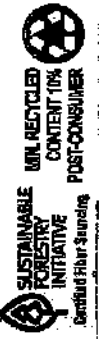
Equitable Adj. Change of Law



KEEPING YOU ORGANIZED

No. 10334

2-153L



MIN. RECYCLED
CONTENT 10%
POST-CONSUMER

McDermott, Timothy (Ptrn-Jax)

From: Jamerson, Kimberly
</O=GRU.COM/OU=GRUADM/CN=RECIPIENTS/CN=JAMERSONK1>
Sent: Thursday, June 30, 2011 4:21 PM
To: EveryoneGRU
Cc: citycomm; Blackburn, Russ D.; Godshalk, Brent L.; Radson, Marion J.; Lannon, Kurt M.; Howard, Cecil E.; gainesvillepio
Subject: e-LINE: Financing Secured for Biomass Plant



June 30, 2011

Financing Secured for Biomass Plant

American Renewables notified us today that it has secured financing for the Gainesville Renewable Energy Center (GREC). Below is the news release GREC distributed this afternoon announcing this important milestone.

GAINESVILLE BIOMASS PLANT COMPLETES CONSTRUCTION FINANCING

The Gainesville Renewable Energy Center (GREC), a 100 MW biomass power plant located in Gainesville, Florida, has successfully raised nearly \$500 million in construction financing. Construction of the plant began in March 2011; completion of this financing allows the project to remain on schedule, with operations expected to commence in late 2013. The successful development of GREC follows that of Nacogdoches Power, a nearly identical 100 MW biomass project located in east Texas, which was developed by the same sponsor team and sold to Southern Power late in 2009.

The non-recourse debt financing is being provided by the Bank of Tokyo-Mitsubishi UFJ, Ltd, New York Branch, as Coordinating Lead Arranger, as well as Natixis, Rabobank Nederland, ING Capital, Credit Agricole, and Societe Generale. Equity is being provided by the parties involved in the development of GREC (Energy Management, Inc., BayCorp Holdings Ltd., and Tyr Energy Inc.), as well as by certain principals of Fagen, Inc., the contractor building the facility. Christopher Smith acted as financial advisor to the project; Cadwalader, Wickersham & Taft acted as counsel to the borrower; and Chadbourne & Parke acted as tax counsel to the borrower.

"Completion of construction financing allows GREC to move forward without delay, ensuring that the Gainesville community will receive the many environmental and economic benefits of this renewable energy facility," said Jim Gordon, President of GREC LLC.

GREC LLC has a 30-year contract with Gainesville Regional Utilities (GRU) to sell all of the electricity from the facility to the utility. Pursuant to the power purchase agreement, GREC LLC will provide notice to GRU that construction on the facility has officially begun. The 100-megawatt biomass plant

will be fueled by clean wood waste that includes the tops and limbs from harvested trees, urban wood waste from landscaping contractors and power line/roadway clearance contractors and residue from lumber mill operations. Power generated from the biomass plant will provide electricity for 70,000 homes.

Fagen, Inc., one of the largest green energy design-builders in the U.S., is the EPC contractor responsible for all engineering, procurement and construction activities of the project; Fagen Inc. is also the EPC contractor for the Nacogdoches Power project; Metso Power, a global leader in fluidized bed boilers is providing and erecting the boiler island; NAES Corporation, the leading independent services provider for the energy markets, will provide operations and maintenance services to the project; and BioResource Management, Inc. a leading biomass management firm with offices in Gainesville, will oversee fuel procurement activities. In addition, Wood Resource Recovery, one of the largest waste wood recyclers in Florida also located in Gainesville, will provide a significant portion of the facility's fuel supply.

Mr. Gordon concluded, "We greatly appreciate all of the tremendous support that GRU and the City of Gainesville has provided during the permitting and financing processes. In addition, we have a huge group of supporters to thank for helping us reach this significant milestone." Organizations that have endorsed the project include the Florida Municipal Electric Association, Florida Wildlife Federation, Southern Alliance for Clean Energy, Florida Forestry Association, Gainesville Chamber of Commerce, Florida Farm Bureau and the Alachua County legislative delegation.

TIMEKEEPERS: PLEASE POST

GAINESVILLE BIOMASS PLANT COMPLETES CONSTRUCTION FINANCING

FOR IMMEDIATE RELEASE

June 30, 2011

CONTACT

Albert Morales, Chief Financial Officer
Gainesville Renewable Energy Center
(603) 767-1297

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###

About the Gainesville Renewable Energy Center (GREC)

GREC is a 100-MW biomass power facility located in Gainesville, Florida, which when operational will supply enough renewable power for approximately 70,000 homes. GREC has a 30-year contract with Gainesville Regional Utilities (GRU) to sell electricity to the utility. The biomass facility will bring significant benefits to GRU and its customers. Biomass energy supplements GRU's and the City of Gainesville's renewable energy portfolio, which includes solar power and an aggressive conservation program. GREC will also meet GRU's need for improved reliability, increased fuel diversity and long-term cost savings for customers. GREC will also bring numerous jobs to the community. More than 700 direct and indirect permanent jobs will be created throughout the region as a result of GREC.

(www.gainesvillebiomass.com)

About Gainesville Regional Utilities

GRU is a community-owned, multi-service utility located in Gainesville, Florida, providing electric, natural gas, water, wastewater and telecommunications services to approximately 93,000 retail and wholesale customers. GRU's combined services make it the most comprehensive utility service provider in the state. GRU is Florida's leading utility in establishing long-term energy efficiency goals and in helping its customers reduce energy consumption. GRU was recently named the top U.S. public utility by the American Public Power Association. (www.gru.com)

JC Casarez

From: Hunzinger, Robert E <IMCEAEX-_O=GRU+2ECOM_OU=GRUADM_CN=RECIPIENTS_CN=HUNZINGERRE@ci.gainesville.fl.us>
Sent: Friday, May 27, 2011 2:46 PM
To: Manasco, Skip; McNeill, Shayla L
Cc: Regan, Edward J
Subject: FW: GREC bank visit - June 1st

Shayla and Skip, FYI. You may want to also attend the early am portion, would be a good way for Shayla to meet some of the GREC group. Thx. bob

From: Josh Levine [mailto:jlevine@amrenewables.com]
Sent: Monday, May 23, 2011 12:36 PM
To: Regan, Edward J; Hunzinger, Robert E; Martin, Ruth C; Henley, Janice J
Cc: Al Morales; Alberto Diaz; Christopher Smith
Subject: GREC bank visit - June 1st

Hello,

I wanted to provide you with an update on what is happening with the GREC bank visit. Janice, we would appreciate it if you could pass along this information to Mayor Lowe as you have been doing in the past. Thank you.

We are still scheduled to have GRU and Mayor Lowe attend our bank meeting on **Wed., June 1st in the morning**. Due to the strong interest among banks (we will have between 7 and 8 banks with multiple representatives from each), our total attendee number is approximately 50 people. For this reason, we have had to reschedule the meeting from the Hampton Inn conference room to some conference space at **ZuZu Restaurant** (<http://www.zuzujolie.com/index.php/about-us>). Their address is:

12 West University Avenue, Gainesville
352-377-9468

I believe it is only a block or so away from City Hall.

We are serving breakfast to folks starting around 7 AM and around 7:30ish, Jim Gordon and our financing advisor, Chris Smith, will welcome folks and give them an agenda for the next day and a half. You are invited to have breakfast with us and be there for introductory statements, though if you are not able to make it until 8 AM, that is fine too (there will still be breakfast as it is a buffet and not a sit-down meal). Here is our schedule for the morning:

- o 7-7:30 AM – folks arrive and breakfast buffet is opened
- o 7:30 – 8 AM – introductory remarks and agenda
- o **8 – 8:20 AM – remarks from Mayor Lowe**
- o **8:20 – 9:15 AM – remarks from GRU and questions and answers with the bank group**

My thoughts on what we are hoping Mayor Lowe can speak about include:

- Welcome to Gainesville
- High-level background on City
- Description of the City's renewable energy goals and energy policy initiatives
- How the GREC project dovetails with these goals and initiatives

- Describe the strong, positive support from multiple City Commissions over the last number of years

My thoughts on what we are hoping that GRU can speak about include:

- Background on GRU (customers, services, generation assets, etc.)
- Financial strength of GRU (bond ratings, bond offerings, etc.)
- Description of how GRU arrived at the decision to pursue biomass energy (some of this might overlap with Mayor Lowe's remarks)
- Description of RFP process that resulted in the award of a PPA to American Renewables
- Description of the deliberation that went into investigating the fuel situation and negotiating the PPA
- Support of GREC project from GRU throughout permitting process
- Description of GRU's renewable energy initiatives and how GREC fits into that (again, there might be some overlap with Mayor Lowe's remarks)

We would like the Q&A session to run at least 30 minutes so if we can keep the prepared remarks to 10-15 minutes that would be ideal. If Mayor Lowe's remarks are closer to 15 min, that would leave from 8:15 to 9:15 for GRU to present and answer questions so there might be more like 30 min for presentation and 30 min for Q&A session. I discussed these thoughts briefly with Ed this AM, but if you have additional ideas or suggestions on any of this, please let me know. We will have a projector and laptop available if you would like to use PowerPoint slides. You do not need to have a presentation if you do not want to.

For the Q&A session, we believe that the items that GRU needs to be prepared to address from the bank group, include:

- Fuel pass-through mechanism and GRU's understanding of how that works
- GRU's understanding of their rights to step in and procure fuel
- GRU's understanding of GREC's current fuel contracting status (i.e. contract with Wood Resource Recovery for 40-45% of total fuel needs and letters of interest from other suppliers that GREC will be negotiating contracts with in the next few months and before COD)
- GRU's understanding of how the PPA will need to be assigned to Lenders at Financial Close and the associated Consent Agreement process

As you can see from the above questions, the banks are very focused on the fuel issue. We do not believe that there will be a lot of in-depth questioning on GRU's financial strength based on its credit rating, etc.

For the rest of the day, here is our schedule:

- 9:15 – 10:30 AM – presentations from Fagen Inc., Metso and Siemens (at ZuZu Restaurant)
- 10:30 – 10:50 AM – drive over to GREC site in buses
- 10:50 – 1 PM – GREC site tour
- 1 – 2 PM – Lunch break (catered BBQ from David's at GRU DGS conference room)
- 2 – 3:30 PM – presentation on GREC fuel supply by Antares and Bio-Resource Management (GRU DGS conference room)
- 4 – 5:30 PM – tour of Wood Resource Recovery concentration yard (off Rt. 121 east of Deerhaven)
- 7 – 9 PM – Cocktails/dinner (Paramount Grill - 12 Southwest 1st Avenue, Gainesville)

As I mentioned to Ed on the phone this AM, you are welcome, but not expected, to attend other parts of the day. I would just ask that you let me know what you are thinking so I make sure that our numbers are correct for meals, etc.

In advance, we greatly appreciate all of your assistance in helping us show the potential lenders what a strong project and good investment the GREC project is. We look forward to seeing you next week.

Best, Josh

Joshua H. Levine

Director of Project Development

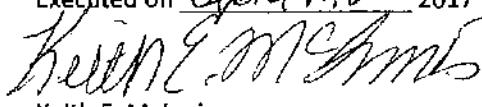
American Renewables, LLC
75 Arlington Street
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Boston, MA 02116
617.482.6150 (x117)
617.233.2939 (mobile)
617.482.6159 (fax)
JLevine@AmRenewables.com

AFFIDAVIT OF KEITH E. MCINNIS

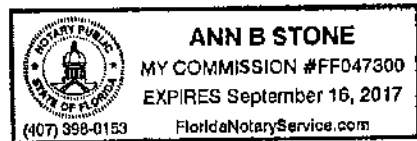
I, Keith E. McInnis, make the following affidavit:

1. I am over 18 years of age and understand the obligations of an oath.
2. I am the currently employed as an Operations Manager. I was previously employed as a Deputy Sheriff
3. In mid-2011, to the best of my recollection in June, at about 9 p.m. one evening I overheard and took part in a conversation at the bar of The Top restaurant in Gainesville Florida. Those who participated in the conversation were myself, then-GRU General Manager Ed Regan, whose identity I knew, and two other individuals with whom I was not familiar at the time.
4. Two individuals sharing drinks with Mr. Regan at the bar were a woman, Caucasian approximately 5'6" tall with light hair approximately 40-50 years of age a younger man of Asian descent whom I had a strong impression was Japanese but did not know him. He was above average in height for a Japanese, approximately 5"10" with broad shoulders and a distinctive square jaw. He was wearing a grey jacket and quite well dressed. Unusually well dressed for this venue and our community. I was told by Mr. Regan that they were lenders from New York. Mr. Regan was previously known to me from a Startup Gainesville and/or GAIN Net event where I made his brief acquaintance. I may be able to identify the woman if I were shown a photograph of her. I have since seen a photograph of Takaki Sakai and confirmed it to be the same person I saw in the Top. Sakai is a director at Bank of Tokyo-Mitsubishi UFJ, and is the man at the bar that night.
5. The subject of the conversation at The Top was a deal involving lenders and a company known as GREC that had contracted with GRU to build a biomass plant in Gainesville. Mr. Regan and the others were sharing drinks at the bar, paid for by Mr. Regan with an American Express Card.
6. I was aware that GREC had contracted with GRU to build a biomass plant in Gainesville. GREC had been recently in the news and I had followed the matter peripherally.
7. After I understood the nature of the discussion I asked the woman why a bank would lend money to build a biomass plant that would not be able to produce electricity very long because it would soon run out of fallen trees to burn. I had seen where the estimates of available wood were based on particularly busy hurricane seasons where unusually large numbers of trees had been downed but that those data weren't representative. She laughed and replied (approximately) 'It doesn't have to work; we get our money no matter what!' She said the agreement was unusual and relieved the lenders of any engineering concerns. I do not remember details of the unusual agreement she referenced, if she described them. She appeared to have become ill and had to run to the restroom.
8. Mr. Regan at some point asked me if I was a GRU customer because if I were that made me a 'stakeholder.' He commented that if I were he could justify paying for my drink. I told him I was a GRU customer. He paid for my neat Irish whiskey (Powers). If Mr. Regan submitted his credit card bill to GRU for reimbursement there may be a record of when this discussion took place at The Top and who participated in it.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 11, 2017 2017

 Keith E. McInnis

NOTARY SEAL AND ATTESTATION





JC Casarez

From: Stephens, Robert <Robert.Stephens@cwt.com>
Sent: Thursday, June 02, 2011 9:57 AM
To: Manasco, Skip
Cc: McNeill, Shayla L
Subject: RE: GREC Project Financing

Great-what number should I call--I can send out a dial in if that would help. Robert

-----Original Message-----

From: Manasco, Skip [mailto:MANASCORO@gru.com]
Sent: Thursday, June 02, 2011 6:36 AM
To: Stephens, Robert
Cc: McNeill, Shayla L
Subject: RE: GREC Project Financing

Robert,
I'll be out of the office most of the day, but should be available 11:00-noon. I will ask Shayla McNeill to join the call.
Skip

Raymond O. Manasco, Jr.
Utilities Attorney
Gainesville Regional Utilities
72-393-1010
Cell: 352-672-2444

Sent from my Windows(r) phone.

From: Stephens, Robert <Robert.Stephens@cwt.com>
Sent: Wednesday, June 01, 2011 7:56 PM
To: Manasco, Skip <MANASCORO@gru.com>
Subject: GREC Project Financing

Chris Smith, who is working with American Renewables, asked me to reach out to you and introduce myself. I'm an outside lawyer helping Chris bring together the project financing for the GREC biomass plant. Tonight we had a call with the lenders on some PPA issues that they are considering. Is there a time tomorrow morning that would work for an introduction and a brief preview of some points that the lenders are discussing?

Robert

Robert Stephens
Cadwalader, Wickersham & Taft LLP
1111 Bagby Street, Suite 4700
Houston, Texas 77002
713.343.7575 Office
713.304.2081 Cell
robert.stephens@cwt.com<mailto:robert.stephens@cwt.com>

JC Casarez

From: Manasco, Skip <IMCEAEX_O=GRU+2ECOM_OU=GRUADM_CN=GRUADM+20ACCOUNTS_CN=MANASCORO@ci.gainesville.fl.us>
Sent: Thursday, June 02, 2011 12:41 PM
To: 'Cole, Jonathan'
Cc: McNeill, Shayla L; Hunzinger, Robert E; Regan, Edward J
Subject: FW: GREC Project Financing
Attachments: Robert G Stephens.vcf

Jon,

For the 10 AM conference call tomorrow morning we will be discussing the following sections of the GRU/GREC PPA with a view toward being prepared to respond to GREC's lenders' requests for clarification, and/or adjustment of the PPA in the consent document that will be forthcoming in the next couple days Robert Stephens, GREC's outside counsel spoke with me this morning and gave me the heads-up. His contact info is attached. Feel free to contact him if you deem appropriate.

>25.1.2

>Taking 25.4, 25.5 and 26.1 together lenders may want to add a process for determining damages.

>Appendix IX, section 1.6 lenders may seek clarification of intent of sentence that begins "Alternatively..."

>Section 27.2.5; there is concern that the methodology for determining Fair Market Value may result in IRS characterizing PPA as a lease. This is perhaps the most serious concern.

We probably will not receive the document until Monday at the earliest, but want to begin our internal conversation ASAP. Joining us on the call will be Shayla McNeill, the incoming Utilities Attorney as I will be going into retirement June 30. I look forward to our call.

Ship

Raymond O. Manasco, Jr.
Utilities Attorney
Gainesville Regional Utilities
P.O. Box 147117 Sta. A-138
Gainesville, FL 32614-7117
352-393-1010
FAX 352-334-2277

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From: Stephens, Robert [mailto:Robert.Stephens@cwt.com]
Sent: Wednesday, June 01, 2011 7:40 PM
To: Manasco, Skip
Subject: GREC Project Financing

Chris Smith, who is working with American Renewables, asked me to reach out to you and introduce myself. I'm an outside lawyer helping Chris bring together the project financing for the GREC biomass plant. Tonight we had a call with the lenders on some PPA issues that they are considering. Is there a time tomorrow morning that would work for an introduction and a brief preview of some points that the lenders are discussing?

Robert

Robert Stephens
Cadwalader, Wickersham & Taft LLP
1111 Bagby Street, Suite 4700
Houston, Texas 77002
713.343.7575 Office
713.304.2081 Cell
robert.stephens@cwt.com

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Bank of
Tokyo
Mitsubishi

Consent Negotiations w/ Banks for ^{financial} transactions 2 June 11 10⁰²
TIC w/ Robert Stephens © 11am

GREC

- finance lawyers for the PPA w/ GREC/GRU
- PPA is piece of collateral to the banks
- cure & take over rights (if Amer. Ren. defaults)
- Millbank standard response forms

§ 25.1.2
of PPA

^{cross} if event of default section, banks want to get rid of this section, Ship thinks its boilerplate & unsure why we added this section GRU will consider the elim. of the §.

25.4

Purchaser Default - Remedy - Am. Ren. prob. thought this was a great provision at the time, but how do you prove damages for a 30 year PPA or renewable energy credit characteristics, nowhere to really compare the value of this PPA. Banks want to put in process to determine damages on this issue. This is something that Robert thinks we could move on this but he hasn't found an acceptable option yet. Banks have requested clarification. Strengths in future for remedies on this deal makes it hard to quantify. NY attorneys assisted GRU during the contract terms. Thinks this is fair request of ^{banks} to see how this works in practice.

Quinlan
CMT
for Brian
Orest
Suzanne
Harrington

TK

Appendix 9 - Initial Testing standards

§1.6 - structure of events of default up above this section, if we don't meet tests as scheduled, GRU would have an option to reset @ the K @ production. If trace the math, GRU could refuse to allow the buydown of damages & GRU could always ~~one~~ negotiate an adjustment. GRU has duty of good faith negotiation & a standard of reasonableness. Technically, if GRU said

What does the
bank see on the
charge? Will they
be able to
pay for it?
to present
to the bank.

we want allow § A.R. to est. new capacity. Bank wants some
clarity on how optionality will be used.

Budget Option- FMV term § 27.2.5 (pg. 33) which involves
bc the K is a 30 yr+ PPA, there's some potential for IRS to
recharacterize this as a lease, not a PPA. There are safe harbors
that if we meet them. Any rt. to purchase facility has to be
at FMV at the time. Some adjusted mechanism will be recommended
to an appraised FMV type of concept. Bank will want a floor
that we can fit into the safe harbor to eliminate the IRS
getting involved in this

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RESOLUTION NO. 060732

PASSED December 11, 2006

A resolution of the City Commission of the City of Gainesville, Florida, amending the Purchasing Policies of the City of Gainesville; providing a transition schedule and providing an effective date.

WHEREAS, the City Commission of the City of Gainesville, Florida (the "City")

adopted Purchasing Policies by Resolution No. 951467 on April 22, 1996; and

WHEREAS, the City wishes to amend the purchasing policies to govern

purchases and sales of supplies, materials, equipment, and services by the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION

OF THE CITY OF GAINESVILLE, FLORIDA:

Section 1. The City of Gainesville Purchasing Policies are hereby adopted in their entirety to read as set forth in Exhibit A, attached hereto and incorporated herein as if set forth in full. The Purchasing Policies adopted by Resolution 951467 on April 22, 1996, are hereby rescinded, except as provided herein.

Section 2. Transition Schedule. The provisions of the Purchasing Policies adopted by this Resolution shall regulate and govern the purchase and sale of supplies, materials, equipment and contractual services of the City made on or after January 1, 2007, or in the case of purchases made pursuant to solicitations, to purchases made as a result of solicitations issued on or after January 1, 2007. Purchases made prior to January 1, 2007, and purchases made pursuant to solicitations issued prior to January 1, 2007 shall be processed and acted upon in accordance with the provisions in effect prior to the effective date of this Resolution.


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Section 3. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 11 day of December, 2006.


PEGEEN HANRAHAN
MAYOR

ATTEST:


KURT M. KANNON
CLERK OF THE COMMISSION

Approved as to form and legality


MARION J. RADSON
CITY ATTORNEY

DEC 19 2006

Purchasing Policy

Section 1: Purpose

The City's Charter, Article III, Section 3.01, vests the Charter Officers of the City with the authority to purchase and contract for supplies, materials, equipment and services required to perform their assigned duties subject to the rules adopted by the commission. The Charter Officers shall have the authority to bind the City for all purchases unless prior approval of the City Commission is required, and may delegate such authority as they see fit. Approval of the City Attorney shall be obtained on all written contracts, except where standardized documents approved by the Attorney's office are used. The policies contained herein as amended shall constitute the regulations which shall govern the sale and purchase of supplies, materials, equipment, and contractual services by the City, which regulations shall be implemented by procedures approved by the City Manager and the General Manager for Utilities (the "Managers"). The Purchasing Divisions of the City derive their authority to supervise purchases and sales through the Managers. Nothing herein shall be construed to regulate the purchase and sale of any interest in real property by the City.

Section 2: Responsibilities of Purchasing

- (a) The purchasing divisions shall assist all departments and divisions, including Charter Officers, in making purchases and sales of supplies, materials, equipment and services in accordance with the policies established by the City Commission and the procedures established by the Managers.
- (b) The purchasing divisions shall provide support to enable all purchases to be made at prices, which are the most cost effective and through the application of sound business practices.
- (c) The purchasing divisions shall maintain records, which document that purchases have been made in accordance with City Commission policy and established procedures.

Section 3: Functions of the City's purchasing divisions

In carrying out its responsibilities, the purchasing divisions shall perform as follows:

- (a) provide customer responsive management of the purchase, receipt, and delivery of materials, equipment and services to support corporate and public operational requirements.
- (b) identify qualified suppliers of materials, equipment and services; develop and maintain bid lists of quality suppliers; add and delete vendors and contractors from the list of qualified suppliers in order to maintain performance standards;
- (c) develop and maintain fair and impartial business relationships with vendors that ensure that quality, cost-effective products and services are provided for the benefit of tax and rate payers; and
- (d) conduct quality control and performance checks as needed to ensure that vendors fulfill contractual requirements;
- (e) supervise the disposition of supplies, materials and equipment by approved processes.

Section 4: Ethics in Public Contracting

City employees shall have no interest, financial or otherwise, direct or indirect, nor engage in any business transaction or professional activities nor incur any obligation of any nature which is in conflict with the City's Code of Ethical Standards and Florida Statutes, Chapter 112 as applicable. To this end, City employees are expected to demonstrate the highest standards of personal integrity in public

Exhibit A

Purchasing Policy

activities and conduct their duties in ways that are free from the inference or perception that favorable treatment was sought, received or given and to avoid any interest or activity which is in conflict with the conduct of official duties.

Section 5: Definitions

- (a) Award Basis. The basis on which the purchase decision is made.
- (b) Best Evaluated Bid. The bid which, through analysis, is determined to be most advantageous to the City considering factors such as qualifications, past performance, stated price, costs of transportation, ownership and operation, elements of service, technical support, product quality, fitness for purpose or design, delivery time and/or time required for performance, warranties, exceptions taken to the specifications or any other basis of award stated in the bid documents.
- (c) City. The operating and administrative departments of the General Government, Gainesville Regional Utilities, and the Charter Officers of the City of Gainesville, Florida.
- (d) City Officials and Employees. City Commissioners, Charter Officers, City Employees, and agents of the City.
- (e) Competitive Situation. Exists if at least two suppliers submit responsive bids in an effort to obtain an award and the receipt of quotations is without prior disclosure of a competitor's quotation; also, the receipt of quotation(s) by auction.
- (f) Contractual Services. Services performed for the City by persons not in the employ of the City including, but not limited to, travel, freight, express, parcel post, postage, telephone, telegraph, utilities, rent, professionals services and the construction, repair, alteration and maintenance of facilities of the City.
- (g) Cooperative Purchasing. Purchases made under the terms and conditions of another public agency's bid where the vendor awarded the bid is willing to supply the items at the agency's bid price or the agency's bid documents provided for purchases by other agencies.
- (h) Emergency Purchase. Any purchase which becomes necessary due to unforeseen circumstances and which affects the operation of the City; or is needed in a life threatening situation or public safety emergency or where delay of the purchase would subject the City to substantial additional costs.
- (i) Formal Bid. A process of bidding, conducted by Purchasing, which sets forth the requirements of a purchase or sale and which is issued by Invitation to Bid, Request for Quotation, Request for Qualification, or Request for Proposal.
- (j) Item. A unit of supplies, materials, equipment, or contractual services; a quantity of the same units purchased at the same time; or, a combination of items which are purchased together because the purchase of one item is required for the use of other(s).
- (k) Lowest Responsive Bid. The lowest bid which conforms in all material respects to the requirements set forth in the bid documents.
- (l) Manager. The City Manager or General Manager for Utilities as appropriate, or their designee.
- (m) Non-competitive situation. Exists when the product or service is purchased from a sole source, a specified source, or an only approved source.

Exhibit A

Purchasing Policy

- (n) Obsolete materials and equipment. Materials and equipment that are no longer used, useable, useful, or cost-effective.
- (o) Only Approved Source. Only one source meets the stated requirements of a specification based on a thorough qualitative and/or quantitative evaluation.
- (p) Professional Services. Services which involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field.
- (q) Purchasing Division. The purchasing organization of General Government or Gainesville Regional Utilities, as appropriate.
- (r) Sole Source. The only source through which materials or services may be purchased.
- (s) Specified Source. A source selected without competitive bidding for justifiable reasons.
- (t) Standard Material. Any material, which is specified in an approved materials manual and routinely stocked for use of any operations department of the City.
- (u) Black out period means the period between the time the submittals for invitation for bid or the request for proposal, or qualifications, or information, or the invitation to negotiate, as applicable, are received at the City of Gainesville Purchasing Departments, and the time the City Officials and Employee awards the contract.
- (v) Lobbying means when any natural person for compensation, seeks to influence the governmental decision making, to encourage the passage, defeat, or modification of any proposal, recommendation or decision by City Officials and Employees, except as authorized by procurement documents.

Section 6: Method of Source Selection

6.1 To ensure the greatest economic benefit to the City, competitive bidding will be used except as provided herein. The requirement for competitive bidding shall be satisfied as long as two or more qualified suppliers submit responsive bids. The value of the award shall determine the bidding process as follows:

- (a) Purchases with an anticipated cost exceeding \$50,000 require Formal Bids submitted through the Purchasing Division;
- (b) Purchases with an anticipated cost of \$50,000 or less, but greater than \$2,000 require a Written Quotation submitted either through the Purchasing Division or the originating department, except that verbal quotations will be permissible for the following:
 - i. Petroleum products;
 - ii. Emergency purchases.

6.2 Best evaluated or lowest responsive bids, as designated by the bid solicitation, will serve as the basis for bid awards in competitive situations. All factors being equal, preference shall be given in the following order to products, manufactured, produced, or distributed by a person, firm, or corporation: 1) with drug-free workplace programs meeting the requirements of Florida Statutes; 2) located within the City of Gainesville, if not subject to the Local Preference Ordinance; 3) located within Alachua County; 4) located within the State of Florida. When the appropriate Charter Officer determines that rejection of all bids is in the best interest of the City, all bids may be rejected and either the purchase discontinued or additional bids sought.

6.3 The following may be purchased without receipt of competitive bids:

Purchasing Policy

- (a) Items of supplies, materials, equipment, or contractual services whose cost does not exceed \$2,000.
- (b) Non-competitive situations.
- (c) Materials, equipment, or services purchased under state or federal contracts or other public agency cooperative purchasing opportunities.
- (d) Utility services when the subject utility is the only available source of such service
- (e) Contractual services of a professional nature whose cost does not exceed \$50,000 , except as required by State law and except for legal services in which case the City Attorney may supply the qualifications of one firm for legal services in connection with litigation involving the City. Continuing contracts for professional services of indefinite duration shall be reviewed for appropriateness with regard to the quality of the service and the competitiveness of the cost. Such review shall be the responsibility of the appropriate charter officer or his/her designee and shall be conducted not less than every five years.
- (f) Emergency purchases, at the discretion of the Manager, where the circumstances of the emergency do not permit sufficient time to obtain competitive quotes.

Section 7: Purchases Requiring City Commission Approval

7.1 Every purchase of an item of supplies, materials, equipment, contractual services, or extension(s) to existing contracts costing in excess of \$50,000 shall require the approval of the City Commission, except that no prior approval shall be required for the following:

- (1) any adjustment to a contract or purchase order previously approved by the City Commission which does not affect the cost, including change of the contract time, or which constitutes a deduction to the purchase amount or which constitutes an addition to the purchase amount of ten (10%) percent or less of the previously approved amount.
- (2) Purchases of fuels used in operating plants and equipment or for the delivery of customer services, including petroleum products and fuel oil for generation; coal meeting environmental requirements at the lowest delivered price per BTU available and the transportation thereof; and natural gas and liquefied petroleum gas at the lowest delivered price per BTU available and the transportation thereof; also natural gas rebates.
- (3) Purchases of materials, equipment or services used for the operation and maintenance of utility plants, and distribution facilities, substations, lift stations and gate stations, and purchases of standard materials.
- (4) Purchases for the repair and maintenance of system-wide computer software and hardware.
- (5) Purchases for the expansion or operation and maintenance of the fiberoptic or other telecommunication systems and contracts for telecommunication access, transport, and other services.
- (6) Used lease vehicles and purchases for the maintenance of fleet equipment.
- (7) Materials, equipment or services purchased under state or federal contracts or other public agency cooperative purchasing opportunities, provided funds for the items have been included in the approved budgets.
- (8) Utility services when the subject utility is the only available source of such service.
- (9) Emergency purchases as defined in Section 5.
- (10) Contracts or purchase orders for construction projects, or professional services associated with construction projects, which do not exceed \$300,000.

Purchasing Policy

7.2 Reports shall be made to the City Commission of any purchase of materials, equipment or services greater than \$50,000 for which prior approval has not been obtained.

7.3 Reports shall be made to the City Commission of any Bid Protest for purchases that do not require approval of the City Commission.

Section 8: Small Business Programs

The Purchasing Divisions shall take affirmative steps to seek out, identify, and work with Small Business Enterprises in accordance with programs and procedures developed by the Purchasing Divisions. As part of these programs, the Purchasing Divisions may waive competitive bidding requirements for the first time order with a Small Business Enterprises in an amount not greater than \$10,000 in order to fairly assess their capabilities to perform in accordance with required standards.

Section 9: Prohibition of lobbying in procurement matters

Except as expressly set forth in section 10, during the black out period as defined herein no person may lobby, on behalf of a competing party in a particular procurement process, City Officials or employees except the purchasing division, the purchasing designated staff contact. Violation of this provision shall result in disqualification of the party on whose behalf the lobbying occurred.

Section 10: Remedies/Appeals

Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract shall comply with the administrative procedures published by the Purchasing Divisions established for bid protest. In the case of purchases that require approval of the City Commission, a bidder or proposer who has exhausted the foregoing procedures may appeal the decision of the City Manager, or other Charter Officer as applicable, to the City Commission, which appeal shall be scheduled by the Charter Officer involved, prior to the award.

The City Commission shall review the decision of the Charter Officer, the record before the Charter Officer, and written or oral argument of the parties involved in the protest. No new evidence shall be considered and the City Commission may only reverse or modify the decision of the Charter Officer upon a determination that his/her decision was not based on substantial competent evidence or that his/her reasoning or application of the policies, procedures and law was fundamentally flawed. The decision of the City Commission shall constitute final administrative action.

Section 11: Sale of Obsolete and Unusable Property

- (a) The sale of obsolete or other unused equipment and materials or the sale of by-products of utilities operations or improvements on real property (such as timber or hay) shall be at the discretion of the Manager. The sale shall be by method selected by the Purchasing Manager as appropriate to reach prospective buyers.
- (b) Any items sold with a current book value in excess of \$10,000 shall be sold by written quotations except when the sale is by auction.
- (c) Obsolete or unusable items with a current book value of \$25,000 or less may be sold in accordance with written guidelines promulgated by the Manager.
- (d) Any items sold shall be for cash, payable by certified check, wire transfer, or other means acceptable to the Accounting Manager.

Purchasing Policy

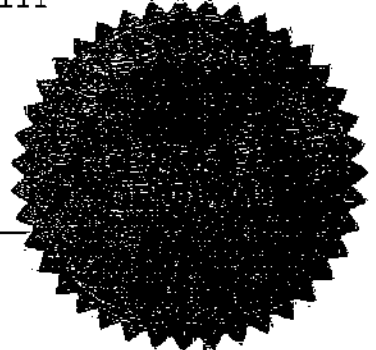
Section 12: Donations of Property

The Manager may authorize and approve the donation to any governmental agency of obsolete or unusable items whose value does not exceed \$7,500 after making a determination that such donation is in furtherance of governmental objectives.

Section 13: Loans, Sales, or Rentals to Other Entities

The Manager may, at his discretion, lend materials, supplies, tools or services to non-City entities. The Manager, or his designee may sell or lease useable materials, supplies tools or services to non-City entities at cost plus overheads. All loans, sales or rentals shall be in accordance with the following criteria: a) when emergency or unusual conditions dictate the need for such sale, rental or loan; b) a community service would be served and the good or service is in sufficient supply that the sale, rental or loan would not impair service to customers or citizens; or c) an agreement entered into by the City contemplates or requires such assistance.

CITY OF GAINESVILLE CITY COMMISSION MEETING IN RE:
EVALUATION OF BIOMASS-FUELED GENERATION FACILITY
PROPOSALS



IN RE: Public Hearing
BEFORE: Gainesville City Commission
DATE: May 7, 2009
TIME: Commenced at Unknown
Concluded at Unknown
LOCATION: Commission Chambers
Gainesville, FL
REPORTED BY: LISA D. FREEZE, RPR, CRR
Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC
2894 REMINGTON GREEN LANE
TALLAHASSEE, FL 32308 (850)878-2221

P R O C E E D I N G S

1
2 MR. LANNON: Evaluation of biomass fuel
3 generation facility proposal with the
4 recommendation of city commission: One; receive a
5 presentation from the general manager and staff
6 regarding the power purchase agreement in the City
7 of Gainesville Renewable Energy Center, LLC, for
8 power generated by the nominal 100-megawatt
9 biomass generating plant; two, approve the
10 executed PPA and preauthorize the general manager
11 or his designee to execute such documents and take
12 all steps which may be necessary to move on the
13 terms of the PPA, including but not limited to
14 filing of all required applications with the
15 jurisdictional governmental bodies and the
16 agencies in the lease of and easements over
17 portions of the Deerhaven Generating Station site
18 necessary for the construction and operation of
19 the biomass generating plant.

20 MADAME MAYOR HANRAHAN: Okay. Thank you,
21 Mr. Lannon. Welcome, Mr. Hunzinger.

22 MR. HUNZINGER: Thank you, Madame Mayor and
23 commissioners. And on behalf of the GRU
24 employees, we'd like to congratulate Commissioner
25 Henry and Mastrodicasa for three more years.

1 COMMISSIONER HENRY: Thank you.

2 MR. HUNZINGER: Bringing forth this recommend
3 today -- recommendation today is a culmination of
4 a long, long process that generated much
5 discussion, not only within the community but also
6 on this commission.

7 We are pleased and excited to bring this
8 recommendation forth today. It's probably the
9 biggest commitment for GRV and the city since
10 Deerhaven 2. And certainly will likely be one
11 of the biggest decision points for many years
12 to come. It will be a key part of our future
13 long-term resource supply; and over the life of
14 this contract, significant benefits will accrue
15 to our customers and citizens and also to the
16 regional area.

17 Now, there have been many a GRU personnel
18 involved in this for a long time. I'd like to
19 recognize some of those today. The core group,
20 now, there's been many, many more and Ed may
21 have a list of additional people. But first of
22 all, Ed Regan and John Stanton were the colead
23 negotiators. And the other members of the
24 group were Skip Manasco, city attorney that
25 works with us. Rick Bachmeier, Ed Hoffman,

1 Jonathan Cole, who is our attorney from Orrick
2 from the bond counsel. And he was a big help
3 and also myself. So also, I'd like to give Joe
4 Wolf some special recognition for all the work
5 he did with the forest stewardship issues with
6 the RUC committee.

7 Since I arrived last March, this project
8 has been the most prominent that I've been
9 working on. And I -- it's probably not been
10 the one that's received the most publicity.
11 That's been the Solar Feed-In Tariff, certainly
12 for the last few months. And -- but it's been
13 almost a year to the date where the commission
14 authorized the utility to negotiate with
15 American Renewables to try to reach agreement
16 on a contract. And, of course, then it was
17 Nacogdoches. They're now named American
18 Renewables.

19 Our initial meeting with them to develop
20 negotiation topics and logistics was the latter
21 part of June in 2008. Since then, there have
22 been countless meetings, phone discussions,
23 conversations, documents back and forth. But I
24 want to just relate one thing: I recall late
25 in the afternoon of a meeting in June last

1 year, we were at the Thomas Center and Jim
2 Gordon, who's the president of American
3 Renewables and I were outside. And we were
4 talking after taking some phone calls and made
5 the commitment to each other that we would do
6 everything possible to make this project a
7 reality with an arrangement that both sides
8 could live with and that if we couldn't, then,
9 you know, we would have given our best
10 opportunity, our best shot and we would have
11 walked away in an amicable fashion.

12 Representatives from American Renewable --
13 American Renewables are here today, and you
14 will hear from them a little later. I would
15 like to introduce them now. On my left, first
16 is Jim Gordon, the president; next to Jim is
17 Len Fagan, who is vice president over
18 engineering and construction operations; Josh
19 Levine, who is the project manager and also
20 with them is Tony Wallace, who is a local
21 forestry industry expert and has been working
22 with them on the fuel supply.

23 Now, as I mentioned, we spent a lot of
24 time working out some rather complicated
25 contractual issues and -- however, there's one

1 issue that's not yet resolved. And Jim and
2 Len, this is the issue. You're avid Red Sox
3 fans and I'm a die-hard Cardinal fan, and I
4 have yet to forgive the Red Sox for sweeping us
5 in 2004 so...

6 MADAME MAYOR HANRAHAN: As long as they're
7 not Tennessee fans -- or Georgia, for that matter.

8 MR. HUNZINGER: But the common ground in that
9 comment is that we are baseball fans. And let me
10 tell you what else that the city of Gainesville,
11 GRU and -- have in common with American Renewables
12 and that is that we have a passion for the
13 environment and a diverse renewable and
14 sustainable energy source that makes economic
15 sense.

16 We've enjoyed working with American
17 Renewables to reach conclusion of this --
18 negotiations. They and all their staff have
19 been very professional. They've been business
20 oriented. They have been open and honest.
21 They have integrity. They do what they say and
22 they say what they'll do. And we appreciate
23 their willingness to discuss and generally talk
24 through any issues with an open mind. We have
25 the utmost confidence that this project will be

1 managed and -- well managed and will succeed.
2 And we're looking forward to working in
3 partnership with them.

4 There are some important timing issues
5 with this project as Ed will go into a little
6 bit. The stimulus package plays a part in
7 this. And certainly there are political
8 issues, both nationally and at the state level
9 related to carbon and renewable portfolio
10 standards. And at this time, I'd like to turn
11 it over to Ed Regan who is going to go through
12 a detailed presentation. Thank you.

13 MADAME MAYOR HANRAHAN: Thank you very much,
14 Mr. Hunzinger, and thank you for your
15 extraordinary leadership on this matter. It's
16 been a real pleasure as you've taken us through
17 it. And Mr. Regan, you are always a pleasure.

18 MR. REGAN: Well, I thank you for that
19 comment.

20 MADAME MAYOR HANRAHAN: If not mind bending.

21 MR. REGAN: Good afternoon, my name is Ed
22 Regan. I'm the assistant general manager for
23 strategic planning for Gainesville Utilities. And
24 I'm going to take you through a presentation on --
25 on this project. And that's a picture of the --

1 actually the unit that's being built in Texas for
2 the city of Austin and the one that we'll get will
3 look an awful lot like this. The trees will be a
4 little bit bigger.

5 MADAME MAYOR HANRAHAN: I was going to say,
6 do they have much grass and trees in that part of
7 Texas? I'm not familiar with it.

8 MR. REGAN: Well, it might be poetic license
9 or artistic license. I'm going to go through the
10 project history a little bit, mostly for the
11 people that are tuning in toward the end of this
12 three-year saga. But probably what I'm going to
13 mostly focus on is the market changes. They've
14 changed a few things since the time when we
15 accepted the proposal and was authorized to
16 proceed.

17 So we had to adjust the original proposal,
18 and there's some details in the contracts that
19 were not in the proposal, obviously, that we've
20 worked out that are important to understand.
21 And we want to give you an update on our
22 economic risk assessment. Then we'll go
23 through our next steps and recommendation.

24 In terms of project history, we actually
25 started working on things in 2003. In 2004, we

1 were talking about a coal plant. And then in
2 June of 2005, the city commission entered a
3 climate protection agreement. And in April,
4 after a lot of different kinds of works and
5 independent consultants, they selected -- the
6 city commission selected biomass of the next
7 generation.

8 In January -- in fact, it was this
9 commission. In January of 2007, we short
10 listed, I think there were 19 different
11 proposals, and the proposal from Nacogdoches
12 was one of those. In May 2008, after a
13 phenomenal turnaround time by all the
14 proposers, really, we selected a proposal from
15 Nacogdoches, who is now American Renewables,
16 which is -- I must say that somebody over there
17 has a great knack for branding things.

18 American Renewables, that's like Standard
19 Oil. The general manager was authorized to
20 negotiate and execute a power purchase
21 agreement at that time, but because of the
22 significant market changes and how we've
23 adjusted to that, the general manager has felt
24 that although we do now have a signed PPA, it
25 is subject to ratification by the city

1 commission after a full disclosure of what's
2 new and different because he felt like there
3 was enough things that changed that you need to
4 know.

5 During that process, we had a very lively
6 discussion with an ad hoc committee and the
7 regional utilities committee; and finally
8 April 9th, 2009, we approved our forest
9 stewardship plan. I'm not going to talk a lot
10 about that tonight. But I think it is
11 something to be very proud of.

12 In talking to people in that line of
13 business, it's the only one like it in America
14 that we've heard of where we're paying an
15 incentive for people to go on to higher levels
16 of forest management and certification and, I
17 must say, some very strict minimum
18 requirements. And then so April 29th, we did
19 close on a contract subject to ratification
20 tonight.

21 So to give a little bit of a background,
22 the facility we're proposing is 100-megawatt
23 net. It will actually have 115 megawatts
24 gross. The power plant will be built on the
25 Deerhaven site. It's a bubbling fluidized bed

1 boiler and steam turbine. The main bottom line
2 there is is that in the whole industry -- I've
3 spent a lot of time talking to different
4 people -- this is the technology of choice for
5 this kind of plant. And I think it's going to
6 serve us very well.

7 It -- the plant will be fitted out with
8 particulate and NOx controls. It will not need
9 to have sulphur controls or any other advanced
10 scrubbers because this plant is dedicated to
11 very clean fuels. You can't put anything in it
12 that has anything treated or nasty or plastic.

13 The fuel is clean wood from timber harvest
14 residuals: Urban forestry and land clearing,
15 mill residue, and storm and disease biomass
16 debris. The bulk of the material will probably
17 come from the first two categories.

18 One of the interesting features of this
19 plant is that the ash can be 100 percent
20 recycled. There's some day storage. There's
21 no plans or need to have ash storage on site
22 because of its commercial value as a -- I
23 believe a fertilizer product.

24 The contract is a pay-for-performance
25 contract. It's very important, as I'm going to

1 describe. It's a 30-year contract. Here's the
2 first big significant change. When we first
3 started negotiating, it was a 20-year contract.
4 And it's fixed pricing, which is to the
5 advantage of our customers.

6 A little bit about the company; that's
7 changed a bit as well. Originally Nacogdoches
8 was a consortium between Energy Management,
9 Incorporated, and Bay Corp Holdings. And I am
10 probably saying this all legally wrong, but you
11 get the idea.

12 What has happened in the meantime -- and
13 there's another company called Tyr Energy, who
14 was actually sort of pegged in the proposal and
15 in our discussions as being the operating arm
16 for the consortium. Since then -- and Jim
17 knows more of the details of how it happened --
18 Tyr Energy happens to be a subsidiary of the
19 Itochu Corporation, when is a Japanese company.
20 And they have acquired a 49 percent share. And
21 we really feel like this has added a lot of
22 financial depth and strength to the
23 arrangement. And frankly, now Tyr Energy has
24 an equity interest in the unit as well as an
25 operating management contract.

1 So we think that was a move to our better.
2 American Renewables will own and operate the
3 Gainesville renewable energy center. This is
4 an important departure in our culture. Up
5 until now, we've always owned and operated our
6 own power plants. This is -- was deemed to be
7 the right way to go on this one -- there's been
8 lots of conversations about it with the
9 commission -- for largely two reasons.

10 One is that we cannot get all of the tax
11 and other financial benefits that American
12 Renewables or a private tax-paying entity can
13 get. And I hope it doesn't come as a surprise
14 to anybody over here, we have been reverse
15 engineering this deal all the way through. In
16 fact, Mr. Hopkin, that was his primary job on
17 this project. And we don't think we can match
18 their price if we did it ourselves. So that's
19 the first important thing.

20 The second thing this is is that this is a
21 little bit different. This is a different fuel
22 market. It's not a liquid fuel market. And
23 what -- with this arrangement, it helps us out
24 in terms of managing our risks and managing our
25 debt service capacity in a very big way. So

1 those are the two main reasons why we are doing
2 this as a power purchase agreement with a third
3 party who actually owns and operates the plant.
4 They will be, by the way, leasing the property
5 on the Deerhaven plant site.

6 Another important feature of this that I
7 can't overstress is that they will playing --
8 paying tangible property tax, and it's a very
9 significant portion of the total bill.

10 The market changes between the time we
11 awarded the proposal to now relate to fuel
12 prices, our loaded energy forecast, and
13 construction cost.

14 Let's see. This is our current family of
15 curves for fuel price forecasting. A few years
16 ago, we were using a forecast that was way up
17 here. Now the family of curves is way down
18 here. You'll notice that the gas prices in
19 particular, which hit an all-time high last
20 year, are now hitting an all-time low. And the
21 reasons for that will vary on who you talk to,
22 but the two primary reasons are, A, a lot of
23 gas supply has been opened up in the Rocky
24 Mountains and B, for whatever reasons, the
25 economic collapse has really destroyed the

1 demand for both oil and for natural gas.

2 Supply and demand, the price is really low. So
3 that has -- this affects our project in that
4 one of the economic values of this plant is
5 what are the -- what is the value of the cost
6 of the fossil fuels that will -- it will avoid.

7 The other thing is you'll notice that the
8 same kind of thing happened in -- in our coal
9 price forecast. And this bottom line here is
10 what our price for coal will be given now we
11 have scrubbers and can use a wider range of
12 fuel types.

13 The other significant factor is a major
14 change in our load and energy forecast. I wish
15 we could say it was all because of our energy
16 conservation programs, but our forecast with
17 the energy conservation last year at this time
18 was this green line up here. And that would be
19 the summer peak demand. Now our forecast --
20 and you can see we didn't hit it last summer --
21 now our forecast is this line down here, which
22 we think is largely due to economic conditions.

23 It has a very significant effect. This
24 new forecast changes when we would otherwise
25 need capacity which changes the present value

1 of the economics for this unit.

2 The same thing has happened to energy
3 consumption, and that's important because the
4 more -- in our system, under our old forecast,
5 this green line, there was a lot more gas being
6 burned in lieu of less expensive coal to be
7 avoided. So it affects economics.

8 Just a quick recap. This is a graph that
9 I know the commission has seen ad nauseam, but
10 we felt like we had to go through it one more
11 time. And what this -- what this shows is from
12 1997 through now, what our actual peak demands
13 have been, which would be these hash bars and
14 then, of course, our forecast in peak demand.

15 The beige color on top of it is our
16 reserve margin requirement to meet our
17 obligations to the FRCC reliability
18 coordinating group in Florida. And this red
19 line here is our generating capacity. And it
20 was mentioned that Deerhaven 2 was a very big
21 financial commitment. And that was what this
22 big bump here was, where you tend to build
23 capacity ahead of your curve. Because our
24 forecast was up in here and you can see that
25 before we put our conservation plans in effect,

1 we were seeing these lines crossing in about
2 the 2012-2011 time frame.

3 After we factored in conservation and made
4 a very strong commitment to that, we forecasted
5 that the lines were going to be crossing in
6 about the 2018, 2019 time frame.

7 But because the line has moved down due to
8 the economic conditions and the best we can
9 forecast, now the crossing point is in about in
10 the 2023 time frame. And so that's something
11 to keep in mind is that after 2023, we've had
12 some fairly large units that -- I'm afraid of
13 pushing the wrong button here -- that are
14 getting to be 40, 50 years old and will have to
15 be retired.

16 And one of the values of this plant is
17 initially it's there for fuel diversity and
18 economy; eventually we're going to need it for
19 reliability. From day one, however, I do want
20 to say that this unit will help us with
21 reliability.

22 During the middle of last year, there were
23 some unprecedented events in the power industry
24 and in the economy in general. And even before
25 that, things were really increasing at a very

1 fast rate.

2 The commission will remember how our
3 scrubbers and the air quality control retrofit
4 for Deerhaven 2 almost doubled in price in
5 just -- just in the year before that. But
6 material cost for -- sky-rocketed -- power
7 generation. The demand increased all around
8 the world. Equipment and construction costs
9 rose, and the dollar continued to fall against
10 foreign currencies, which is important to this
11 project because some of the technologies are
12 being produced by overseas companies.

13 Just a few more -- touching on the
14 horrible things that were happening: Steel
15 prices increased 37 percent from January to
16 June. And overall, the whole -- every --
17 building and everything just went through the
18 roof. Well, what a shock. Nacogdoches, in
19 those days, came back and said: Look, you
20 know, we -- we had this pricing in our
21 proposal, but, look, here are the things that
22 have changed. We just can't do it for that.

23 Well, we had been watching the situation,
24 and we knew that they were not alone in that
25 dilemma, that the whole market was. So, for

1 example, here's a FERC graph showing what has
2 happened to the prices of construction for a
3 wide range of different technologies. And just
4 to kind of put things in perspective, because
5 of our relationship and contractual
6 relationship, we do not know the exact
7 construction cost of this unit. We may never
8 know the exact construction cost of this unit.

9 What we will know now is what gets taxed,
10 but we believe, because we were doing
11 independent research on our own behalf to kind
12 of, again, reverse engineer the deal, that the
13 construction cost of the unit is somewhere
14 maybe at the low end, just around \$4,000 a
15 kilowatt, maybe as much as 45 -- \$4,500 a
16 kilowatt, which would put it in the range of
17 the high end of conventional coal IGCCs, but
18 less than nuclear.

19 But we knew this was going on, and we knew
20 that we were going to be needing capacity, and
21 so we didn't give up. We said: Well, let's
22 keep talking. And through a fairly arduous
23 process -- and everybody on the team worked
24 really hard on this; there was a lot of long
25 weeks -- here's what changed. The pricing --

1 and I'm going to -- this unit is scheduled to
2 come online in 2013. A lot of what I'm going
3 to talk about is 2014 because that's the first
4 full year of operation.

5 And so the 2014 cost per megawatt hour
6 increased from the initial proposal but again,
7 everything else also increased. One of the
8 advantages of the timing is that we're -- that
9 we're able to take advantage of some new
10 economic stimulus incentives. So there's an
11 option to, instead of taking production tax
12 credits, taking an up front 30 percent grant on
13 the renewal energy portions of this project.

14 Now, not all of the project will qualify
15 as renewable energy. I don't think the roads
16 would qualify, for example. But the pricing,
17 if we get the ITC grant under the contract as
18 it is negotiated, the pricing will have gone up
19 18 percent over what we were seeing in the
20 beginning of 2008.

21 To get the grant, the plant has to be
22 online before January 1st, 2014. If it's not
23 online before then -- and there is time in the
24 schedule to do it if we move expeditiously. If
25 not, then the grant is -- we don't believe the

1 grant is likely to be extended or renewed, in
2 which case the pricing will go up about
3 26 percent.

4 Now, one of the things that has been going
5 on in these markets, which is a big run-up in
6 cost and -- but a lot of the -- a lot of the
7 cost components are starting to come down, just
8 like we saw fuel prices going down, steel
9 prices are coming down, all those kinds of
10 things.

11 And the way we've structured this contract
12 is that when we signed the contract, that was
13 -- we call that the strike price on the
14 contract was American Renewables' best guess,
15 based on all the contracts they had in Texas
16 and what's going on in all these commodity
17 markets, us looking at the commodity markets
18 and between the time that we struck the --
19 signed the contract until the time that the
20 construction starts, which is about 18 months,
21 12 to 18 months -- in the meantime, we need to
22 get all the permits and everything else --
23 there's the opportunity for the prices to come
24 down. And that's because we've agreed on a set
25 of indicators or indexes to index all our

1 prices against.

2 So, for example, the -- the family of
3 indicators includes the Euro-to-dollar ratio.
4 That's right, Euro-to-dollar ratio. That has
5 been coming down for the last three or four
6 months. Another one is the Engineering News
7 Record Index from Atlanta, which also has been
8 coming down. But we don't know how fast it's
9 going to come down. We don't know -- it might
10 go up. Something else could happen.

11 So during that time period, we're going to
12 share that risk through this index process.
13 Once the notice to commence is issued, the way
14 that American Renewables is handling this
15 business, they are entering into fixed price
16 construction contracts, which is the new thing
17 in the market these days. And at that point,
18 the prices are fixed. They are fixed for 30
19 years.

20 What -- that's a very important point, in
21 fact. On one hand, you know, what we were
22 trying to do as a negotiating team, at least,
23 on the GRU side is get the maximum value for
24 our ratepayers and our customers. At the same
25 time, American Renewables had to have a deal

1 that would work. And so when we got to the
2 bottom line or the bottom of the bucket on
3 pricing, then term became something we could
4 negotiate. And we actually went from 20 to 30
5 percent -- 20 to 30 years in the term of fixed
6 pricing, but when you see the graphs and
7 curves, you'll understand why that was of
8 interest.

9 There is still the fuel risk share program
10 that we talked about originally when we
11 accepted this proposal. And that fuel risk
12 share means that American Renewables, who is
13 responsible for all the fuel acquisition,
14 will -- if they beat the target price, they get
15 to keep some of the gain, keep about 15 percent
16 of the gain. If they -- if they come in higher
17 than the target price, they have to eat 15
18 percent of the cost.

19 And so there's -- they always have skin in
20 the game. What is a little bit different --
21 that was in the original proposal. What is
22 different now it that the fuel price targets
23 get reset every year, so they could go down,
24 they can go up. But we understand more about
25 how they do their structuring of their

1 contracts, and Jim will talk more about that.

2 But the risks we're really going to be
3 exposed to on their fuel side is really diesel
4 and labor. Now, diesel is only a small part of
5 the production cost, maybe 10 percent of the
6 production cost. Labor is fairly more
7 significant.

8 Diesel, you can hedge against; labor is a
9 fairly stable commodity. There's also a small
10 part of the billing that was going to be fixed,
11 but it -- we've agreed to let it float with
12 CPI, and that's the variable O and M that's the
13 cost for -- a plan of this scale and magnitude
14 will require some chemicals and different
15 things like that. One of their requirements is
16 to buy auxillary power for when the plant isn't
17 running to do repairs and keep the lights on,
18 which they're going to buy from us, and that's
19 indexed to CPI.

20 One of the things that we were successful
21 in doing is we restructured their original
22 proposal, which was a fairly traditional
23 proposal with a capacity payment and an energy
24 payment. And the capacity payment, you pay
25 that capacity payment, you know, month in,

1 month out.

2 We've restructured it to minimize our
3 financial liabilities because we knew what the
4 rating agencies were looking for. If we had
5 stuck with a capacity payment, they'd have
6 looked at those capacity payments over a
7 20-year contract or now a 30-year contract as a
8 financial obligation of the system, and they
9 would have treated it just like bond debt.

10 We would have to run it through the EPIF.
11 We'd have to have the right coverage ratios,
12 and it would impede our ability to finance
13 additional debt for other projects. The
14 restructure deal is 100 percent take and pay
15 contract. We only pay for the energy they give
16 to us.

17 If they are able to make energy and we
18 don't want it for whatever reason, we do pay --
19 we do make them whole on a part of the cost.
20 With that structure, we met with the bond
21 rating agencies. They are satisfied that that
22 meets their criteria that this is a take and
23 pay contract, and we will have achieved our
24 financial objective there.

25 One of the other things -- and the

1 commission will recall that about two years
2 ago, we entered into what we called a prepay
3 contract for natural gas through the Florida
4 Gas Utilities where a third party basically
5 bought a whole bunch of gas and financed it and
6 leveraged tax-exempt financing versus taxable
7 financing to get us a 57-cent discount on all
8 the gas.

9 The fact that we're going into this deal
10 attracted a lot of attention and Jennifer Hunt,
11 who needs to get --- and her staff and Kevin
12 Crawford, they're the ones who have been
13 watching the financial side of the house.
14 They've been looking at the credit ratings of
15 the various parties and spent a lot of time
16 with me, meeting with these banking houses, two
17 of whom are still actually making money, which
18 is a good thing.

19 Some of the banks are now pretty much, as
20 Jennifer would say, disappearing from the face
21 of the earth. And they're ready to go on a
22 prepayment contract, which would make a pretty
23 significant difference in our cost. I'm going
24 to show you that -- that effect -- anywhere
25 between ten and 15 percent and for financial

1 purposes, I'm going to be showing you the
2 effect of a 10 percent savings.

3 One of the -- one of the other -- this is
4 almost a little embarrassing because, you know,
5 frankly -- and I know Josh will attest to this,
6 probably Jim will -- there was a certain amount
7 of wailing and gnashing of teeth and crying the
8 blues and being sad and there's a certain
9 amount of theater that goes along with
10 negotiating this kind of contract.

11 And so -- but I have to sort of tell you
12 what's good about it. And I kind of wish they
13 weren't here to hear it. But one of the things
14 we got was what we call a right of first offer,
15 which means that under the contract, if
16 American Renewables has any indication that
17 they would be interested in selling or
18 transferring ownership of the facility, they
19 have an obligation to tell us and we have a
20 window of time -- I believe it's 90 days -- to
21 prepare an offer. And they cannot sell it for
22 less than that offer. And that -- that is at
23 anytime throughout the whole life of the
24 program. There's also a buy-out option in year
25 29.

1 There's also the ability to renegotiate a
2 contract. And under the buy-out option, you
3 cannot set a price for a buy-out option. Under
4 tax regulations, for us to be engaged in this
5 kind of a contract, any kind of buy-out option
6 has to be at fair market value.

7 So what we have set up in the contract is
8 how you establish fair market value, which
9 basically means their appraiser, our appraiser;
10 they pick an appraiser, we average them, you
11 throw out the high or the low. It gets rather
12 involved.

13 So we're very pleased with that feature of
14 the contract. Now, it leads to the next
15 question, which is: Okay, you know, we're real
16 excited because we believe that while this
17 project is going to be a little bit out of the
18 money, a little bit more expensive than our
19 other alternatives in the early years, it's
20 going to be a really good deal in later years.

21 Well, what happens if it's such a good
22 deal for us and a bad deal for American
23 Renewables that they're losing money hand over
24 fist on this contract? What happens then?

25 First of all, to understand that, the

1 first thing is American Renewables will have no
2 option to sell the energy to anybody but to us.
3 We have 100 percent of the output. There's a
4 lot of ways that we can physically control
5 that, but contractually, that's the deal.

6 Obviously, it's all going to go over our
7 facilities to go anywhere through the
8 transmission system and it's in our leased
9 land.

10 The contract has a very clear dispute
11 resolution process. So everything I'm going to
12 talk about would be in the final extremist,
13 things are really going south. First of all,
14 to remember is that there's going to be a fair
15 amount of equity in this -- in this facility.

16 So what we're talking about here is the
17 ongoing cost for labor, operations and the
18 debt. So if they're losing money and they stop
19 producing energy, the first thing that happens
20 is we have a whole setup of liquidated damages,
21 millions of dollars that they will pay for us
22 because we have to replace the power.

23 If they get really deep into that, there's
24 also performance bonds that they'll have to pay
25 off on. If they, frankly, stop producing

1 energy and say: We can't do this anymore, they
2 are in default of the contract. Once they go
3 into default on the contract, they are going to
4 have a lot of debtors saying: Well, wait a
5 minute, wait a minute. You know, you owe money
6 on this thing. And the way it would work is
7 that it would go into receivership, which -- in
8 which case they would either have to honor our
9 contract or we would be in a great position to
10 take the plant over. And we hope that never
11 happens, but you just need to know that your
12 staff is thinking about that eventuality. And
13 if we do take it over on a bankrupt situation,
14 boy, will we get a good deal.

15 So Jim will never let that happen. So now
16 let's talk about the economic risk assessment.
17 And to do that, we have to go through the
18 project cost and benefits. An awful lot of the
19 benefits for this project are not going to show
20 up on a customer's bill, at least not at first.
21 But they will show up in -- just like we did
22 with the Solar Feed-In Tariff in terms of jobs,
23 money going to the schools, money going to the
24 hospitals, through -- this is a very different
25 kind of proposition than we've done in the

1 past. So it's worth talking about that a
2 little bit. Then we have to talk about the
3 risk factors that could affect the economics.
4 And we -- what we want to do is compare this
5 project to our market opportunities, which will
6 be to buy capacity and energy off of the
7 Florida market, which is going to be -- all the
8 pundits say for the next 20, 30 years, it's
9 going to be off the natural gas combined cycle
10 market.

11 Anybody that builds nuclear is going to
12 put it in their base. Anybody that builds
13 something really -- like a biomass plant is
14 going to put it in their base because this is
15 going to beat out peaking capacity, as you'll
16 see. We've also done long-term generation
17 optimization settings.

18 This commission is pretty aware of things
19 like a EGEAS and how that works. But we're
20 going to only touch on that because it's very
21 complicated and difficult to explain. But then
22 we'll show what the short-term effects on fuel
23 adjustment are and what will happen to that
24 over time.

25 So the project costs, capital, labor,

1 facility maintenance, renewable replacement,
2 that's fixed for 30 years. Twenty years out,
3 they have to replace a bunch of boiler tubes,
4 that's on American Renewables' book. Not our
5 cost, not our responsibility.

6 The variable cost, like the chemicals and
7 auxiliary power, those are indexed to CPI,
8 which we have agreed is a fair way to do it.
9 And we're going to have a wholesale power
10 contract for auxilliary power which is much
11 like all of our other wholesale power
12 contracts; it's actually keyed off what the
13 actual production costs are, just like our
14 wholesale power contract with Alachua, just
15 like our retail service rates where we have
16 fuel adjustment in it, their wholesale power
17 contracts work the same way.

18 In terms of the fuels, that's probably the
19 single largest risk component in this whole
20 thing. The approach that American Renewables
21 will be required to take because of the
22 financing they want to do will be a portfolio
23 of long-term contracts. As I understand it,
24 they typically are indexed against diesel and
25 labor costs. And -- but we still have the part

1 of our contract where we share the price risk.

2 Jim is going to get up after me and
3 discuss that in more detail. One of the
4 questions we keep hearing over and over again
5 on this project: Is there enough fuel? Well,
6 we've done our studies. We're satisfied
7 there's enough fuel. They have done their
8 studies, which they have not shared with us
9 because those are proprietary, but the people
10 -- one of the things we've done to make this
11 process transparent is our staff, Joe Wolf,
12 has gone to the field with Josh, it was another
13 fellow, Ari Mervis and Tony Wallace met with
14 the producers; and it's my understanding that
15 they could easily get 100 percent locked up
16 firm commitments for ten years. But that's not
17 the optimal strategy.

18 There's a strategy where you want to have
19 some swing fuels, so you could take advantage
20 of opportunity fuels and things like urban
21 forestry and stuff like that. So another
22 benefit of this -- it's a cost and a benefit.
23 It is that the American Renewables will have to
24 pay tangible property taxes, which are paid --
25 are going to be a straight pass-through to

1 Gainesville Regional Utilities; however, if
2 there is severe -- severely impaired
3 performance, that -- those taxes will be
4 prorated. Those tangible -- I will go to the
5 numbers on that in a second.

6 It's a pay for performance contract. If
7 they are not making energy, we aren't paying
8 anything. In fact, we don't pay anything until
9 the plant not only comes online but makes
10 Mr. Stanton here happy that they've met all
11 their obligations under the contract for proof
12 of firm capacity and that -- the capacity, the
13 ratings are what they should be.

14 And that's in a -- I must say, I want to
15 compliment John on that. He added a lot of
16 value to the whole process on that. And it was
17 really done in the weeds, and I was pretty
18 impressed.

19 MADAME MAYOR HANRAHAN: Yeah.

20 MR. REGAN: Len was real happy with that.

21 MADAME MAYOR HANRAHAN: I'm just sitting here
22 wishing that you guys had negotiated the contract
23 between the County and Shands.

24 MR. REGAN: But we do have one contract --

25 MADAME MAYOR HANRAHAN: No, no, no, I don't

1 want to get off on that.

2 MR. REGAN: One of the things this plant will
3 do is, obviously, avoid expensive fossil fuels.
4 It will also meet all the anticipated renewable
5 portfolio scenarios we've ever heard of so far.
6 Now, that includes also our solar. But by 2014,
7 we'll be at 50 percent -- I mean, even if we only
8 take 50 percent of the output of this unit, we'll
9 be at 20 percent renewable.

10 The -- one of the -- one of the benefits
11 that we've attempted to quantify, but is a
12 very -- sort of a guess is what the value of
13 avoiding carbon taxes will be and having --
14 having met the renewable energy portfolio
15 standards, what that is worth.

16 The current Waxman-Markey bill, we -- we
17 -- it's so much a ton is a range of the
18 estimates. When you roll it back to megawatt
19 hours, it's 11 to \$15 a megawatt hour. For our
20 work, we've been using 12 as a low ball
21 estimate. But it has not happened yet.

22 So you got to take that with a bit of a
23 grain of salt. This project will create over
24 500 new jobs, some of them at the plant itself,
25 35 to 40 at the plant, the rest of them in the

1 region.

2 So now the -- the tangible property tax,
3 the city of Gainesville will get part of it,
4 about \$1.3 million a year. \$5.5 million will
5 go to other agencies in the county, like the
6 county itself, the school board, the library
7 system, Water Management District. And in the
8 earlier years of this project, as I'll go
9 through in a little more detail, we're going to
10 be -- we're going to have a third-party partner
11 taking some of the energy.

12 So about a half of that \$5 1/2 million
13 dollars a year will be imported from outside
14 the county to benefit all the facilities in the
15 county and to help pay for all the services in
16 the county.

17 Some of the less tangible project costs
18 and benefit is we're going to get cleaner air
19 in the region. And the reason for that is that
20 an awful lot of material that was going to be
21 collected, chipped up and brought to the plant
22 would otherwise be burned in the field.

23 I've heard estimates of 60 or 70 percent
24 of it would otherwise be burned in the field.
25 When you have open burning of biomass, you

1 create a very high proportion for PM 2.5, which
2 we all know is the worst part of, you know,
3 particulate matter, it's the active ingredient
4 of curing hams because those PM 2.5s go in
5 there and make the ham safe to eat in the
6 future because nothing can live there. So we
7 are going to take the wood to a plant that's
8 designed --

9 MADAME MAYOR HANRAHAN: There's a swine flu
10 joke in there somewhere, but I'm not quite pulling
11 it up.

12 MR. REGAN: Well, that's up to Gina, I mean.

13 MADAME MAYOR HANRAHAN: Yeah, Gina worked on
14 that.

15 MR. REGAN: Instead, we are going to be
16 taking this material to a modern facility with
17 proper combustion, control of NOx, and reduction
18 of particulate matter. I mentioned the wood ash
19 will be 100 percent recycled. The plant -- well,
20 to meet the site certification requirements, there
21 will be no surface water discharge of industrial
22 water at all. It's going to be a zero-discharge
23 plant.

24 The plant will reduce landfill
25 requirements. It's going to promote ecosystem

1 restoration and fire-fuel hazard reduction.
2 And at the same time, it's going to support the
3 silviculture industry in this region. As we
4 talked about it, it takes advantage of the stim
5 -- new stimulus bill grants and it provides
6 capacity for the future.

7 Now, here are some of the risk factors.
8 When -- when we first got the proposal from
9 Nacogdoches, now American Renewables, they had
10 a very good explanation as to why they were
11 proposing a bigger unit than other proposers.

12 Largely, it had to do with the economies
13 of scale that we believe in and know are real.
14 And it's by going from a 50 to a 100 megawatt
15 unit, you spend a lot less per kilowatt to
16 build it.

17 And the question then became the fuel
18 supply. And they were confident in the fuel
19 supply, and we were confident in the fuel
20 supply. And in fact, all the Navigant studies
21 for the potential of renewable energy in
22 Florida show that in our immediate region is
23 capacity for up to 500 megawatts. So this is a
24 1 mega -- 100-megawatt plant.

25 However, they said: We want to build a

1 100-megawatt plant, but we really didn't need
2 100 megawatts that soon and especially in the
3 earlier years, because it's a little bit
4 expensive compared to the market.

5 But they also gave us the option to buy
6 all of the output. After discussion with the
7 commission, we all agreed to go for 100 percent
8 of the output, knowing that we could market
9 some of the output from this unit in your
10 earlier years to other third parties.

11 Once we got to a certain point in our
12 discussions where we are pretty much settled on
13 pricing with their permission to disclose some
14 indicative pricing, I then spent a couple of
15 weeks being really busy talking to -- doing my
16 power marketing thing in Florida.

17 We now have three companies that are lined
18 up for this. They are waiting for us to
19 execute this contract and they'll enter a
20 confidentiality agreement, and we'll be able to
21 review all the contracts. The pricing isn't
22 scaring them, in fact, they tend to want longer
23 rather than shorter. And so there are three
24 municipal utilities that are very like-minded.
25 And after discussing it over very carefully

1 with Bob, we're -- we've decided to offer it to
2 them on a basis that makes it very transparent.

3 All the costs are going to be
4 even-Stevenly shared. The benefits to the
5 community -- so there's no arguments about
6 that, the benefits to the community are going
7 to be the tax revenues which accrue to the city
8 as well as to the rest of the agencies in the
9 county and we'll be making money on the
10 wheeling.

11 They, on the other hand, will be paying
12 two wheelings to take it, but even with that,
13 they are very interested in this. We think the
14 probability of not selling this capacity is
15 low. And even then, it's just a question of
16 are we going to be 2 or \$3 off our target
17 price. I mean, and that's even without a
18 renewable portfolio standard being passed.

19 Because the economics on this thing are
20 very key to the value of fossil fuels, we want
21 to show you two scenarios; one is where the
22 fuel prices are high and one where the fuel
23 prices are low. And we -- to show you that the
24 effects of missing the deadline for the ITC
25 grants and the production tax credits.

1 So we'll start off with this thing here.
2 That's a graph between 2014 and 2043, which
3 shows -- it's purple with green. I'm not sure
4 how it shows up in your handout. That's our
5 forecast of what the cost per megawatt hour out
6 of this unit will be.

7 I'll point out that there -- the axis has
8 not been labeled because that's confidential
9 and proprietary information. And it's not to
10 our advantage to, you know, flog that out
11 about. And that assumes we get the grant.

12 Now, here is our -- here's our
13 alternative. And as we discussed throughout
14 this whole process, we had created a market --
15 a market bogey for Florida, which would be what
16 is the price for available firm capacity from a
17 high efficiency combined cycle natural
18 gas-fired unit in Florida? And the reason why
19 that was a good choice is that there's an
20 executive order not to build coal.

21 We do know that this is very different
22 cost structure than nuclear, and fortunately
23 just a few weeks as part of this going around
24 and doing marketing, Florida Power & Light gave
25 me an offer for some firm capacity of

1 3-on-1 G-class facilities; you guys know what
2 that means. And it meant that our -- so we
3 adjusted our market prices down a little bit,
4 so this is a really good view of what the
5 incremental cost for firm capacity and energy
6 in Florida for base-load purposes will be if
7 it's based on natural gas.

8 So you can see in your early years under
9 this scenario, by the fourth year, they're
10 about on par; by the fifth year, the American
11 Renewables plant will be just under the cost of
12 the market.

13 And so that's -- when we talk about this
14 project being sort of front loaded, it means
15 that it's going to be -- there's a premium to
16 pay in the earlier years, but you can see over
17 the long term of this contract, it's a very
18 strong net benefit for -- for the community.

19 The next slide here shows what happens if
20 we don't get the grant. You can see how the
21 American Renewables moves up a little bit. And
22 instead of, you know, crossing over by year 5,
23 we're crossing over in year 6.

24 If there's a carbon tax and this
25 particular offer is for a very efficient unit.

1 Natural gas has low carbon anyway and using
2 the -- the -- the bottom edge of the
3 Waxman-Markey for this particular unit, that's
4 what the carbon taxes would do. You can see
5 that the crossover point moves up in time to be
6 closer.

7 So in the backup, you'll notice that we
8 mentioned the net present value benefit of this
9 facility. And what that's derived from is
10 taking the area under these curves and present
11 valuing them. The low range is \$212 million,
12 and that would be the present value under -- if
13 we don't get the grant and there's never a
14 carbon tax. If there's a carbon tax and we get
15 the grant, it's up to \$492 million net present
16 value.

17 MADAME MAYOR HANRAHAN: That's over a 30-year
18 time horizon?

19 MR. REGAN: It's over 30 years. And,
20 obviously, with your present value and we're
21 using, I think, 7 1/2 percent, the latter year is
22 kind of really heavily discounted. The next
23 scenario here I want to show you --

24 MADAME MAYOR HANRAHAN: Just a moment.
25 Commissioner Hawkins.

1 COMMISSIONER HAWKINS: I'm just curious,
2 Mr. Regan, does that -- does that 212 include the
3 value of the plant if we may take control 30 years
4 down the line?

5 MR. REGAN: We just stopped the financial
6 analysis at 30 years.

7 COMMISSIONER HAWKINS: Okay. So potentially
8 be better.

9 MR. REGAN: Didn't make any assumptions after
10 that. So potentially it could be much better.
11 And I'm going to show you some more scenarios --
12 and we did all that just using our baseline fuel
13 forecast.

14 MADAME MAYOR HANRAHAN: Just to be clear, we
15 wouldn't take the plant; we would purchase the
16 plant. Just to be clear, tempting though it may
17 be.

18 MR. REGAN: Thank you. And I'm sure that was
19 --

20 MADAME MAYOR HANRAHAN: Like in Shands --
21 nevermind. Did I say that? Inside voice, outside
22 voice.

23 MR. REGAN: Now I'm going to take you through
24 what happens if we used it for fuel price
25 forecast. There's our base fuel price forecast.

1 By the way, we assumed, you know, the
2 going numbers for diesel escalation and labor
3 escalation and all that kind of stuff in there.
4 And that's why it's not perfectly flat. And
5 here's our baseline gas alternative forecast.

6 And, like I said, we used a forecast for
7 fuel that was 20 percent higher and 20 percent
8 lower. Now, right now, the forecast we're
9 using is the lowest that it's been in ten
10 years.

11 And our experience has always been that
12 the floor is much closer than the ceiling. So
13 we think that the probability of the fuel
14 prices being higher is greater than the fuel
15 prices being lower, but we just did a
16 20 percent plus or minus to kind of give you
17 the idea.

18 So the next one is if the fuel prices are
19 20 percent lower, it takes longer for the
20 biomass unit to come into the money. Instead
21 of coming into the money by year 5, it's coming
22 into the money by about year 8 or 9. If the
23 fuel prices are high, it's in the money by the
24 second year.

25 So when you are looking four to five years

1 out on a gas price forecast, it's pretty --

2 MADAME MAYOR HANRAHAN: Pretty sketchy.

3 MR. REGAN: -- pretty -- pretty sketchy.

4 That would be a good way of putting it.

5 There's what happens when we -- if we didn't
6 get that particular grant. We also use our
7 EGEAS modeling system, and using that thing, if
8 you assume -- and of course, the EGEAS has no
9 way of taking into account any interest in
10 meeting Kyoto or reducing carbon or any of
11 those other intangible benefits or those other
12 not on the book benefits like in property
13 taxes.

14 It would suggest that the best approach --
15 and, of course, what a EGEAS does is it gives
16 you this technology, so much of this
17 technology, so much of this technology, so on
18 and so forth. As it marches through time, it
19 would say, okay, in 2014, because some of the
20 contracts were rolling out on the Progress
21 Energy, it's saying you should be buying
22 probably about 50 megawatts of this Florida
23 Power & Light deal.

24 And then as time goes on and in another
25 five years, you are buying 25 megawatts of a

1 biomass plant and then a 75-megawatt biomass
2 plant, you know, but...which is not really
3 typically feasible, but it kind of gives you an
4 idea of what your base case would be without
5 this. If we titrated it, we increased the
6 carbon taxes, with the carbon tax as low as \$5
7 per megawatt hour, this plan is the selected
8 plan.

9 The bottom line here is that in the early
10 years, there will be some pressure on fuel
11 adjustment. I'm going to go through that, but
12 everything we are looking at says that over its
13 life, this is a good investment for the
14 community for energy savings and capacity and
15 reliable -- reliability, forgetting all the
16 other benefits, as a straight-up utility
17 proposition.

18 One of the questions we've heard is:
19 Well, how does that compare to a coal plant?
20 And it depends entirely on what you assume for
21 the carbon tax or something like that. Without
22 any kind of carbon taxes, gas is going to be a
23 little more expensive than -- than coal, but
24 you're not allowed to build coal in Florida.
25 So we didn't spend a lot of time trying to

1 quantify that.

2 But this is -- again, we always try to --
3 we always told the commission we are trying to
4 do something that's economic, it's somewhere
5 between gas and coal.

6 MADAME MAYOR HANRAHAN: Could I -- I wanted
7 to pause you on that's because it's a -- it's just
8 something I'm curious about. That has been the
9 determination of the PSC with respect to the
10 investor owned utilities.

11 Do we think that would also -- I mean,
12 just as a theoretical question, do we think
13 that it's just that there's been sort of a
14 chilling effect created by the PSC's actions,
15 or do we really think that the processes that
16 we would have to go through, we would be in the
17 same position that the IOU or IOUs that were
18 turned down for coal production --

19 MR. REGAN: Well, the IOUs actually got
20 approved. And then when Governor Crist came
21 along, he passed an order that, you know, knocked
22 them out. Florida Power & Light had some big coal
23 units on the books: Seminole and then there was a
24 Taylor plant.

25 MADAME MAYOR HANRAHAN: Right.

1 MR. REGAN: More recently what we have seen
2 is Florida Power & Light and Progress really
3 pushing more on a nuclear -- the nuclear front.
4 And in all of their work, they are obviously
5 believing that there will be carbon taxes. And
6 when you -- when you start throwing that in there,
7 nuclear is cheaper than gas; gas is cheaper than
8 coal.

9 MADAME MAYOR HANRAHAN: But just to be clear,
10 do we interpret that there's truly a moratorium on
11 new coal plants or is it more that there's been a
12 chilling effect associated with some of the recent
13 actions of the governor and the PSC?

14 MR. REGAN: Well, in Florida, it's a
15 moratorium. It's not a moratorium in the country,
16 but we have been seeing a lot of coal plants being
17 canceled because of cost overruns and for
18 political reasons.

19 MADAME MAYOR HANRAHAN: Okay. I just wanted
20 to better understand it myself. And there's
21 something else I'm kind of curious about, which we
22 may or may not be able to predict the future but

23 —

24 MR. REGAN: Can I just edit that for a
25 second?

1 MADAME MAYOR HANRAHAN: Yeah.

2 MR. REGAN: I think a lot of companies are
3 thinking you know what, there's going to be some
4 kind of carbon tax, I think, that changes their
5 thoughts.

6 MADAME MAYOR HANRAHAN: Right, right. In the
7 discussion about the renewable portfolio standard
8 that occurred in the Legislature last week --

9 MR. REGAN: Sure, yeah.

10 MADAME MAYOR HANRAHAN: -- I was actually
11 there when they debated it on the floor of the
12 Senate where it passed.

13 MR. REGAN: Yeah.

14 MADAME MAYOR HANRAHAN: And Gainesville was
15 mentioned in a positive light, I will -- I will
16 say by Senator Nancy Detert. One of the things
17 that was being said by many of the advocates was
18 that if Florida does not have a renewable
19 portfolio standard and the federal government
20 adopts as part of its climate change legislation a
21 renewable portfolio standard, that because of the
22 way there are always kind of price relief
23 considerations in there and the way that those
24 were drawn, I think in the draft federal
25 legislation, if a state has an existing RPS, then

1 it's essentially grandfathered and they recognize
2 that.

3 If a state doesn't have an RPS, then the
4 federal law rules. And because of the way the
5 price caps are operating, it would be likely
6 that the least cost solution for Florida
7 utilities would be to purchase wind power from
8 Oklahoma or whatever as opposed to pursuing
9 renewable options here in our state and
10 creating the jobs and the economy, the economic
11 benefit here in our state; do you have any
12 sense of that? I mean, is that a true
13 statement?

14 MR. REGAN: You've got it right.

15 MADAME MAYOR HANRAHAN: Okay.

16 MR. REGAN: And they wouldn't necessarily be
17 buying the power because there's a lot of losses
18 to ship it here.

19 MADAME MAYOR HANRAHAN: Right, right.

20 MR. REGAN: But they would be buying the
21 environmental attributes so that all of the
22 federal proposals create a market for carbon and a
23 market for renewable energy credits.

24 MADAME MAYOR HANRAHAN: Okay.

25 MR. REGAN: There's also another important

1 feature is that under the Florida -- which got
2 morphed into the clean power standard, where to
3 get your percentage, you would back out nuclear.

4 MADAME MAYOR HANRAHAN: Right.

5 MR. REGAN: Municipals were exempt.

6 Under all the federal regulations,
7 municipals are included. And so this whole
8 thing about, you know, are you going to be
9 getting your renewable energy locally or not,
10 it's really a state issue the way this is
11 evolving.

12 MADAME MAYOR HANRAHAN: Well, and that --
13 that was sort of getting -- getting to the real
14 question I had embedded in here is do we have a
15 sense -- I mean, I've been sort of assuming and
16 operating under the assumption that Gainesville is
17 probably better off in terms of the marketability
18 of our excess energy from this plant if the
19 Legislature passes an RPS rather than just waiting
20 for the federal legislation being -- because my
21 perception, again, is that if Florida passes its
22 own renewable portfolio standard -- which, by the
23 way, the governor is still pushing for and has
24 been very supportive of -- that we would be in a
25 better position to market this power to other

1 Florida utilities.

2 MR. REGAN: That is absolutely right.

3 MADAME MAYOR HANRAHAN: Okay.

4 MR. REGAN: It changes the value of that
5 power, definitely. But there's still a strong
6 appetite for it, even without that.

7 MADAME MAYOR HANRAHAN: Yeah, and that's -- I
8 mean, I think, again, people are sort of reading
9 the tea leaves both in Tallahassee and Washington
10 and saying even though Tallahassee got a little
11 stymied this year, Washington will almost
12 certainly take some kind of action.

13 I mean, it may or may not be what we are
14 predicting today, but something is going to
15 happen most likely.

16 MR. REGAN: I guess you -- I was very
17 surprised to see that it went through the Senate
18 in Florida 37 to 1. And, you know, from our
19 experience with the Solar Feed-In Tariff and our
20 customers' willingness to do that is I think the
21 public is ready for this.

22 MADAME MAYOR HANRAHAN: Yeah. And I -- I
23 will also say when I met with the governor's
24 staff, Steve Adams, they were just really
25 complimentary of everything that we are doing. So

1 kudos, again, to our staff.

2 MR. REGAN: We've -- we've actually gone and
3 met with him and explained things. They are very
4 curious. I have requests from a number of
5 communities in Florida that are looking at doing
6 this with the Feed-In Tariff.

7 MADAME MAYOR HANRAHAN: Yes.

8 MR. REGAN: And so it's exciting times. And
9 frankly, I think you should all be very proud
10 because the reason why Gainesville is in the lead
11 is because you guys are putting us there.

12 MADAME MAYOR HANRAHAN: Oh, yes, we know
13 that.

14 (Laughter.)

15 MR. REGAN: So let's talk about the --

16 MADAME MAYOR HANRAHAN: Thank you, though.

17 MR. REGAN: -- the short-term direct utility
18 effects. Obviously, it avoided fuel cost; we've
19 discussed that. We are very confident that we can
20 enter in a prepayment. We've assumed a benefit to
21 that. And then you have to make some assumptions
22 about: What is the value of a renewable energy
23 credit? What is the value of CO2? And then we
24 have the indirect utility build benefits.

25 And the biggest one there and it's awfully

1 significant and the economist in me and the
2 engineering economist in me and others would
3 say yes, that a very real tangible benefit.
4 But it's not going to show up on a -- on your
5 first-year-out fuel adjustment. But that's
6 big, the value of the -- the avoided capacity.

7 And then there's the improved reliability
8 and price stability of this fuel, the value of
9 fuel diversity over volatile gas prices is --
10 is worth a lot, but how do you measure that? I
11 will say that we spend a lot of time every
12 week -- John will attest to this -- trying to
13 mitigate the fluctuations in gas with our
14 hedging programs and other things like that.

15 So volatility is basically bad for our
16 customers. Stability is good. And this is
17 going to be a very stable fuel price. The
18 other community benefits that I'm going to be
19 throwing into here for you to see are things
20 like tangible property taxes, job creation and
21 cleaner air to some -- well, we haven't tried
22 to quantify job creation and cleaner air.

23 But anyway, so we're going to show this to
24 you in two ways. One is what is the dollars
25 per month on a typical 1,000-kilowatt-hour

1 bill?

2 Let me flip over here. And the next way
3 is going to be what is the percentage on a
4 typical 1,000-kilowatt-hour bill. And for
5 those that are true utility wonks, it just so
6 happens that a dollar per month on a bill
7 happens to be the same as the millage of fuel
8 adjustment. So a \$10 effect on a bill is a
9 10-mill fuel adjustment. And I know that there
10 are those on the commission.

11 But, so looking at this graph or this
12 chart here, we -- we took 2014 because that was
13 the first full year of operation and then we
14 went out five years because that's when the
15 lines started crossing, so you could see what
16 that would do. And so if you just look at 2014
17 and if you look at the item in this column,
18 that is the individual contribution of that
19 factor to the utility bill.

20 So even after you get done paying all the
21 bills and everything, the net effect after
22 fuels savings under the base caseload and the
23 energy price forecast would be to increase the
24 bill by \$10.56.

25 That gets mitigated by entering their

1 prepayment by \$2.25, and then we're assuming a
2 very modest CO₂ regulation benefit of 2.22. So
3 now the net effect on the bill is \$6.10. By
4 2019 -- this is very different than a base rate
5 increase. Because once you do it, it's there
6 forever. By 2019, that's down to 75 cents.

7 So it's a very modest amount, especially
8 because it's temporary and put it in
9 perspective, by 2014, there will be -- probably
10 be something like \$3.25 worth of upper pressure
11 from our solar program. But the solar program
12 has a whole lot less energy and it's a lot more
13 expensive.

14 But let's keep going down the list here.
15 When you take into account the avoided capacity
16 benefit, which again will not turn into dollars
17 and cents in 2014, but again, using net present
18 value and levelization, it's worth \$4.73 a
19 megawatt hour, which takes this \$6.10 thing
20 down to \$1.37.

21 When you take into account that half the
22 property tax in 2014 is going to be coming from
23 outside of our community, that adds another
24 1.35 worth of benefit. So now you can see the
25 cumulative effect on the value to our rate

1 payers, if you will, those 2-cents.

2 If we miss the ITC grant deadline, it adds
3 another \$1.48 to the bill. And if the PTC is
4 not extended, it would add another \$3.14. We
5 think it's very unlikely the PTC would not be
6 extended. It's been in place since 1992.

7 You know, there were some years where they
8 let it go, but so far, it's always been
9 extended. Recently was extended fairly --
10 fairly significantly after 2014. But we are
11 very confident that we will -- can make that
12 deadline, but just in case, I needed to show
13 you this.

14 MADAME MAYOR HANRAHAN: And are the
15 production tax credit and the stimulus funding, is
16 that an either/or?

17 MR. REGAN: Yes, you pick one or the other.
18 If --

19 MADAME MAYOR HANRAHAN: So we want the
20 production tax credit, but if we don't get that,
21 we'll take the stimulus.

22 MR. REGAN: Right.

23 MADAME MAYOR HANRAHAN: If we can.

24 MR. REGAN: No, we want -- we want the
25 stimulus, but if we can't get that, we'll take the

1 production tax credit.

2 MADAME MAYOR HANRAHAN: Oh, okay.

3 MR. REGAN: Because -- because the stimulus
4 is a 30 -- it's a 30 percent grant, but it's in
5 lieu of the production tax credit, so most of the
6 value is in the production tax credit. It just
7 happens to be higher value if you take the -- take
8 the...

9 MADAME MAYOR HANRAHAN: Okay.

10 MR. REGAN: So by 2019, you can see when you
11 take those factors into consideration, you are
12 making money or say re -- you're helping to reduce
13 utility bills.

14 MADAME MAYOR HANRAHAN: Relative to the
15 alternative, though --

16 MR. REGAN: Relative to the alternatives.

17 MADAME MAYOR HANRAHAN: -- I think we ought
18 to emphasize. And with respect -- you made a
19 statement about this is more expensive than solar
20 on a unit cost --

21 MR. REGAN: Right.

22 MADAME MAYOR HANRAHAN: -- but not overall.

23 MR. REGAN: Right. We'll be -- we'll be
24 putting a lot more money into this than into
25 solar.

1 Let's see.

2 Now let's take the scenario where fuel
3 prices are 20 percent lower, where as I showed
4 you before, it takes longer for this unit, for
5 the biomass unit to be in the money.

6 So using -- it's the same form of
7 analysis. Just based on the fuel savings,
8 instead of \$10 cost, it's \$12, almost \$13 worth
9 of cost. We still have the prepayment
10 benefits, which are mostly applied to the -- to
11 the non --- well, it will only apply to the
12 biomass plant.

13 So you can see that now your risk has gone
14 from \$6 to about \$8.32. It gets diminished by
15 2019 to \$4. But if you keep marching through
16 it, you can see what the effects are and,
17 obviously, if -- if the forecast is -- is high,
18 this -- this is going to be about an 8-dollar
19 cost on a bill, reducing to 4.

20 But eventually, it will be become a
21 positive thing. If the forecast is high on the
22 other hand, I mean, if the prices actually come
23 in higher than the forecast, instead of a \$6
24 effect on a bill, we're talking about a 3.88
25 effect on a bill. And by 2019, you are

1 actually saving \$2.60.

2 And, you know, obviously, this case,
3 everything is looking really rosy and good.
4 It's really a good investment, which, by the
5 way, it is staff's opinion.

6 Now, if you look at it from the
7 perspective of what is the -- what do those
8 numbers mean in terms of the percentage of the
9 whole bill, given that in mind that some other
10 costs is -- costs are going to be going up
11 including fuel cost, our most likely scenario
12 is that the overall effect of this project in
13 2014 is going to be a 4.3 percent effect on a
14 bill, diminishing to a half a percent in 2019,
15 and then be a savings to the community
16 thereafter, keeping in mind that these numbers
17 don't reflect any of the other kind of benefits
18 we're talking about.

19 If fuel prices are high, which we think is
20 more probable than fuel prices being lower, the
21 story is different: It's only a 3 percent
22 effect and we're actually almost 2 percent
23 lower by 2019.

24 If the fuel prices are low, this will
25 contribute 6 percent to the 2014 bill, 2 1/2

1 percent to the 2019 bill. The good news is
2 that it may not be noticed because all the
3 other parts of the bill are lower. But this is
4 the indivi -- this is not what the bill will
5 be; this is the contribution of this project to
6 the bill.

7 We think it's a good investment.

8 By the time you get closer, already it has
9 affected our corporate modeling and our
10 planning. We had a reserve -- we were
11 anticipating we were going to be needing some
12 capacity even in 2023; we had been building
13 some reserves because you have to have an
14 equity interest in that. That need for an
15 equity interest happening has now been taken
16 out.

17 So our next steps is we need to get the
18 Deerhaven site zoned. It's always been site
19 certified, and only recently have the LDRs
20 changed where we found out when we were looking
21 at some land use changes for the land adjacent
22 to it that we had never zoned the site, and we
23 need to get it zoned. So we are going to get
24 it zoned.

25 We are -- we're doing the zoning in such a

1 way that it would allow ground mount solar and
2 "industrial symbiosis" is the term we were
3 using in our strategic retreat with the
4 commission. What that means if there's a --
5 some kind of a manufacturing process that could
6 use waste, heat or steam or biomass and it
7 would be beneficial to put it there, it would
8 be allowed by zoning right. Of course, the
9 city commission would have over -- final say on
10 anything like that.

11 MADAME MAYOR HANRAHAN: Would that be any --
12 I mean, could it also be ash or --

13 MR. REGAN: It could be.

14 MADAME MAYOR HANRAHAN: -- lime or whatever
15 else?

16 MR. REGAN: Or maybe sequestering CO₂.

17 MADAME MAYOR HANRAHAN: If you figure that
18 out, that would be good.

19 MR. REGAN: We've -- we've -- I've seen
20 plants where they make these paving stones, for
21 example, out of some of the waste products. But a
22 good example would be a cellulosic ethanol plant
23 where they need to take the cellulose, they make
24 high quality alcohol, ethanol from it.

25 The -- the waste on the back end can be

1 pressed and it's of a moisture content you
2 could put it into this boiler. And that would
3 be the kind of thing where you would have a
4 synergistic opportunity in getting a higher
5 quality product out of your cellulose.

6 Let's see. So the zoning is underway,
7 we're doing that. We'll have to get need
8 certification from the PSC. Under Florida law,
9 the -- a private developer can't get need
10 certification. It has to be the load-serving
11 entity. We're the load-serving entity.

12 So we're going to be responsible for doing
13 the need certification. And under the current
14 need certification requirements, we're going --
15 going to be going in there primarily for fuel
16 diversity and economic reasons because the
17 capacity reasons are kind of off the edge of
18 the ten-year site plan, it will factor less
19 importantly, but that would be one of the
20 considerations where the state is actively
21 seeking fuel diversity.

22 In terms of the site certification, that
23 is going to be the responsibility of American
24 Renewables. That will include transportation
25 studies, air studies, water studies, all of

1 those things. And one of the questions we hear
2 a lot is the number of truck -- amount of truck
3 traffic, which I believe in the contract we've
4 agreed to the hours of operation for the trucks
5 and the -- I think it's 140 trucks a day, which
6 winds up being a small percentage of the
7 traffic on 441.

8 And to put it into -- to kind -- to kind
9 of put it in context, the Leveda Brown transfer
10 station is collecting 600 tons a day of biomass
11 and then shipping it up to New River. Our
12 plant is going to be taking in and -- it's a
13 one-way trip. This is a two-way trip.

14 And so it's probably roughly comparable in
15 terms of the amount of truck traffic and, you
16 know, going out all over the road, it's not
17 like you're, you know, squished in by all these
18 trucks bringing in garbage or taking garbage
19 out.

20 To put that in perspective, I think it's
21 eight to ten trucks an hour, which on these
22 major highways, you know, you don't want that
23 coming to your front door, but on a major
24 highway, there's thousands a day, you know,
25 kind of a thing.

1 So they'll have -- American Renewables
2 will have to get financing. And once we have
3 all the permits and the financing, the order to
4 commence construction will start.

5 Once it's constructed, there will be
6 capacity and operational testing. And staff's
7 recommendation is to approve the power purchase
8 contract that we've -- that Bob has signed and
9 authorize the general manager to -- it's going
10 to be a number of -- number of ancillary
11 documents that go along with this, including a
12 lease, a land lease -- question? Oh.

13 -- a land lease, contracts or signing the
14 permit applications and all those kinds of
15 things that we need to do, we're asking for
16 authorization to do that. And with that, I'd
17 like to turn the podium over to Jim Gordon.

18 MADAME MAYOR HANRAHAN: Thank you, Mr. Regan.
19 Welcome, Mr. Gordon. Thank you for being here.

20 MR. GORDON: Well, I'd like to thank the
21 commission and the GRU and the citizens of
22 Gainesville for inviting us here this afternoon to
23 this biomass presentation. I'd also like to
24 commend you on your renewable energy initiatives,
25 but more importantly for your leadership in

1 enhancing energy independence, addressing climate
2 change, creating new green jobs and sustainable
3 economic development.

4 Over the last 16 months, we have been
5 involved in, I would say, very tough, but fair
6 negotiations with Gainesville Regional
7 Utilities. What we have been struck by is
8 their team's constant attention to try to
9 enhance the benefits of this project for the
10 community and the ratepayers. Their attention
11 to detail and their responsiveness, the level
12 of analysis that they have done throughout this
13 whole effort, I think has really made this a
14 better project.

15 We are not only being held to very high
16 economic standards, but also performance
17 standards. As -- as Ed pointed out, this is a
18 performance -- pay-for-performance-type of
19 contract, where many of the risks have been
20 shifted to us. These are risks that we feel
21 confident we have the ability to manage. Our
22 company has been involved for the last 35 years
23 in developing energy projects, and we are very
24 selective in the types of customers that we try
25 to build relationships with.

1 But we are -- we are really proud to be
2 here today in this community. Now, the -- the
3 tech -- you've heard a lot about the technology
4 and the economics, but I want to demonstrate my
5 commitment, our company's commitment to this
6 community that we have a goal to create the
7 best biomass plant in the United States.

8 We -- we feel that we have the technology
9 in partnership with GRU. We also are very
10 mindful that we have certain pressing time
11 frames that we want to meet. We really do want
12 to qualify for this economic stimulus package
13 because it will reduce the project execution
14 risk, the project financing risks.

15 As you know, many of the production tax
16 people that have that tax appetite have kind of
17 significantly diminished because of the
18 economic turmoil. And one of the reasons that
19 the federal government has created this
20 economic stimulus package is that there is a
21 clear signal, not only from the local community
22 here, which has a desire to create more
23 renewable energy, but also from national
24 leadership.

25 They recognize the benefits of renewable

1 energy and most importantly, it's an
2 inexhaustible resource if it's properly
3 managed. It is something that is going to
4 create new jobs and economic development and
5 also will enhance our economic and national
6 security.

7 One of the things that we -- to
8 demonstrate our commitment -- and there was a
9 lot of discussion is can you guys really meet
10 this deadline; and that is, the project has to
11 be in construction by 2010. And we believe
12 that if we can start immediately and we have a
13 local Gainesville surveying company called
14 Genesis that is lined up literally to be on the
15 Deerhaven site tomorrow and start the surveying
16 process.

17 On Wednesday, we have -- we have meetings
18 lined up with ECT; which is a local Gainesville
19 company that we have retained to work with us
20 through the site certification process and to
21 also help us on managing the permitting
22 process.

23 We have also retained a local Gainesville
24 forestry expert, Tony Wallace. And it is our
25 intention to try to seek out as many local area

1 companies to participate. One of the things
2 that we have been known for in other
3 communities is that we try to create as much
4 economic development in this area, and we are
5 already doing that with the consultants that we
6 have hired.

7 Now, we know that this project is going to
8 create over 40 permanent jobs in the operation
9 and maintenance. And our effort and our plan
10 would be to hire locally from experienced
11 people that are in the region. We also know
12 that this project is going to create anywhere
13 from 450 to 550 jobs in the forestry industry.

14 And that's an industry that could really
15 use the jobs but most importantly, use a
16 long-term anchor so that these companies can go
17 out and finance the necessary equipment and
18 know that they have certainty of revenue to
19 help finance their business and grow as we move
20 down the line.

21 Also, during the three-year construction
22 period, at peak of construction, there will be
23 350 skilled laborers working: Pipefitters;
24 electricians; civil, structural engineers;
25 designers working on this project to create

1 more economic development and, obviously, the
2 indirect benefits of that in restaurants and
3 hotels and -- throughout the community has a
4 multiplier effect.

5 We've talked about the technology, but one
6 thing I want to stress is that Gainesville
7 Renewable Energy Center, we want to become part
8 of the community. And, in fact, our vice
9 president of engineering sitting here,
10 Mr. Fagan, will be looking to purchase a home
11 in the area.

12 This is a -- he -- we need somebody on the
13 ground, carefully managing and monitoring the
14 project; besides Mrs. Fagan doesn't want to
15 spend another winter up North.

16 MADAME MAYOR HANRAHAN: You're probably
17 (inaudible).

18 MR. GORDON: And what Mrs. Fagan says --

19 MADAME MAYOR HANRAHAN: (Inaudible.)

20 MR. GORDON: Then Ed -- Ed touched on the
21 sustainable forestry practices. And this is --
22 this is going to be a -- certainly a best practice
23 approach.

24 I also want you to know that Josh Levine,
25 our project manager, is a graduate of Yale

1 University's school of forestry. And basically
2 one of the reasons that he entered into that
3 program is because of his interest in managing
4 natural resources in a sustainable fashion.

5 And that's one thing that our company has
6 a commitment to and that's the environment.
7 That -- that's the reason that we are really
8 trying to build this platform of a biomass
9 company.

10 You also may know that our company has
11 pioneered offshore wind technology. We have
12 worked for the past eight years with federal
13 and state agencies, helping to evolve the
14 regulatory framework for offshore wind.

15 There are certain regions that have
16 renewable resources and different kinds of
17 renewable resources. And Florida has solar and
18 certainly biomass resources. One of the things
19 that you may be thinking about is, well, could
20 there be too many biomass projects built in a
21 region and put too much stress on -- on the
22 forest industry?

23 And let me say that as -- as tough it was
24 -- as tough as it was to satisfy GRU, that, you
25 know, what we were providing made sense and was

1 a well-thought-out plan, the bankers that will
2 finance this plant are also very discriminating
3 and tough.

4 And what Gainesville has done with this
5 project is taken what we call a first-mover
6 advantage. By moving forward with this and
7 establishing this project, we have to not only
8 convince lenders of the forest resources here,
9 but the lending community will look at new
10 proposals that come after us.

11 And at a certain point in time, they will
12 not finance new plants because they will say
13 that within a 75-mile or a 100-mile radius, we
14 think that the fuel supply is pretty tied up.
15 So that's -- that's one consideration to think
16 about.

17 And Madame Mayor, I think you were right
18 on target in thinking about -- I certainly
19 can't prognosticate what the Florida
20 Legislature is going to do, but I can tell you
21 looking at the experience in other states, I
22 don't think --

23 MADAME MAYOR HANRAHAN: We can, but it's
24 normally not worth repeating.

25 MR. GORDON: I -- I -- what -- you know,

1 oftentimes people say: Well, we'll just -- we'll
2 buy renewable energy credits from Iowa or Seattle,
3 Washington. What happens very soon is that the
4 states look and they say: Why should we be
5 supporting economic development in Iowa or
6 Wisconsin when we should have our own renewable
7 energy credit program, renewable portfolio
8 standard so that we can get the regional air
9 quality benefits. We can get the sustainable
10 economic development and the new jobs and get the
11 energy security in our region.

12 So that is -- that is basically the
13 summary of our project. We are very excited
14 about it and it -- it certainly -- I think
15 we've built up a lot of chemistry with GRU, and
16 we look forward to becoming an integral part of
17 the community, moving forward. Thank you.

18 MADAME MAYOR HANRAHAN: Thank you so much,
19 and we very much welcome you here. We feel like
20 we've found an extraordinary partner and one with
21 a deep track record. So we're very much looking
22 forward to this.

23 I also want to just say for the record,
24 because it was a piece of the history that I
25 think in the interest of time got left out, but

1 a couple of years ago, the city of Gainesville
2 really set out to benchmark ourselves against
3 the other leading municipal utilities on energy
4 efficiency renewables and other practices that
5 we thought were worth pursuing. And two of the
6 several utilities we visited were Austin -- and
7 we know that you're building a plant for
8 Austin, the city of Austin as well, and
9 Burlington, Vermont. And it was really
10 Burlington and I see Rob Brinkman with the
11 Sierra Club here. And he was along on that
12 trip. We took a number of citizens with us.

13 But it was Burlington that, I think,
14 demonstrated to us that you can do a biomass
15 plant of this type in an environmentally
16 responsible way with an eye toward enhancing
17 and not hurting the forestry resources in the
18 area. And I think we are achieving that today,
19 and we have you to thank for being the ones who
20 will execute it on our behalf.

21 Commissioner Henry.

22 COMMISSIONER HENRY: Yeah. First of all, I'd
23 just like to thank you for including the local
24 businesses because that's something that's always
25 been very important to us, to essentially share

1 the wealth, so to speak.

2 But my other question is: When it comes
3 to the jobs, I don't know how much control that
4 you would have over making sure that there is a
5 good degree of diversity in the hiring for
6 those jobs and when it comes to the ancillary
7 businesses doing business with you as well and
8 also to -- to not leave out those that might
9 have had, say, a brush with the law, but
10 they're trying to reestablish their lives.

11 I don't know what the policy might be in
12 possibly hiring, I guess, ex-felons or people
13 that have had a problem with the criminal
14 justice system because we find that to be a
15 problem in the city as well as far as those
16 individuals being able to seek gainful
17 employment.

18 And, I mean, if it's just a small
19 percentage, but I just ask if you have some
20 control in the hiring process to, please,
21 consider those populations for the jobs as
22 well. Thank you.

23 MADAME MAYOR HANRAHAN: Thank you,
24 Commissioner Henry. One of the other exciting
25 things, I think, is this is the example -- an

1 example of the type of project that will provide
2 jobs at every level of the employment scale from
3 truck drivers and loggers and, I mean, either
4 through contract or directly to engineers and
5 scientists.

6 So it's sort of exciting to see that
7 continuum because oftentimes you just see jobs
8 within a narrow focus.

9 COMMISSIONER HENRY: Right, yeah.

10 MADAME MAYOR HANRAHAN: So it's great.

11 Commissioner -- is there another
12 commissioner who wished to be recognized?

13 Oh, I'm sorry. Oh, I see Mike.

14 MR. REGAN: We switched the numbers.

15 MADAME MAYOR HANRAHAN: Yeah, my numbers
16 haven't caught up with the movement. Commission
17 Donovan.

18 COMMISSIONER DONOVAN: Thank you, Madame
19 Mayor.

20 I -- the -- thank you for your
21 presentation. That was wonderful to hear and a
22 particular thanks to the staff. That was a
23 really great presentation.

24 I -- I had given the staff a bunch of
25 questions I had, and they answered all of them

1 except maybe one or two, the -- the question on
2 construction costs. I think you answered it,
3 and I think I didn't follow it.

4 So I would -- I'd like -- you know, I had
5 observed in my note that from June '08 to
6 currently -- well, really I -- I said from
7 November till now, the costs have really
8 dropped for construction materials as far as
9 I -- I knew; although, I grant that steel may
10 not have. But I -- I didn't really hear the
11 answer to that, whether that has been put --
12 sort of calculated into the contract.

13 MR. REGAN: Yes. And what that is is when I
14 say -- when we hit our strike price, we are
15 watching all the indicators and the prices and
16 they had originally proposed a much higher
17 percentage increase.

18 And when we hit our strike price, it was
19 watching all those things and then knowing at
20 that moment what the prices they were getting
21 in Texas were. And so there was some market
22 movement reflected in the prices that we agreed
23 to on August 29th.

24 COMMISSIONER DONOVAN: Okay, great, thank
25 you.

1 Second question, Mr. Regan, you can
2 answer, I think. The 500 jobs that are noted
3 that will be --

4 MR. REGAN: Yeah.

5 COMMISSIONER DONOVAN: Is that -- are those
6 permanent jobs, including at the plant and in the
7 field?

8 MR. REGAN: Yeah, those don't include any of
9 the construction jobs.

10 COMMISSIONER DONOVAN: Okay. Sure.

11 MR. REGAN: Those are -- those are the
12 ongoing --

13 COMMISSIONER DONOVAN: Sure, good.

14 MR. REGAN: -- jobs.

15 COMMISSIONER DONOVAN: And then the last
16 thing I would like to just note is Mr. Regan
17 started off by, I think it was -- maybe it was
18 Bob, I forget who had said -- who it was --
19 that -- that we are interested -- I think it was
20 speaking to environmental concerns, and we are
21 interested in them as long as they make economic
22 sense.

23 And I think this has been an amazing case
24 over the last three or so years what -- in --
25 in discovering that what made economic sense at

1 one point and by one calculation didn't make
2 economic sense a little bit down the road and
3 by another set of factors and calculations.

4 The -- the goals changed, the values
5 changed and the externalities were dealt with
6 in different ways and so the outcome is this
7 and pretty exciting, I think. So thank you
8 very much.

9 MADAME MAYOR HANRAHAN: Thank you,
10 Commissioner Donovan. Are there others waiting to
11 speak? Commissioner Lowe?

12 COMMISSIONER LOWE: Yes. Thank you, Madame
13 Mayor. I would just like to also thank staff for
14 the work that's been done on this and also the --
15 the people at American Renewables for -- for
16 working on this project.

17 And as Commissioner Donovan stated, we've
18 made quite a bit of progress over the last
19 three years or so, and I think staff has been
20 very responsive to the values of the community
21 in bringing this forward. And I know it's been
22 a lot of hard work and look forward to seeing
23 the progress moving forward on this project.

24 This together with the Feed-In Tariff
25 really does indicate that Gainesville is a real

1 leader and it's the GRU people, including the
2 staff, that's made that possible. Thank you,
3 Madame Mayor.

4 MADAME MAYOR HANRAHAN: Thank you,
5 Commissioner Lowe. Commissioner Poe.

6 COMMISSIONER POE: Thank you, Madam Mayor.
7 And I know thanks are going around and I
8 don't want to belabor that, but I think there's
9 two people that I'd really like to make sure
10 that I thank. And then the first is
11 Commissioner Lowe, who has been chair of the
12 regional utilities committee.

13 And many of, I think, the safeguards and
14 protections that are in this contract are
15 because of his leadership on that, especially
16 for stewardship protections and some of the
17 environmental species protections. And they
18 were -- there was a lot to work out there, and
19 there were -- there were some sticking points.
20 And there -- I mean, we were really, you know,
21 I think going through uncharted territory in a
22 lot of ways.

23 And I think it's Commissioner Lowe's
24 dogged sort of pursuit of making sure we came
25 out with a product that our community and our

1 commission and the GRU could be happy with that
2 we have this. So I think, you know, I --
3 Commissioner Lowe, your leadership on that
4 committee and bringing good recommendations to
5 the whole commission has been instrumental in
6 this. So I thank you for that.

7 And also, the leadership at the very top
8 level, I know, and I'll try to get around to
9 everyone at GRU eventually. But I think our
10 general manager, Bob Hunzinger, in a lot of
11 ways, was brought in to -- you know, to carry a
12 project like this out.

13 There is a -- there is a culture of
14 leadership at GRU that I don't think was
15 necessarily compatible with a project like
16 this. And I know in the search for a new
17 general manager that this -- this type of
18 vision may not be necessarily this plant or
19 this company or this final configuration,
20 but -- but this type of direction was what the
21 commission was seeking. And I think,
22 Mr. Hunzinger, you've just performed that task
23 to a -- to a remarkable degree, and -- and we
24 owe a debt of gratitude and so does our whole
25 community.

1 And I think that — you know, I've always
2 been someone that tries to look out on his
3 horizons as 20-year 30-year horizons, and I
4 really think that the citizens of Gainesville
5 and Alachua County and of Florida, in fact,
6 when they look back at sort of leadership and,
7 you know, providing direction for the rest of
8 the state will look back to this era and to
9 your leadership, sir, and really thank — thank
10 us for that.

11 So and then finally, Madame Mayor, you
12 have -- Gainesville would not be on the energy
13 map but for your efforts and voice. And -- and
14 that -- that's true locally; that's true at the
15 state level, and more, I think, recently at the
16 national level, and we're very proud of that
17 and happy for that.

18 But this is important. There are very few
19 issues that are more important than this issue
20 for a variety of reasons. And maybe that's our
21 long-term well-being as a species; maybe that's
22 our economic competitiveness and viability
23 internationally in an increasingly volatile
24 market. But this is important for a very long
25 time.

1 And I do not believe that our community
2 would be where they are without you, really, I
3 know, going through some very tough times,
4 trying to convince other people to follow. But
5 it -- this is an exciting day for Gainesville
6 and this is an exciting day, I think, for the
7 entire state. And I hope that you take -- I
8 know pride is one of the seven deadly sins, but
9 I think you get an exemption today.

10 So for all the three of you, thank you
11 very much. And for the folks from American
12 Renewables, I know this has been a long time
13 coming, but -- but I hope that you feel that
14 your efforts were worth it and that you are
15 happy and -- with the -- the agreement that
16 we've reached. I thank you, Madame Mayor.

17 MADAME MAYOR HANRAHAN: Thank you,
18 Commissioner Poe. Are there any further comments?
19 I will just make one other comment that may be a
20 little gratuitous, but if those who were following
21 this process or engaged in it as citizens and
22 staff as elected officials, there was a point at
23 which we did an analysis. We hired a consulting
24 firm and we looked at all of our options.

25 And the number one option did come out for

1 conservation, and we remained committed to our
2 conservation goals, even though it's hurting
3 our bottom line a little bit.

4 But then the other -- the other two things
5 that came out were IGCC and biomass. And it
6 was based on a spreadsheet that was developed,
7 I believe, by staff. Was it developed by
8 staff? Where is Mr. Regan? He would know.

9 MR. REGAN: Yes.

10 MADAME MAYOR HANRAHAN: Yeah, and it was --
11 it was actually, we -- we actually had a lot of
12 citizens in the audience that night, and we let
13 people put in how they ranked the environment,
14 price and economic impact and then social impact
15 in the community in terms of numbers of jobs
16 created and social equity and all of those things.

17 And I couldn't help but sit here as
18 Mr. Gordon was making the presentation about
19 the values that his company is bringing to this
20 project that we have really hit on all
21 cylinders in terms of where we're going with
22 this. And it's easy to forget that that
23 decision was made in a very different political
24 context.

25 It was a very different leadership in

1 Washington. It was very different leadership
2 in Tallahassee. And I think it's worth
3 recognizing that Governor Crist has almost
4 singlehandedly turned around an orientation in
5 Tallahassee, obviously not as far as we had
6 hoped this session, but still making progress,
7 I think, and still creating a climate in which
8 this project can and will be successful.

9 And, you know, there is a lot of luck and
10 things that we have no control over. And all
11 of those things have sort of fell in our favor,
12 which is fortunate. I mean, a lot of decisions
13 could have gone a different way and we'd be
14 sitting here feeling a little foolish.

15 But fortunately, everything that has
16 happened subsequent to the decision has
17 reinforced that this was the right thing to do,
18 and that's very fortunate for us and I think,
19 hopefully, an indicator that it, in the
20 long-term, is absolutely the right thing to do.

21 And it will support, you know, an
22 important part -- you know, Florida's forestry
23 industry is a -- it's a very important part of
24 who we are and what employs people. The
25 agriculture community has been very supportive

1 of this, the silvicultural community and, you
2 know, those folks are going to be growing trees
3 rather than subdivisions, which we as city folk
4 thinks is positive. So we're looking forward
5 to that.

6 Okay. With that, do we have a motion for
7 the recommendation? And then we will be more
8 than happy to take citizen comment.

9 COMMISSIONER LOWE: Madame Mayor, I move the
10 staff recommendation.

11 COMMISSIONER POE: Second.

12 MADAME MAYOR HANRAHAN: We have a motion and
13 a second. Are there members of the public who
14 would wish to speak? Mr. Brinkman, welcome.

15 MR. BRINKMAN: Thank you, Madame Mayor,
16 commissioners and congratulations. I remarked to
17 Ed Regan when I saw him earlier today that it's
18 been almost exactly a year since when you
19 authorized the manager to move forward with this.

20 I'm -- I was thinking back today to, you
21 know, originally we were entertaining a coal
22 plant, and you actually brought up the issue of
23 whether or not there's a moratorium. And
24 actually Seminole does have a court-ordered
25 issue of a permit from the state of Florida.

1 However, due to the fact that the Obama
2 administration has reversed the ruling of the
3 Bush Administration's EPA director and found,
4 in accordance with their three-judge panel,
5 that it must regulate carbon dioxide from power
6 plants, there is, although not officially,
7 there is, in effect, a nationwide moratorium on
8 coal plants at this time. So in my opinion, if
9 we had gone with coal, we would have just hit a
10 roadblock this year.

11 I also recently sent you a piece about
12 Progress Energy's nuclear progress in Levy
13 County and the 20-month delay it's run into,
14 which will cost -- raise the cost substantially
15 and Progress Energy customers are paying those
16 costs now on their monthly bills, yet they have
17 no assurance they will ever get power.

18 In our case, we only pay for the power
19 that we will get. And I want to thank you, as
20 I think I said in the previous email, that
21 there was a proposal put before you that you
22 could meet your Kyoto protocol goals by going
23 with 50 megawatts of biomass and 50 megawatts
24 of nuclear. You chose to go with 100 megawatts
25 of biomass, and I think that was a very wise

1 choice.

2 No matter what you think about the
3 advantages of nuclear, I think the economics of
4 nuclear are simply not going to allow it to
5 happen.

6 Time will tell, but I think you've taken a
7 very safe bet. And, of course, the other thing
8 that you've really exerted a lot -- shown a lot
9 of leadership on is the Solar Feed-In Tariff,
10 and I hope one of the next items of discussion
11 before this commission can be how we can fund
12 an increase in the Feed-In Tariff cap, because
13 I was just reading an email while listening to
14 this presentation that if the budget bill
15 passes as it is currently written, there will
16 be about \$4 million of uncommitted rebate for
17 solar available in the state of Florida.

18 So it would, I think, be very helpful to
19 businesses and citizens in Gainesville if we
20 could raise that cap and allow people to access
21 those state funds also. All of these things
22 but, to me, the big advantage of renewable
23 energy besides the obvious environmental
24 benefits going back to the economic benefits --
25 which really as you well know, you can't do

1 anything without the money; economics drive
2 everything -- is that all of these things, all
3 renewable energy forms really do help keep
4 money in our community and in our state instead
5 of exporting them to other states or even to
6 other countries.

7 And so I want to thank everyone who has
8 been involved. It occurs to me that many of
9 you may not be on this commission by the time
10 this power plant goes into operation, but I
11 hope to see you at the groundbreaking ceremony
12 certainly and perhaps when the plant is
13 commissioned. Thank you.

14 MADAME MAYOR HANRAHAN: Thank you, Mr.
15 Brinkman and thank you for all of your assistance
16 and vision and advocacy for all of our green
17 efforts. Are there other citizens who might wish
18 to speak?

19 Mr. Willard, are you wishing to speak?

20 Mr. Willard, are you wishing to speak?

21 MR. WILLARD: (Inaudible.)

22 I thought I heard you say Mr. Hunzinger
23 was leaving.

24 MADAME MAYOR HANRAHAN: No, we certainly hope
25 not. We haven't given him any reason to, we don't

1 think.

2 MR. WILLARD: Okay. Heard Commissioner Poe
3 talking about the general manager again, but I
4 didn't hear you say anything about -- okay. A
5 hundred megawatts, that's all we got coming out of
6 this plant?

7 MADAME MAYOR HANRAHAN: Yeah, I think that
8 will make it -- will it make it the largest
9 biomass plant in the state?

10 MR. WILLARD: Hopefully, we can get most of
11 our laborers if not subcontractors and contractors
12 from locally. I know we can get our laborers
13 locally. Somebody has been writing in the
14 Gainesville Sun about the laborers never working
15 on the VA. Subcontractors and contractor working
16 on the VA is from out of town. That's a lie.

17 The laborers are from right here, right
18 here, I mean, Newberry, Hawthorne, Micanopy,
19 Alachua. That's the same as in Gainesville or
20 Alachua County. Talking about Marion County,
21 from out of town. And you can -- you can see
22 those (inaudible). You can see the effect of
23 those patches going down going down I-75.

24 (Inaudible.)

25 Can you see the big oxygen -- big oxygen

1 reservoir that's sitting up there look like a
2 grain reservoir, you see the pipes, they flows.
3 They got ice this thick, 10 inches thick on it.
4 Never seen that before, not even in Montana,
5 not even in Washington, D.C. Last month,
6 April, spent the night in a homeless shelter up
7 there. In the middle of downtown that is.
8 (Inaudible) are already here. They go off 441
9 to I-75. They are already here. I never seen
10 that before. First time I've seen that. And
11 it's hard to take pictures. They all blurry
12 and wavy pictures. Digital pictures, they were
13 digital, very hard.

14 What kind of pollution is in this air?
15 Control should be making a fortune because they
16 going -- they going to charge a fortune since
17 Marion County's transfer station closed. They
18 get on the transfer station in Marion County,
19 and transfer station we got in Leveda Brown.
20 They're are going to be charging a fortune for
21 the transfer fees at Leveda Brown.

22 They be charging a fortune, since Marion
23 County transfer station closed down. What's
24 the problem with that? Why did the Marion
25 County transfer station close down? Can

1 anybody tell me?

2 MADAME MAYOR HANRAHAN: No, sir, I'm not
3 knowledgeable of that.

4 MR. WILLARD: Maybe Mr. Regan can tell us.

5 MADAME MAYOR HANRAHAN: Thank you,
6 Mr. Willard. Thank you for your comments.

7 Are there any further citizens wishing to
8 speak? Seeing none, shortly we will move to a
9 vote. I was inspired by a member of staff to
10 suggest that we may also want to invite all of
11 the staff who worked on this and our partners
12 from American Renewables and any citizens who
13 feel some ownership to come forward to the
14 dais. We'll take a photograph to memorialize
15 the event.

16 I believe Mr. Hunzinger has already signed
17 the contract pending commission approval, so we
18 won't pretend like we're signing anything
19 again. But we would like to memorialize the
20 event as we did for the Solar Feed-In Tariff.
21 So at this time, we will move to a vote. All
22 in favor indicate with a sign of aye.

23 All opposed? Motion carries unanimously.
24 So again, thank you to everyone. And if
25 everyone who feels some ownership would like to

1 come forward and just line up behind us here,
2 we'll see if we can get our staff to take a
3 photo.

4 (The proceedings concluded.)
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ACCURATE STENOGRAPHIC REPORTERS, INC.

EX. Q

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, LISA D. FREEZE, Notary Public, certify that I was authorized to and did stenographically report the proceedings herein, and that the transcript is a true and complete record of my stenographic notes.

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

WITNESS my hand and official seal this 27th day of August, 2012.

/s/Lisa D. Freeze

LISA D. FREEZE, CRR, NOTARY PUBLIC
2894 REMINGTON GREEN LANE
TALLAHASSEE, FL 32308
850-878-2221

JC Casarez

From: Walton, J. Lewis <WaltonJL@gru.com>
Sent: Wednesday, June 29, 2011 8:08 AM
To: McNeill, Shayla L
Subject: FW: video

Importance: High

Found the video... looking at meeting before for any other mention.

From: Hunzinger, Robert E
Sent: Wednesday, June 29, 2011 9:02 AM
To: Walton, J. Lewis
Subject: RE: video

By jove, I think you've got it! You betcha! Thanks, definitely the meeting I was thinking about. This must have been discussed at the very end of the evening meeting.

From: Walton, J. Lewis
Sent: Monday, June 27, 2011 4:38 PM
To: Hunzinger, Robert E
Subject: video

Is this the one you are looking for? Look at the commission comments at the end.

http://gainesville.granicus.com/MediaPlayer.php?view_id=5&clip_id=824&caption_id=1335622

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CITY OF GAINESVILLE
CITY COMMISSION

IN RE: CITY ATTORNEY MEMORANDUM RE: EQUITABLE
ADJUSTMENT FOR CHANGE OF LAW OF THE POWER
PURCHASE AGREEMENT

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: Thursday, January 16th, 2014
TIME: 1:00 p.m.
PLACE: City of Gainesville City Hall
200 East University Avenue
Gainesville, Florida 32601

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were transcribed from video by:

Stephanie T. Lachowicz
Registered Professional Reporter
Florida Professional Reporter
Notary Public
Powers Reporting, Inc.
301 West Bay Street, Suite 1418
Jacksonville, Florida 32202

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A P P E A R A N C E S

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Mayor Ed Braddy

Commissioner Lauren Poe

4

Commissioner Thomas Hawkins

Commissioner Yvonne Hinson-Rawls

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Commissioner Todd Chase

Commissioner Susan Bottcher

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Mayor-Commissioner Pro Tem Randy Wells

Nicolle Shalley, Esquire

7

Ross Blackburn

Kathy Viehe

8

9

Public Speakers:

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Donald Shepherd

Paula Stahmer

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Debbie Martinez

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P R O C E E D I N G S

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January 16th, 2014

1:00 p.m.

3

MAYOR BRADDY: Next item.

4

THE CLERK: The next item is the city

5

attorney memorandum regarding equitable

6

adjustment for change of law of Power Purchase

7

Agreement with the recommendation on page 21 of

8

the agenda.

9

MAYOR BRADDY: Okay. Madam Attorney, top

10

that one.

11

MS. SHALLEY: Thank you, Mayor.

12

MAYOR BRADDY: This one just might. Go

13

ahead.

14

MS. SHALLEY: As you-all know, in October of

15

2013 it was brought to my attention that there

16

was a 2011 amendment to the PPA that appeared not

17

to have been approved by the City Commission. As

18

a result, my office did a factual and legal

19

inquiry into whether that amendment was possibly

20

an ultra vires act of the general manager -- the

011614 City Commission meeting.txt
21 former general manager, ultra vires meaning
22 outside the scope of his authority, such that we
23 could seek to invalidate the amendment in a court
24 of law.

25 Our inquiry led us to conclude that 4
1 litigation would not be advisable, and that's for
2 a couple of reasons. What we think is, well, we
3 could bring arguments. GREC would very
4 effectively counter those because of a number of
5 things. One is several weeks after the PPA
6 amendment was signed by the general manager, the
7 Commission and the public was given notice of
8 that amendment via a GRU press release e-line
9 that goes out to a wide audience. No action was
10 taken at that time on the matter.

11 The second thing is there is a purchasing
12 policy. It exists both at GRU and on the general
13 government side that allows for amendments or
14 modifications to contracts to be made if the
15 modification doesn't exceed 10 percent of the
16 contract amount. In this case -- although that
17 policy was never intended or doesn't appear to be
18 intended to cover amendments that aren't
19 currently budgeted or aren't part of project

20 contingency, in this case the amendment does not
21 exceed 10 percent of the overall cost of the PPA,
22 so we think GREC could argue very effectively
23 that it falls within that purchasing policy.

24 The third is the amendment was approved as
25 to form and legality by one of the former

5

1 assistant city attorneys.

2 And then there's a final point that wasn't
3 brought up in the memorandum, but the memorandum
4 did indicate that we -- in the course of our
5 inquiry we also discovered another 2011 amendment
6 to the PPA that was called a Consent and
7 Assignment document. And within that document --
8 although its primary purpose seemed to be to give
9 a consent and assignment to one of GREC's
10 lenders, that document also contains some PPA
11 amendments, and that document within its body and
12 text -- and it was attached as one of the
13 exhibits to the memorandum.

14 It actually affirmatively states that the
15 PPA -- the first PPA amendment called the
16 equitable adjustment and the second PPA amendment
17 were all approved by all necessary action of the

011614 City Commission meeting.txt
18 City Commission and that no further authorization
19 was needed. So the document on its face seems to
20 very clearly indicate to GREC that all of these
21 documents were appropriately approved.

22 MAYOR BRADDY: That last one, when was that
23 done?

24 MS. SHALLEY: That was done in June of 2011.

25 MAYOR BRADDY: Before or after --

6

1 MS. SHALLEY: It would be after --

2 MAYOR BRADDY: It came after the fact.

3 MS. SHALLEY: -- the original equitable
4 adjustment.

5 MAYOR BRADDY: Okay. And is the original
6 equitable adjustment act that we're -- that your
7 findings, and you stand by these findings,
8 constituted an ultra vires act by the former
9 general manager?

10 MS. SHALLEY: It appears that it was. Like
11 I say, because of all of these reasons, though,
12 we think that GREC could very effectively --

13 MAYOR BRADDY: Well, let me ask you --

14 MS. SHALLEY: -- make arguments against
15 that.

16 MAYOR BRADDY: -- if this -- one of the

17 points of your memo is that it could be argued
18 that the expenditure was within the 10 percent
19 range, that the general manager does not need to
20 -- so in that sense if that's the case, then he
21 did not act in ultra vires -- it was not an ultra
22 vires action?

23 MS. SHALLEY: Right. That is the exact
24 argument that GREC would make.

25 MAYOR BRADDY: That's the argument they

7

1 would make, but in your -- you're our attorney.
2 Is that a valid argument?

3 MS. SHALLEY: Yes. Because a plain reading
4 of our purchasing policy states exactly that.

5 Now, when you delve a little further and you
6 talk to purchasing staff on both general
7 government and GRU sides, they say it's never
8 been used in this way and we don't think it was
9 intended to. We always bring amendments to the
10 City Commission if they exceed certain dollar
11 amounts. And the most important thing is that
12 that provision is generally always used for like
13 construction contracts where there's a project
14 contingency set aside ahead of time, and the

011614 City Commission meeting.txt
15 thought being they shouldn't come back to you-all
16 every time for a change order or whatever that
17 increases the price as long as it remains below
18 10 percent.

19 But the plain reading of our purchasing
20 policy, and hence one of the recommendations in
21 the memo, is to modify that policy to make it
22 very clear, like put a dollar cap on that it's no
23 more than -- it's 10 percent, but no more than
24 \$200,000 or 300, you know, whatever. That's a
25 policy decision for you-all, but that's why the

8

1 recommendation.

2 MAYOR BRADDY: Okay. I'm sorry. I sort of
3 interrupted your comments. You have other
4 comments?

5 MS. SHALLEY: Yes. So I -- I bring this to
6 you today because another thing that was -- was
7 discussed in the memorandum is that until this
8 Commission decided whether or not to take some
9 action, that we would anticipate putting GREC on
10 notice that the portion of the payments that are
11 about to be made with the post commercial
12 operations date would be paid under protest.

13 My office had a conversation with the CFO

14 for GREC about that to let them know that that
15 might -- that action might be forthcoming. They
16 indicated that any payment under protest they
17 believe would subject them to damages and they
18 would seek to hold the City and GRU liable for
19 those damages.

20 Again, we think we could make arguments to
21 counter those but didn't feel it would be the
22 best thing to put the City and GRU in that
23 position if it was unnecessary if you-all were
24 going to accept the recommendation of my office,
25 which is not to initiate litigation regarding the

9

1 ultra vires act, not make the payments under
2 protest at this time, and secondarily refer the
3 recommendations in our memo along with whatever
4 recommendations that staff -- I know staff
5 continues to think about ways that there could be
6 management controls or legal controls that would
7 seek to avoid this kind of thing happening in the
8 future.

9 So my thought was that those recommendations
10 could go to the -- let's see. I have to check
11 which committee because we have several

011614 City Commission meeting.txt
12 recommendations in different committees, but it
13 seemed to me that it was most appropriately taken
14 up by audit, finance, and legislative because
15 they have the pending referral regarding an audit
16 of GRU which seems to bring into debate a lot of
17 these type things. Maybe it wouldn't be an
18 audit, but it would be controls that could be put
19 into place, as I said, to try to assure that this
20 type thing doesn't happen again.

21 MAYOR BRADDY: Okay. Thank you. Members of
22 the Commission, any questions or comments? And
23 I'll start with Commissioner Hinson-Rawls.

24 COMMISSIONER HINSON-RAWLS: Oh. I'm first
25 again. I didn't hear everything, but we're

10

1 talking about \$103 million; am I right?

2 MS. SHALLEY: Yes. That's -- that's the
3 amount that I've -- that I've been told. Or
4 105 million.

5 COMMISSIONER HINSON-RAWLS: Whatever.

6 MS. SHALLEY: It's over 100 million.

7 COMMISSIONER HINSON-RAWLS: It's over
8 100 million, and even one over 100 -- any one
9 million is a lot of money. I'm trying to see.
10 Now, we're talking about walking away from that

11 without a fight? Is that what I hear?

12 MS. SHALLEY: Yes. Without initiating
13 litigation because it -- we do feel that while
14 you could bring litigation, you would spend a lot
15 of time and money and GREC would have a very good
16 chance of prevailing.

17 COMMISSIONER HINSON-RAWLS: Oh. They have a
18 very good chance of prevailing?

19 MS. SHALLEY: Given all of those things that
20 we outline in the memorandum.

21 COMMISSIONER HINSON-RAWLS: Unless we change
22 our regulations and management?

23 MS. SHALLEY: And, again, that would only
24 help prevent this in the future and --

25 COMMISSIONER HINSON-RAWLS: Right. But

11

1 not --

2 MS. SHALLEY: -- wouldn't effect --

3 COMMISSIONER HINSON-RAWLS: -- help this
4 right here and right now.

5 MS. SHALLEY: -- a solution in these
6 documents.

7 COMMISSIONER HINSON-RAWLS: Okeydoke.

8 MAYOR BRADY: Commissioner?

9 COMMISSIONER HINSON-RAWLS: I'm good,

10 Mr. Mayor.

11 MAYOR BRADY: Commission Bottcher.

12 COMMISSIONER BOTTCHER: Thank you. And so I
13 just want -- just for clarification since it's
14 not specifically written in the agenda itself,
15 but it is in the online document that the
16 recommendations are to -- there's three that you
17 have here. One is to foster a clear
18 understanding of -- that the utility attorney --
19 utility's attorney operates under your office,
20 and then there's two other recommendations that
21 address the -- the City's purchasing policy. And
22 so that's -- that's what you're talking about
23 that needs to go back to the audit, finance, and
24 legislative committee, correct?

25 MS. SHALLEY: That's correct. Now, actually
12

1 the first one we've already implemented.

2 COMMISSIONER BOTTCHER: That's what I
3 thought.

4 MS. SHALLEY: I've worked with Ms. Viehe,
5 and we've --

6 COMMISSIONER BOTTCHER: Yeah. Right.

7 MS. SHALLEY: I think -- I think we're there

8 on that one.

9 COMMISSIONER BOTTCHE: Okay. That's what I
10 thought.

11 MS. SHALLEY: So that's just a matter of
12 informing you-all of that.

13 COMMISSIONER BOTTCHE: Okay. So -- and
14 with that -- and I know that there's other
15 lights, but I'm going to go ahead and put a
16 motion to move the staff recommendation.

17 MAYOR BRADDY: We have a motion. Do we have
18 a second?

19 COMMISSIONER HAWKINS: Second.

20 MAYOR BRADDY: We have a motion and a second
21 to move the staff recommendation, which will
22 confirm that the City Commission does not desire
23 to initiate litigation seeking to invalidate the
24 equitable adjustment and also to refer these
25 recommendations of the city attorney's memo to
13

1 the audit, finance, and legislative committee.

2 Okay. I got some more lights. Commissioner
3 Wells.

4 COMMISSIONER WELLS: Thank you. I just have
5 some questions if I could ask to the city

011614 City Commission meeting.txt
6 attorney. Is there any question in your mind
7 about what would be a venue of any such dispute,
8 i.e., would there be any doubt in your
9 understanding that it would be through the
10 arbiter-type process that we previously went
11 through or another venue such as a court?

12 MS. SHALLEY: There is some question about
13 that because we believe that bringing litigation
14 to initially invalidate an amendment is really a
15 matter of state law and a question of our charter
16 and a question of who's authorized to do what
17 within the city. It really doesn't involve the
18 PPA. You know, it's sort of -- it's -- it's do
19 you have the basic authority to do what you did,
20 so our initial thought was we could bring that in
21 state court.

22 Now, obviously I think that GREC would seek
23 to get that dismissed and try to get it set over
24 to arbitration under the PPA. And ultimately
25 even if that first question could be answered, we
14

1 do think the dispute regarding the payments and
2 all of that, because it does involve the PPA,
3 would likely end up between -- you know, before
4 an arbitrator.

5 COMMISSIONER WELLS: All right.

6 MS. SHALLEY: So it would be a long and
7 complex process.

8 COMMISSIONER WELLS: A second question.

9 COMMISSIONER BOTTCHE: And expensive.

10 MS. SHALLEY: Yes.

11 COMMISSIONER WELLS: A second question I
12 guess would be, one of the most striking things
13 about your memo and -- and what we know now of
14 apparently the -- both the external counsel as
15 well as the internal counsel on the original
16 underlying question, the facts of the underlying
17 question are that there was no change of law.
18 And what strikes me perhaps most dramatically
19 about the resolution that was provided is it's
20 self-styled as a settlement. Not as an
21 amendment, but as a settlement. I mean, it says
22 that right in the document, and -- and as I
23 understand it from you, that the second document
24 is somewhat also styled in the form of a
25 settlement.

15

1 Can you provide any other examples of such a
2 settlement taken without express Commission

3 approval certainly of this scope? I can think of
4 many, many, many cases in the time I've been on
5 the Commission where settlements in the range of
6 a few thousand dollars were brought to the
7 Commission related to, you know, trip and fall
8 and that sort of thing. And I'm rather -- well,
9 let me just start with that question. Are there
10 other examples you can think of where such
11 self-styled settlements were provided without
12 express Commission approval?

13 MS. SHALLEY: No. My --

14 COMMISSIONER WELLS: Or which they could be
15 done.

16 MS. SHALLEY: Any claims or litigation that
17 -- that the City is involved in are handled
18 somewhat jointly by the risk management
19 department and by the city attorney's office. We
20 -- both departments are the ones that evaluate
21 the claims, that seek Commission authorization.
22 The two departments -- we have a written policy
23 that dates back to 2000 that requires that any
24 settlements that exceed \$20,000 be brought to the
25 City Commission, so I'm not aware of any that are
16
1 greater than that threshold.

2 MAYOR BRADDY: How long has that been in?

3 MS. SHALLEY: Since 2000.

4 COMMISSIONER WELLS: Is there anything in
5 state law that you're aware of -- I mean, you've
6 already mentioned within our own policies, but
7 within state law such as sunshine law that would
8 be protective of any City action that does not
9 receive express City Commission approval?

10 MS. SHALLEY: No, because the sunshine law
11 is really geared towards making sure that the
12 decisions that you-all make, meaning those items
13 that are brought to you for a decision to be
14 made, that your meetings are all held in the
15 sunshine, but in this case it does appear from
16 talking to the former -- former attorney for GRU
17 and the former general manager that they did
18 believe based on one thing or another that they
19 had the authority to do it without bringing it
20 back to the City Commission.

21 COMMISSIONER WELLS: Well, going to that
22 point, the failure to share a significant legal
23 opinion -- and certainly to my knowledge this
24 document was utterly unavailable to any of the
25 elected commissioners at the time when the

1 so-called notification was provided, and just
2 referring to the fact that it was -- that it was
3 publicized that a change had been accepted
4 fundamentally assumes that there was, in fact, a
5 change of law, and that's very clearly provided
6 under the Power Purchase Agreement.

7 And yet what was most striking about this
8 was when I inquired about it of the firm that
9 provided it, they basically stated to me that
10 they were told that they were not to share any
11 opinion given to the elected body, that if I were
12 wanting it, I needed to request it through
13 management.

14 So it seems to me pretty clear that there
15 was no way for an elected official to be aware
16 that there was a dispute on the underlying
17 question of whether or not there, in fact, had
18 been a change of law, and therefore that the
19 notice -- the so-called notice was effectively --
20 you know, I don't want to -- I don't want to
21 assume intent, but it -- it would appear to me
22 that it says the notice was given that there was
23 a change of law and that the Power Purchase

24 Agreement provides a change of law. There was
25 nothing that would allow a decision-maker on the
18

1 Commission to know that there was dispute on the
2 question of whether or not it was a change of
3 law.

4 I mean, is there anything in -- in what you
5 found that shows that that was available to
6 anyone other than management?

7 MS. SHALLEY: I, you know -- and of course
8 what we were doing are reviewing files that exist
9 and asking questions of people who were involved
10 at the time, staff members. I don't recall
11 seeing an e-mail or any correspondence where that
12 memorandum was shared with anyone outside of
13 GRU's management at that time, so --

14 COMMISSIONER WELLS: And going to this idea
15 that it was done under the 10 percent rule, you
16 provide a pretty clear indication that all other
17 examples -- and correct me if I'm wrong, do you
18 know of any other examples where changes have
19 been made to contracts under that 10 percent rule
20 in which an explicit report of the value of that
21 change has not been reported in the form of -- I
22 think you -- you described a reporting process in

23 which that is exercised. Setting aside the
24 budget issue, can you -- do you know of any other
25 changes of that sort in which that report was not
19

1 made and was any such report made here?

2 MS. SHALLEY: And I wouldn't be the one to
3 ask for that because I'm not -- you know, that's
4 not something that I monitor. The GRU
5 purchasing --

6 COMMISSIONER WELLS: Who --

7 MS. SHALLEY: -- department is the one that
8 issues those memorandum. We did ask if this was
9 reported on that memorandum after -- you know, if
10 it were done under the 10 percent rule, it would
11 have been -- GRU purchasing says that it would
12 have been shown on their report, and they could
13 not find a report that showed this particular
14 expenditure.

15 Now, in speaking with the former general
16 manager, he felt that his authority -- he didn't
17 cite that purchasing policy. He felt that his
18 authority derived from the original City
19 Commission action that approved the PPA, had a
20 part to the motion that indicated that the

21 general manager was authorized to carry out all
22 necessary terms and execute documents necessary
23 to carry out the PPA.

24 COMMISSIONER WELLS: Well, this -- I guess
25 this too is one of the more troubling aspects.

20

1 When we first asked these questions, the numbers
2 we heard were very modest. 20 million was what
3 it eventually began, and then I -- you know, I
4 think -- eventually I think your office was the
5 one that finally came up with the -- the number
6 of 103 million, and then adjusting for inflation
7 I think you -- I don't know if that was you or
8 the manager that -- at the time who came up with
9 that estimate.

10 MS. SHALLEY: I believe it was John Stanton
11 and some people in his -- in his department.

12 COMMISSIONER WELLS: None of those numbers,
13 even the smaller ones that I heard initially,
14 seemed to me to fit the description of, which I
15 think you quote in the report, minimal impact.
16 On the second change, the collateral interest and
17 the ten other amendments, do we have any
18 valuation or any way of evaluating the dollar
19 value of those modifications?

20 MS. SHALLEY: Not that I'm aware of. Staff
21 continues to look at all of these documents, and
22 when I say staff, GRU staff, legal -- both GRU
23 management staff, GRU legal staff. We continue
24 to look at these to better understand what they
25 mean. The amendments that come out of that

21

1 second consent and assignment are really more --
2 they're text changes to the PPA, and, for
3 instance, like one of them redefines what damages
4 would be in the event the City breaches.

5 But it's hard to put a dollar figure on that
6 right now because you'd have to know what's the
7 nature of the breach, when does it occur, what's
8 the nature of the damages that would be claimed.
9 There's no -- it certainly makes an amendment to
10 the PPA, but it's not a quantifiable thing like
11 the equitable adjustment was where it's very
12 clearly an increase in rates. These are other
13 things that seem -- they clearly modify the PPA
14 but not in a monet- -- not in a readily
15 ascertainable monetary way.

16 COMMISSIONER WELLS: Mr. Mayor, I absolutely
17 support the modifications that have been proposed

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18 to make this clearer. I'm not at this point
19 satisfied that we've fully evaluated the
20 potential for questioning the underlying facts of
21 this contract. You know, I feel -- you know, I
22 respect staff have spent a lot of effort, and
23 I've, you know, talked with Ms. Viehe at length
24 about this. I spoke to the prior manager about
25 this topic, and I think other staff have been

22

1 spending a lot of time into this as well as the
2 city attorney. So, you know, I mean, I don't
3 have any magic any more than anybody else about
4 what we do here, but I am absolutely not
5 satisfied that this is resolved.

6 MAYOR BRADDY: Yeah.

7 COMMISSIONER WELLS: And frankly I think
8 this is the most egregious example of bad faith
9 not by our staff, but by the contractor that had
10 a self-styled settlement of this clear dollar
11 value been entered into. For that not to be
12 expressly approved and even expressly
13 communicated to this body is just jaw dropping to
14 me, and -- and I -- I don't believe this should
15 be considered a done deal because I don't believe
16 that that is a -- I don't think that's an

17 adequate resolution of this. I don't -- I don't
18 know where else to go with it at this point, but
19 I would like for us to continue to evaluate
20 particularly if this should be something that
21 goes into another venue other than the -- than
22 only the -- I'm sorry.

23 COMMISSIONER BOTTCHER: Finance?

24 COMMISSIONER WELLS: I'm sorry. The
25 resolution of it I think should be to continue to
23

1 be looked at within our -- our committee process,
2 and particularly if there's a venue other than
3 the mediation process, although I understand from
4 what the city attorney is saying is that almost
5 anything that comes out of this is going to go in
6 some fashion into a mediation even if it properly
7 can end up in another venue such as state court.
8 But I would -- I would like for us to evaluate
9 this, and frankly I would like to ask our -- our
10 outside attorney to consider taking on some of
11 that on a -- not a pro bono basis, but on a
12 speculative basis given their central role in
13 communicating this only through management and
14 not through this body.

15

MAYOR BRADDY: Okay.

16

COMMISSIONER WELLS: Thank you, Mr. Mayor.

17

MAYOR BRADDY: Very good. And real quick

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before I turn to the others, yeah, because I

19

agree with your sentiment exactly, and, you know,

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one of the things not contemplated here I want to

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ask is, you know, you're obviously recommending

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-- you're saying pretty much we can't, you know

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-- we wouldn't be successful if we pursued, I

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guess, litigation. But could we seek damages

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against the former general manager for his

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1

actions?

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MS. SHALLEY: There's always the potential

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for that, although I'm -- I'm certain that he too

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would have arguments regarding he certainly put

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the Commission on notice of what occurred a

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couple weeks after. I don't know, and -- and my

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memo, while it took considerable effort for my

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office to look into all the factual and legal

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issues for the small part that we did, what we

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didn't do is we didn't go into -- I don't know

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what you would find if you deposed former

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commissioners and/or current commissioners that

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were involved at the time. Perhaps they did know

14 through individual briefings. You know, those
15 are all things that if you were -- I guess I
16 would be very cautious about going after a
17 current or former employee unless we do know that
18 they did something that was clearly unlawful or
19 unethical.

20 The indications -- as I said, the former
21 general manager indicated to me that he believed
22 he had authority under that broad -- broad
23 initial authorization from the Commission.

24 MAYOR BRADDY: Yeah. Okay. Well, I --
25 yeah. You have virtually unanimous legal opinion
25

1 that A is not B, and then you have an action that
2 says, well, we're going with B and with no
3 explanation and then an after-the-fact e-line
4 newsletter highly suspect.

5 So anyway, we'll turn back to commissioners.
6 Commissioner Hinson-Rawls.

7 COMMISSIONER HINSON-RAWLS: Yes, Mr. Mayor.
8 My question is -- well, one of my questions --
9 some of my questions I don't even know. Is GREC
10 in any way responsible for how this transaction
11 occurred? Is there any question about how we

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12 make payments to them and what authority chain
13 might be -- might they expect to have in that
14 approval or even the EPA who made this
15 requirement, who did they make it of, and how
16 that was imposed on GREC and we ended up with the
17 expenditure? Are there any questionable
18 procedures that might have been not followed
19 correctly? I said that very convolutedly, I
20 know, but I don't even -- you know what I'm
21 saying?

22 MS. SHALLEY: The memo has -- that we
23 prepared has as two exhibits how this issue
24 originally arose, was GREC sent a memo describing
25 why they thought a change in law occurred. GRU

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1 management staff analyzed that. GRU outside
2 counsel wrote a memo on -- describing why they
3 did not believe a change in law occurred, so
4 there were obviously initially arguments on both
5 sides that would have been -- or -- and one can
6 assume were evaluated by someone at that point in
7 time. It just wasn't done by this Commission.

8 COMMISSIONER HINSON-RAWLS: So if -- GREC
9 told GRU that they have to cover this expense and
10 GRU just agreed to do it after all these

11 discussions?

12 MS. SHALLEY: That's correct.

13 COMMISSIONER HINSON-RAWLS: Without coming
14 through the City Commission?

15 MS. SHALLEY: And a binding agreement was
16 signed by your then general manager.

17 COMMISSIONER HINSON-RAWLS: And that can't
18 be contested?

19 MS. SHALLEY: Correct. I mean, it can be
20 contested, as I pointed out in the memorandum,
21 but we don't think that our likelihood -- it will
22 be costly, it will be time consuming, and we
23 don't think that our likelihood of success is
24 very good on that issue alone. That's one thing
25 I want to make very clear, is that staff

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1 continues to look at all of these documents for
2 ways that -- I guess the easiest thing to say is
3 better understand what they mean going forward
4 for us, were there other things that were done
5 irregularly that we could --

6 COMMISSIONER HINSON-RAWLS: Yeah,
7 irregularly.

8 MS. SHALLEY: -- talk to GREC about. You

9 know, staff continues to be engaged in that.
10 It's just that on this issue of was this an ultra
11 vires act of the general manager, which is the
12 present dispute that we thought we might have, we
13 don't -- we wouldn't recommend litigation on that
14 and we wouldn't recommend making payments under
15 protest on that issue because GREC has already
16 indicated they -- you know, they would seek
17 damages against us if we did.

18 COMMISSIONER HINSON-RAWLS: Have we
19 consulted with EPA about what went -- how this
20 transpired?

21 MS. SHALLEY: In the files that I reviewed,
22 yes, there was -- there was a lot of information
23 coming from the EPA to GRU, and it appeared that
24 various advisors to GRU management were looking
25 at the core issue of was there -- you know, what

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1 were the changes, how were they coming about,
2 but, again, once a binding written document was
3 signed by -- on behalf of the City, it becomes
4 harder to really address those fundamental
5 issues.

6 COMMISSIONER HINSON-RAWLS: I -- I know this
7 needs to be challenged. I just don't know who

8 the challengee is, if you understand. I don't
9 know if it's the general manager. I don't even
10 know if it's GREC. They got what they went
11 after, and clearly the general manager gave it to
12 them. I'm thinking it might be EPA. I don't
13 really know, but some way this needs to be
14 challenged. And I'm not necessarily -- I think
15 I'm in the same position as Commissioner Wells.
16 I do think we need to make changes going forward,
17 but what do we do about the money that's already
18 been committed to our customers -- on our
19 customers?

20 MAYOR BRADDY: Are you concluded for now?

21 COMMISSIONER HINSON-RAWLS: Yes.

22 MAYOR BRADDY: Thank you, Commissioner
23 Hinson-Rawls.

24 Ms. Viehe.

25 MS. VIEHE: Mr. Mayor, as Ms. Shalley

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1 mentioned, we are continuing to go through the
2 contract, and one of the things that we are doing
3 now is we received our bill, our first bill, so
4 we are going through and doing our due diligence
5 on the bill. Mr. Stanton is planning to send an

6 e-mail to GREC asking for documentation of the
7 charges for the equitable adjustment. It's my
8 understanding that back when this was signed and
9 agreed to, there was an estimate provided, so I
10 think it's incumbent upon us, and Mr. -- like I
11 said, Mr. Stanton's already working on this, that
12 we ask for documentation of those costs and make
13 sure that in the billing that we are paying what
14 actually were the costs to GREC. So I just
15 wanted to make you aware of that, that that is
16 going on.

17 MAYOR BRADDY: Okay. Thank you, Ms. Viehe.
18 And Commissioner Chase.

19 COMMISSIONER CHASE: Thank you, Mr. Mayor.
20 I wanted to go back in time a little bit. I --
21 you know, when this item came up, I mean, it
22 certainly surprised a lot of us, and I -- I
23 remember, you know, Commissioner Wells during
24 that meeting -- I mean, just watching the emotion
25 and the passion. I mean, you were in office,

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1 and -- and you -- you know, you were here during
2 that time. And -- and so I appreciate, you know,
3 your leading into this and I appreciate how you
4 feel about this and I -- I generally hold the

5 same feelings that you have and where we are now.

6 But I wanted the city attorney --

7 Ms. Shalley, if I could ask you a couple

8 questions that I can't remember the exact answer,

9 but I -- you know, I had asked about D&O

10 insurance, which is directors and officers

11 insurance, which is common in corporations for

12 potentially an item like this. Do you recall

13 what we have? And was it -- it's my

14 understanding that since we're self-insured that

15 we don't have D&O or do we have D&O on charters

16 or commissioners?

17 MS. SHALLEY: That's a risk management

18 question. And I know that Steve Varvel answered

19 it at the time that you asked it, but I don't

20 remember what his response was.

21 COMMISSIONER CHASE: Okay. So it shouldn't

22 take him that long, but it's -- okay. So that's

23 -- because that's -- I do think that that's --

24 potentially is -- is something that -- because

25 the most troubling thing -- what I'll tell you --

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1 what I'll tell you guys is sometime around

2 January -- or December 19th of last year, a few

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3 weeks ago, I mean, I shut life down and I relaxed
4 and I did not read word for word the memo that we
5 got kind of that day. But I did read it and --
6 and if -- and I have it up on my computer and you
7 provided us a copy of it today.

8 And, you know, what -- what was more
9 discerning to me was on page 6 of your memo you
10 say, in the course of our inquiry into this
11 matter this office also became aware of another
12 document that amended the PPA without City
13 Commission approval. This document is titled a
14 Consent and Agreement dated as of June 30th,
15 2011, when I was in office, attached as Exhibit
16 G. It appears to have been provided in the
17 context of GREC obtaining financing for the
18 biomass facility. This document assigns a
19 collateral interest in the PPA for the benefit of
20 GREC's lenders and makes ten amendments to the
21 PPA as set forth in section 5 of this document.

22 So when I read that, I just -- that -- that
23 even was -- was more concerning. Now, in that
24 document you -- I believe is one of the -- the
25 points that causes you some legal concern because

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1 within that agreement is -- is cited the PPA and

2 then also amended via the change of law venue?
3 Is that -- is that -- do I understand that
4 correct?

5 MS. SHALLEY: That's correct. That document
6 refers to the PPA and the first amendment as the
7 assigned agreement, and it confirms that the --

8 COMMISSIONER CHASE: There was a --

9 MS. SHALLEY: That it was the execution,
10 delivery, and performance by purchaser of the --
11 the agreement being signed, then the Consent and
12 Assignment and the assigned agreement have been
13 duly authorized by all necessary action of the
14 City Commission and no further authorization is
15 necessary. And it goes on to make a number of
16 similar --

17 COMMISSIONER CHASE: And I looked through
18 the agendas, and I don't -- I don't -- I can't
19 find it ever came to the Commission at all via
20 consent, via anything. I mean, it was -- this --
21 this Consent and Agreement thing was -- was just
22 done; is that correct? It was signed by the
23 general manager and -- and the GRU attorney?

24 MS. SHALLEY: That's correct.

25 COMMISSIONER CHASE: As well as I believe

1 Mr. Gordon and then the bank, the lenders. What
2 is that? That -- that -- so if you read that
3 document, that -- that -- that assigns the
4 entire, you know, interest of the PPA over to
5 this lender in the event, I guess, of default and
6 certain actions. So this was a -- this was a
7 critical legal document that -- that GREC needed
8 during a time where they were financing during a
9 time in -- in 2011 when by that point on
10 June 30th I recall I think I had -- by then I had
11 at least recommended to the RUC that we review
12 the assumptions and -- and, I mean, just --
13 that's troubling. So that's -- that's troubling
14 as well, and I wonder if that was not -- if that
15 was a -- what is it? I took a --

16 MAYOR BRADDY: Ultra vires.

17 COMMISSIONER CHASE: Yeah. Sorry, Father
18 Anthony. I took Latin. But if that was one of
19 those as well, I mean, possibly there's two --
20 there's two actions that -- now, we can't
21 necessarily invalidate the -- the Consent and
22 Agreement at this point, which is backup
23 collateral for the financing, but I find this --

24 we have this discussion, the fact that they are
25 now concerned that we're concerned because 34
1 they're trying to refinance, and it's -- so -- so
2 perhaps what we need to do is -- is -- is
3 something I've been saying a lot lately, is let's
4 not fight, let's talk and let's not give up our
5 ability to talk much in the way Teddy Roosevelt
6 talked.

7 MAYOR BRADDY: Big stick.

8 COMMISSIONER CHASE: Just for those who are
9 good at history, I mean, because it's -- it's
10 a -- it's important. And going back to, I mean,
11 Commissioner Wells on the Commission, I mean --
12 now, I mean -- I mean, this -- this PPA was
13 amended and -- and -- and assigned over and
14 everything, and, you know, none of the Commission
15 knew. Now, I don't know -- do you know offhand
16 if any -- it is your opinion that that was maybe
17 ultra vires -- ultra vires and -- and that it was
18 out of the scope and the Commission should have
19 seen that?

20 MS. SHALLEY: That's -- again, that came
21 more recently to our attention, and that would be
22 another thing that would require a time intensive

23 evaluation, but just generally speaking what I
24 can say is the PPA does require the City to sign
25 consents and assignments. Those are commercially
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1 standard documents and normally -- and, in fact,
2 if you look in your home mortgages, there's
3 similar language, the idea being that if there's
4 a lender who's lending one of the parties
5 significant money, they want to know that the
6 document is valid. They want to know that if for
7 some reason the party that they're giving the
8 loan to defaults, that they can step in, that
9 they can take over, that they can do the
10 necessary things to protect the asset.

11 The unusual part of this con- -- so I would
12 say those commercially reasonable consent and
13 assignments are something that one would expect,
14 and indeed, as I recall, the PPA requires us to
15 review those and, if they're commercially
16 reasonable, to sign those.

17 The unusual part of this one is the -- I
18 believe it's -- the section is termed special
19 agreements, and that's where the amendments arose
20 out of, so arguably those were. Those special

21 agreement parts are -- would be ultra vires, but
22 then again, I know the general manager, if we
23 were to -- obviously he's one of the people, if
24 we were to get into litigation, that would be
25 deposited. He's going to point back to that

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1 original authorization by the City Commission
2 that he was authorized to do all of these things
3 that are necessary to carry out the PPA.

4 COMMISSIONER CHASE: Okay.

5 MS. SHALLEY: So it puts you-all in a
6 difficult position.

7 COMMISSIONER CHASE: Sure. Sure. And,
8 again, I mean, I haven't much like maybe, you
9 know, other commissioners -- I know Commissioner
10 Wells has expressed some -- I mean, I'm going
11 back in my mind now and all. I mean, I remember
12 -- you know, I remember vividly as I was asking
13 questions new in office. I mean, some of the
14 questions I'm asking were -- were uncomfortable
15 and they were -- they were, you know, just in
16 one-on-one meetings, but it was -- the answer I'd
17 always get was, this doesn't matter. This is
18 done. The Commission wants this, and quite
19 frankly you don't have the votes. And I'm like,

20 well, I don't even know that I want the votes. I
21 just -- I'm just asking the question.

22 And -- and so having said all that, I
23 generally support that -- you know, I'm not --
24 I'm not a lawyer and I don't know what paying
25 under protest means or whatever, but between, you
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1 know, Exhibit G on your memo and -- and your
2 thoughts about that, between the, you know, kind
3 of still kind of hazy question, as at least
4 Commissioner Wells has asked questions that I was
5 listening to and agree and the fact that, you
6 know, I keep saying -- I mean, at least one
7 person actually saw when I compared GREC and the
8 city to the tiger and the boy in the movie
9 that --

10 COMMISSIONER BOTTCHE: Life of Pi?

11 COMMISSIONER CHASE: Yes. Thank you.
12 Because they said something to me about it, and I
13 guess it was maybe a little goofy. But we are
14 still in this together, and I want to talk and I
15 don't want to -- I don't want to take any action
16 at this point until I -- until I feel comfortable
17 that we've fully vetted all of what's there.

18 And -- and at some point if this gets into a
19 discussion about refinancings and acquisitions
20 and -- and, you know, requirements for less
21 power, whatever it might be, things that, you
22 know, help us, help them, help everyone, I want
23 to keep that open. And I don't support at this
24 time the motion and would rather us continue in
25 the -- well, I don't know what direction we're

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1 in, so I would ask, I mean, after the vote if we
2 would talk about what direction we would want to
3 take.

4 So thank you for your -- and the
5 in-depthness that you've done with this motion --
6 I mean this memo was -- was -- is appreciated,
7 and -- and, again, this is -- this is to me about
8 the best thing going forward. And I'm trying not
9 to dwell on the past too much, but I just believe
10 it provides the necessary context that gives me
11 reason to not stop our fight for our -- for what
12 we think is right. Thank you.

13 MAYOR BRADY: Thank you, Commissioner
14 Chase.

15 Commissioner Poe.

16 COMMISSIONER POE: Thank you. Commissioner

17 Chase mentioned there's a motion on the floor.

18 Did I miss a motion?

19 MAYOR BRADY: Yes. Commissioner Bottcher,
20 I believe it's your motion?

21 COMMISSIONER BOTTCHER: Yeah. It's --

22 MAYOR BRADY: Seconded by Hawkins.

23 COMMISSIONER WELLS: I think the staff
24 recommendation.

25 COMMISSIONER BOTTCHER: Right. It was
39
1 basically the staff recommendation.

2 COMMISSIONER POE: You know, I mean, I don't
3 want to be redundant to everything that's been
4 said, so I won't. I share the level of
5 frustration that has been exhibited up and down
6 the dais.

7 You know, at some point we have to decide
8 whether we take action contrary to our city
9 attorney's legal advice, which I'm not
10 comfortable with, or we move forward with what we
11 know is under our control and what we can do,
12 which is being aggressive with instituting
13 institutional controls I would say on both sides
14 of government to ensure that this doesn't happen

15 to some future commission, I believe that's
16 included in the motion, and continuing to look
17 for opportunities to correct some of the
18 financial impacts to the utility as -- that are a
19 result of -- of this action that's been taken,
20 which I think is the point that several of you
21 have indicated that, you know, we're not -- we
22 don't -- we don't want to slam the -- the door
23 shut and walk away.

24 But I'm not personally willing to go down a
25 road of litigation because I think it's just 40
1 going to cost us a significant but undetermined
2 amount of money for no real benefit. And -- and
3 that goes for, you know, giving direction and not
4 file these payments under protest because I just
5 don't -- I don't want to be tied up in litigation
6 unless I think that we're going to get something
7 significant out of it for our customers, and I
8 don't think that's going to happen with that.

9 But I do agree, you know, I think with
10 Commissioner Wells that there -- the future
11 opportunities may present themselves that we have
12 not been able to identify right now, and we need
13 to be open to pursuing those if we have a greater

14 degree of legal confidence and sort of, I would
15 say, moral confidence that -- that it would bear
16 positive results for -- for our residents and
17 rate payers, so, you know, with that I'll support
18 the motion on the floor. Thank you.

19 MAYOR BRADDY: Thank you.

20 Commissioner Hawkins.

21 COMMISSIONER HAWKINS: Thank you, Mr. Mayor.
22 I seconded the motion on the floor, and I support
23 the motion on the floor. On the substance of the
24 underlying problem, I can't add anything that
25 hasn't already been said, I think particularly by
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1 Commissioner Wells. It's not -- to put it
2 mildly, it's not good. That said, I appreciate
3 that we have practical recommendations that we
4 can take going forward to prevent similar
5 problems in the future.

6 As Commissioner Poe just described, I'm not
7 willing to go down a litigation path now. If --
8 if a majority of the Commission is interested in
9 making this decision more slowly, in other words,
10 not ruling out the possibility of litigation
11 today in order to think more or gather more

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12 information or in some other way making the
13 decision more slowly in the hopes that changing
14 facts or changing information will let us make a
15 better different decision, then I would support
16 that.

17 But in order to do that, I guess we would
18 need some kind of a substitute motion on the
19 floor. You know, I -- while I wouldn't support a
20 litigation decision, I would support something --
21 I would support making payments under protest,
22 so -- so if we're -- if we're with the motion
23 that's on the floor, I'm going to support the
24 motion on the floor, and that will end the
25 question. But if somebody wants to articulate a

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1 different course of action, you know, I -- I
2 would support postponing the decision to
3 eliminate the option of litigation, although I
4 would not at this time support a litigation
5 option.

6 MAYOR BRADDY: Thank you.

7 Before we circle back around, I want to
8 recognize Commissioner -- our City Attorney
9 Shalley again.

10 MS. SHALLEY: Yes. I did just want to

11 clarify that the -- the recommendation that I
12 proposed is -- it's only appropriate to make
13 payments under protest if you have a real dispute
14 that you've identified that you're going to
15 pursue. It's not enough to make payments under
16 protest if you're still considering things or --
17 or generally dissatisfied with a document. This
18 doesn't foreclose us in the future, if we do
19 determine that -- that there's some other more
20 viable legal challenge that we have, from at that
21 point making payments in protest as respects that
22 legal challenge and -- and you-all going ahead
23 and litigating that in the future.

24 This is -- this was really aimed at getting
25 to -- since in -- in our legal opinion it's not
43

1 advisable to pursue litigation on the one issue
2 that we looked at, that we don't feel it would be
3 appropriate to make payments under protest based
4 on that issue alone, so that's really what that
5 was getting at. It doesn't foreclose us from
6 continuing to have discussions, from people
7 continuing to consider the contract and the
8 amendments, so --

9 MAYOR BRADDY: All right. I want to make a
10 comment before I recognize commissioners again,
11 and that is whereas I appreciate the memo, I -- I
12 find -- I mean, essentially, you know, what's to
13 prevent OREC from -- I mean not OREC, you know,
14 GREC from essentially using your memo as
15 Exhibit A as to why there was no harm versus the
16 things you cite within the memo? I mean, you --
17 so in some ways you make the case for them, which
18 you're supposed to do. You're supposed to give
19 us all this guidance and you're supposed to do
20 all this research and you've done a good job, but
21 as you indicated at the outset, Ms. Shalley, you
22 haven't -- it hasn't been exhaustive yet, that
23 this is based on what you've uncovered or what
24 you've, you know, looked at.

25 As Commissioner Chase mentioned, in the 44
1 course of your research you came across another
2 action that seems to have been outside the bounds
3 of the general manager's -- his -- what he's
4 authorized to do, and so my -- I guess my point,
5 Commissioners, is that I would not support the
6 motion on the floor because as Commissioner
7 Hawkins indicated, it would end the question at

8 least on this matter.

9 And I would not be surprised -- here's --
10 here's my point, I think there's more there. I
11 would not be surprised if we -- if eventually we
12 get to something else that circles back to this
13 item originally, that comes right on back to it,
14 and then we're going to be telling ourselves,
15 well, wow. We -- we foreclosed on that
16 possibility to recover the monies we're
17 essentially owed, and so in other words, it would
18 be a hasty action to support the motion on the
19 floor and to do that, so I'm not comfortable
20 supporting the motion on those grounds.

21 And let me say one thing about, you know,
22 this -- GREC is good at this, folks. Anytime
23 we've, you know, indicated we're not happy, we
24 hear that they're going to take action on us, and
25 we -- we -- just not very long ago,

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1 Commissioners, we went through a very long,
2 agonizing process of trying to come up with a
3 dollar figure to make an offer on their plant
4 because they told us absolute certainty they got
5 a buyer lined up, they're ready to sell.

6 Well, guess what? There's no buyer. In
7 poker that's called a bluff, so I don't know if
8 -- if -- what they're doing here, but I'm -- I'm
9 just saying I am not ready to jump simply -- I'm
10 not ready to say how high do I need to jump
11 because they told us to jump.

12 There may be more that circles back around.
13 This issue -- the dollar figure here is too large
14 to quickly dismiss it to find a way out. I think
15 our legal advice is good, it's solid, but I think
16 it's -- I think it's not complete because we
17 don't have all the information yet. So in a
18 limited sense this is a good recommendation. In
19 the broader sense we need -- we need more time to
20 dig into this and not be intimidated by GREC, and
21 so I would -- I'll pause there and -- because
22 there's still some lights to recognize.

23 COMMISSIONER WELLS: I think I was next.

24 MAYOR BRADDY: Yeah. I'm sorry. Yeah.

25 Commissioner Wells was next and then

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1 Commissioner --

2 COMMISSIONER WELLS: Hinson-Rawls.

3 MAYOR BRADDY: -- Hinson-Rawls.

4 COMMISSIONER WELLS: Mr. Mayor, I just have

5 a question I guess. Absent explicit action -- I
6 imagine this is to Mrs. -- Ms. Viehe or to
7 Ms. Shalley. Absent specific guidance today,
8 what would you-all do? Would you act to pay
9 under protest or -- you would not at this time is
10 what I understood. You have a specific action
11 you've already taken, which is asking for
12 additional documentation, so absent specific
13 guidance from us, what -- would you pay under
14 protest or you would continue to do -- follow
15 that process that you're doing now?

16 MS. VIEHE: Mr. Mayor, you know, it would be
17 my desire that -- if the Commission could
18 articulate your desire. I do not want to send
19 them a letter and then get a lawsuit without the
20 Commission have -- Commission having directed us
21 to send a letter that we are paying --

22 COMMISSIONER WELLS: That's what I --

23 MS. VIEHE: -- but we are paying under
24 protest. That would be my preference.

25 COMMISSIONER WELLS: So I guess what I'm --
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1 I'm going to ask is in a little bit following on
2 Commissioner Hawkins' comment. It strikes me

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3 that we don't need to foreclose it, while at the
4 same time we don't need to declare that we're --
5 we'd like to move toward litigation and protest,
6 and so I would just ask for either a separation
7 of the second item just to simply not approve the
8 confirmation of our action at this time to allow
9 us to continue to review what is available to us.

10 You know, I do have a couple of other items
11 that I'm going to ask the city attorney's office
12 to look at, Ms. Viehe to look at, maybe if any of
13 you do as well, but just simply not to have the
14 staff act to pay under protest or anything but on
15 the other hand not to declare that we're not
16 going to either. Just simply give us the
17 opportunity to exclude number two, and I'm happy
18 to do it either by a modification of the motion
19 if it were friendly or to just simply split the
20 motion and have that second item voted on
21 separately. Either -- whichever you feel
22 comfortable with.

23 COMMISSIONER BOTTCHER: Mr. Mayor, may I
24 explain that?

25 MAYOR BRADY: Yes, please.

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1 COMMISSIONER BOTTCHER: It -- it almost

2 seems that what we're doing then is just
3 subsuming the -- subsuming everything under
4 number three, is let's refer this to committee to
5 decide how to move forward.

6 COMMISSIONER WELLS: Oh. I thought there
7 were some specific actions that were -- I guess
8 those were in the form of referrals.

9 COMMISSIONER BOTTCHE: Yeah. They're
10 pretty close.

11 COMMISSIONER WELLS: Right. Right. Yeah.
12 I'm sorry.

13 COMMISSIONER BOTTCHE: Right. Right.
14 So --

15 COMMISSIONER WELLS: So if you'd be open to
16 that --

17 COMMISSIONER BOTTCHE: Would that -- well,
18 I'm just asking, would that satisfy? You know, I
19 see where you're going with this and I agree with
20 the direction because, yeah, I think there --
21 there are enough questions, especially with the
22 late realization that there was more to this than
23 we thought.

24 COMMISSIONER WELLS: And I'd be happy to
25 have --

1 COMMISSIONER BOTTCHER: I just -- you know,
2 by modifying the motion to just say we're going
3 to refer the recommendations to audit, finance,
4 and legislative committee, would that satisfy
5 that?

6 COMMISSIONER WELLS: I believe --

7 COMMISSIONER BOTTCHER: I guess I'm
8 asking --

9 MAYOR BRADDY: So basically it's just number
10 three.

11 COMMISSIONER HINSON-RAWLS: It's just number
12 three.

13 COMMISSIONER BOTTCHER: Okay. Okay. So
14 that's what I will modify, that we will just do
15 staff recommendation number three.

16 MAYOR BRADDY: Well, does the seconder
17 agree?

18 COMMISSIONER HAWKINS: Yes.

19 MAYOR BRADDY: So the seconder agrees. So
20 the motion on the floor is -- is basically number
21 three, refer these recommendations contained in
22 the memorandum to the audit, finance, and
23 legislative committee to be taken up as part of

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24 the pending referral concerning audit of GRU.

25 Okay. We all understand that.

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1 Go back to Commissioner Hinson-Rawls. I'm
2 just so lost with these lights.

3 COMMISSIONER HINSON-RAWLS: I'm good now.

4 MAYOR BRADDY: You're good. All right.

5 Madam Attorney, then Commissioner Chase.

6 MS. SHALLEY: Yes. And just to clarify
7 along the lines of what Ms. Viehe said, so we
8 will not be making payments under protest at this
9 time. Is that -- is that the will of the
10 Commission? Because that's really the question
11 that we needed answered today.

12 COMMISSIONER BOTTCHER: It's --

13 MAYOR BRADDY: Well, I think we got a light.
14 We'll hear one commissioner address it, and then
15 we can -- or do you want to address it since you
16 made the motion?

17 COMMISSIONER BOTTCHER: Well, I was going to
18 say as maker of the motion, that was -- that was
19 my intent, that we don't do anything that's going
20 to trigger GREC to take legal action against us.
21 Let's -- let's go back to committee, let's go
22 back to staff and carefully talk about, plot out,

23 and decide what the best way forward is so that
24 we can avoid unintended consequences of
25 triggering something on GREC's side.

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1 MAYOR BRADY: All right.

2 COMMISSIONER BOTTCHE: So that's my
3 intention.

4 MAYOR BRADY: Understood.
5 Commissioner Chase.

6 COMMISSIONER CHASE: This is the point, I
7 think, then probably all of us want -- so I just
8 wanted some clarification. So what I see now is
9 -- is a unanimous majority of the Commission
10 forming around, you know, the topic to get more
11 time, and so my question was going to be on this
12 -- this -- we have not made a payment yet; is
13 that correct? It's about to be?

14 MS. VIEHE: That's correct. We have not
15 made a payment yet.

16 COMMISSIONER CHASE: And, again, just
17 ballpark numbers if it was three and a half a
18 year and it's one month at full -- full capacity,
19 it's going to probably be like \$300,000 or
20 something like that a month or 250 or something

21 like that?

22 MS. VIEHE: I think so.

23 COMMISSIONER CHASE: Okay.

24 MS. VIEHE: I saw the number, but I just
25 don't remember it.

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1 COMMISSIONER CHASE: Okay. That's fine.

2 MS. VIEHE: I just want to clarify too we're
3 talking about the -- the full power. We have
4 paid for test power, but not --

5 COMMISSIONER CHASE: Absolutely. But now
6 that it's online and assuming it's at 100 percent
7 capacity, but -- so -- so I -- just speaking for
8 myself, I mean, certainly I thought I had -- I
9 had the -- the thought based on my previous
10 things in my life that, you know, if you pay and
11 then -- I mean, I think that if we send maybe --
12 I don't know if we can send a letter or
13 something, but -- but I think that what we're
14 trying to say is we are sending a signal that we
15 are continuing to look into this matter and
16 reserve the right to take whatever action we feel
17 is appropriate.

18 And -- and quite frankly whether we, you
19 know, pay in protest or not right now, I don't

20 necessarily think as I sit here that's the
21 critical decision, and if it does -- and if I'm
22 going to be -- you know, I don't think Teddy
23 Roosevelt whacked him with a stick and then
24 talked, so let's --

25 MAYOR BRADDY: He carried it.

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1 COMMISSIONER CHASE: So let's talk and carry
2 it, and -- and I think I support the fact that I
3 think we've drawn unanimous support to do this.
4 And so I have no problem not -- I mean paying the
5 bill and not under protest, and at such time
6 we'll address that if it comes up. And I
7 appreciate everybody's willingness to -- to
8 discuss this and look at the different things in
9 the memo, and I support the amended motion.

10 MAYOR BRADDY: Very good. We've talked
11 about this a lot. Let's hear from any citizens
12 who wish to speak to this at the time. Step
13 forward. Let us know what you have to think --
14 say.

15 MR. SHEPHERD: I could be wrong, but --

16 MAYOR BRADDY: First --

17 MR. SHEPHERD: My name is Donald Shepherd.

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MAYOR BRADDY: Yeah.

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MR. SHEPHERD: I could be wrong about this,

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but my legal knowledge states that anytime you

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make payment, that locks you into the agreement,

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therefore I vote that we do not do any

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transaction this far until all of the issues have

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been brought to you to review. Once you make

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payment, the law states that that's a legal

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document bounding you to further payments to

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whenever it's paid in full, and as -- Ms. Shalley

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can take and mount my words, but that is a true

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factor. And so I ask that the Commission take

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and wait on this until we have all the

6

information.

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This other thing we was on -- talking about

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-- I was up here talking about before, that we

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wait on that also. Thank you very much.

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MAYOR BRADDY: Thank you very much for your

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comments.

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Next speaker, please.

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MS. STAHMER: Good afternoon, Mr. Mayor,

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Commissioners. My name is Paula Stahmer. I hope

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you'll bear with me because I have a bad sore

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throat. There are a number of issues that have

17 come up, and I'm just going to sort of go down a
18 list of things without trying to create some sort
19 of rhetorical breaches for everything.

20 Payments under protest could subject any
21 party to -- to alleged damages. That doesn't
22 mean that these damages necessarily amount to a
23 legitimate cause of action. Any party in a
24 contract can protest about being paid that way,
25 but we should not allow that to forestall and

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1 inhibit any appropriate investigation of what is
2 happening here.

3 The fact that the general manager might be
4 able to say that he was authorized to execute any
5 necessary documents to carry out the PPA is
6 standard legal kind of language where certain
7 authorities are basically acknowledged as opposed
8 to being delegated. It does not include
9 authority to substantially and materially change
10 the agreement that you've been authorized to
11 carry out and execute, so that argument just
12 collapses because it's -- it's a straw man. It
13 has no weight and -- and no strength.

14 GREC already knew by virtue of a number of

15 instances that were public before the Commission
16 how the Commission operates and the fact that
17 certain types of changes had to have the explicit
18 authority of the Commission sitting en banc and
19 reviewing the matter.

20 One of the more -- one of the most
21 significant examples is the fact that the
22 modification to the PPA that were signed off on
23 by Mr. Huntsinger in April of 2009, then were
24 brought forward to the Commission to be ratified
25 in 2009, and I believe representatives of GREC

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1 were here at the time. They knew full well what
2 was happening and what was going on, and they
3 wanted to make sure their deal went through. But
4 they understood the fact that the general manager
5 had signed that agreement was not sufficient to
6 really make it legal, and I think the general
7 manager sort of thought, whoops, I better bring
8 it before the Commission in order to make sure it
9 has some weight.

10 GREC has a history of playing the heavy, of
11 making spurious arguments and lots of threats
12 whenever the Commission even mildly suggests that
13 it's got some interest it has to protect that

14 might be counter to whatever it is GREC at the
15 moment is aiming for.

16 The former -- assertions made by the former
17 GRU attorney and the general manager with regard
18 to what GREC knew or didn't know I don't consider
19 to be generally reliable when they're in defense
20 of GREC. There are numerous instances that could
21 be recounted where it was clear both the attorney
22 and the general manager had an identity of
23 interest. It may have all been in good faith,
24 but the way they functioned was such that they
25 usually rose to GREC's defense rather than seeing
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1 their role as public servants and rising to
2 defense of public interests here.

3 I don't know whether the issue of sovereign
4 immunity arises here with regard to the threat
5 for suit for damages and whether that would
6 impose a limitation regardless of how much GREC
7 might claim in such an instance, but I think it's
8 an issue that should be discussed.

9 I do take issues with -- with a number of
10 matters in the city attorney's memorandum. I'll
11 just raise one example.

12 MAYOR BRADY: And -- yeah, one example

13 because --

14 MS. STAMER: Yes. I understand. Reference
15 was made to the -- an argument was raised in the
16 memorandum that the \$103 million does not
17 constitute 10 percent of what the 30-year
18 contract is going to cost, and I think that's a
19 spurious argument to make. The \$103 million is
20 today's dollars. The contract is not
21 approximately \$3 billion in today's money. It's
22 anywhere from 4- to 500 million or more depending
23 upon which document or City Commission meeting
24 you're referencing.

25 The \$103 million, if it's going to be

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1 compared to the overall ultimate cost of the
2 contract, has to be recalculated as to its
3 financed cost, not just the straight
4 \$103 million, so I think it very definitely meets
5 that 10 percent threshold, whether that's a
6 relevant argument in the context of the ultra
7 vires action, et cetera, et cetera.

8 There are a number of other points I would
9 make, but I think those were some of the main
10 ones, and thank you for allowing me to go over

11 my --

12 MAYOR BRADDY: Thank you. Next speaker,
13 please.

14 MS. MARTINEZ: I'm Debbie Martinez. I'll be
15 very brief, and I'll try to be as polite as I
16 can.

17 What's going on here today is exactly why
18 citizens are asking for an independent governance
19 of GRU. Mr. Mayor, I know that you and
20 Commissioner Chase did not vote to approve this
21 30-year overpriced biomass contract with GREC,
22 nor did you champion it, and I do appreciate you
23 working so hard to try to clean up this costly
24 mess.

25 Commissioner Bottcher quickly makes a motion
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1 to move past this \$103 million extra charge to
2 GRU customers as if -- as if it's insignificant.
3 Commissioner Hinson-Rawls stated who do we look
4 to hold accountable if not Mr. Huntsinger. How
5 about Mr. John Stanton, who was one of the
6 negotiators of this contract, and the city
7 commissioners who voted or championed this
8 overpriced, lopsided, and irregularly negotiated

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9 contract.

10 This Commission continues to say oops at
11 every loss, then go on and change regulations
12 after the fact. Thank goodness for city
13 elections this March.

14 MAYOR BRADDY: Thank you.

15 Any other members of the public wish to
16 speak to this item?

17 Okay. Turning back to the City Commission,
18 let's restate the motion since we modified it.
19 What exactly is the action we look to take?
20 Number three is send it to the committee.

21 COMMISSIONER BOTTCHER: It's just number
22 three, to refer -- refer the recommendations
23 contained in the memo to the audit, finance, and
24 legislative committee.

25 MAYOR BRADDY: Uh-huh. And then we will

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1 make a payment not in protest --

2 COMMISSIONER BOTTCHER: Right.

3 MAYOR BRADDY: -- is that correct? And I'll
4 tell you, Commissioners, I'm going to support
5 this because I -- I really like the idea of us
6 being unanimous, assuming we're unanimous. I
7 think that -- more than anything else that sends

8 as strong a message to GREC as anything else we
9 might do. I would be willing to support making
10 the -- the payment under protest, but I'll stick
11 with what we have here.

12 So that said, I'm going to go ahead and call
13 for the vote. All in favor of the motion say
14 aye.

15 COMMISSIONERS: Aye.

16 MAYOR BRADY: All opposed. And motion does
17 carry unanimously. Thank you, Ms. Shalley, for
18 this -- for the explanation and the memo.

19 Commissioner Chase.

20 COMMISSIONER CHASE: I didn't want to make a
21 big deal about it and mess the motion up, but I
22 wondered if the Commission might be supportive of
23 having you draft a letter to the appropriate
24 person at GREC letting them know that -- the
25 action that we've taken or we assume they've --

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1 they will know that? I mean, just --

2 MAYOR BRADY: They will know that, but I
3 would -- as I say, we might want a written record
4 of what our actions are.

5 COMMISSIONER CHASE: Because we get letters

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6 from them all the time.

7 MAYOR BRADDY: Yeah.

8 COMMISSIONER CHASE: So I would -- I would
9 move that the City Commission authorize the mayor
10 to write a letter to the appropriate person at
11 GREC via the PPA about the action we've taken
12 today. Today.

13 MAYOR BRADDY: Okay. Is there a second?

14 COMMISSIONER HINSON-RAWLS: I'm willing to
15 second that with some -- with a question.

16 MAYOR BRADDY: Okay.

17 COMMISSIONER HINSON-RAWLS: What is your
18 intent of the letter and what would be the
19 content?

20 COMMISSIONER CHASE: My intent would be that
21 we are -- that we are -- quite frankly we're
22 continuing to look at this. We reserve the right
23 to potentially pursue some kind of action or
24 protest, but we're not at this time and --

25 COMMISSIONER HINSON-RAWLS: I thought maybe
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1 perhaps you wanted to address the fact that
2 you've been saying let's talk.

3 COMMISSIONER CHASE: And then I would maybe
4 think that maybe it would result in that. We can

5 certainly --

6 COMMISSIONER HINSON-RAWLS: Okay. So --

7 COMMISSIONER CHASE: -- even include that.

8 Would you like to include that?

9 COMMISSIONER HINSON-RAWLS: No. What I'd
10 like to do is say let's talk about this situation
11 and see what would benefit us all.

12 COMMISSIONER CHASE: Absolutely. I --

13 COMMISSIONER HINSON-RAWLS: Especially the
14 customers and neighbors of your facility.
15 Second.

16 COMMISSIONER CHASE: That will be part of
17 that motion -- the letter.

18 MAYOR BRADY: One of the things,
19 Commissioners, maybe then is -- is the letter
20 certainly has a paragraph explaining what we just
21 did today but then request that maybe at a future
22 -- that they'd be willing to come to City
23 Commission or in some way engage us so that we
24 can work together on any of these disputes.

25 COMMISSIONER HINSON-RAWLS: And talk about

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1 some resolutions.

2 MAYOR BRADY: Yeah.

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3 COMMISSIONER HINSON-RAWLS: Yes.

4 MAYOR BRADDY: Okay. All right. That
5 sounds good. I don't see any lights. Do any
6 members of the public wish to speak to that?
7 Seeing none.

8 Okay. Back to the Commission. All in favor
9 say aye.

10 COMMISSIONERS: Aye.

11 MAYOR BRADDY: Opposed? Motion carries.
12 Thank you. Commissioner Chase, motion carries
13 unanimous -- unanimously.

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1 REPORTER'S CERTIFICATE

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EX. S

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STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Stephanie T. Lachowicz, Registered Professional Reporter, Florida Professional Reporter, and Notary Public in and for the State of Florida at Large, hereby certify that I was authorized to and did stenographically report the proceedings and that the transcript, pages 1 through 63, is a true record of my stenographic notes.

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

DATED this 19th day of April 2017.

Stephanie T. Lachowicz
Registered Professional Reporter
Florida Professional Reporter

City of Gainesville Office of the City Attorney

Marion J. Radson ♦
City Attorney



♦ Board Certified City, County
& Local Government Law

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Ronald D. Combs
Raymond O. Manasco, Jr.*
Stephanie M. Marchman
Shayla L. McNeill*
Daniel M. Nee ♦
Nicole M. Shalley
Elizabeth A. Waratuke ♦

June ____, 2011

To the Lenders and Issuing Banks party to the Credit Agreement referred to below, The Bank of Tokyo-Mitsubishi UFJ, Ltd., as Administrative Agent, Union Bank, N.A., as Collateral Agent on behalf of the Secured Parties and as Depository Bank; and each of their permitted successors and assigns

Ladies and Gentlemen:

I have acted as counsel to the City of Gainesville, Florida d/b/a Gainesville Regional Utilities (the "Subject Party"), a municipal corporation duly organized and validly existing under the laws of the State of Florida in connection with (i) the Power Purchase Agreement for the Supply of Dependable Capacity, Energy and Environmental Attributes from a Biomass-Fired Power Production Facility, dated as of April 29, 2009, between the Subject Party and Gainesville Renewable Energy Center, LLC (the "Borrower") (as amended, supplemented or modified and in effect from time to time, the "PPA"), (ii) the Lease Agreement, dated as of September 28, 2009 (the "Lease"), between the Subject Party and the Borrower, (iii) the Large Generator Interconnection Agreement (LGIA), effective as of November 16, 2010, between the Subject Party and the Borrower (the "LGIA") and (iv) the Consent and Agreement, dated as of June ____, 2011, among the Borrower, Union Bank, as Collateral Agent and the Subject Party (the "Consents", and together with the PPA, the Lease and the LGIA, collectively the "Subject Documents").

You have asked for this opinion letter to be delivered pursuant to Section 6.01(q) of that certain Credit Agreement, dated as of the date hereof (as amended, modified or otherwise supplemented from time to time, the "Credit Agreement"), among, *inter alia*, the Borrower, The Bank of Tokyo-Mitsubishi UFJ, Ltd., as Administrative Agent, Union Bank, N.A., as Collateral Agent, the Issuing Banks party thereto and the Lenders party thereto. In rendering the opinions

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City Hall and the City Attorney's Office are closed on Fridays

EX. T

expressed below, I, or individuals under my direction, have examined executed counterparts of the Subject Documents and originals or copies, certified or otherwise identified to my satisfaction, of such corporate records, agreements, documents and other instruments, and such certificates and comparable documents of public officials and have conducted such other investigations of fact and law as I have deemed relevant and necessary as a basis for the opinions expressed below. In such examinations, I have assumed the genuineness of all signatures, the authenticity of documents submitted to me as originals and the conformity with authentic original documents of all documents submitted to me as copies.

In rendering the opinions expressed below, I have assumed, with respect to all of the documents referred to in this opinion letter, that (except, to the extent set forth in the opinions expressed below, as to the Subject Party): (i) such documents have been duly authorized by, have been duly executed and delivered by, and constitute legal, valid, binding and enforceable obligations of, all of the parties to such documents; (ii) all signatories to such documents have been duly authorized; and (iii) all of the parties to such documents are duly organized and validly existing and have the power and authority (corporate or other) to execute, deliver and perform such documents.

Based upon and subject to the foregoing, and having considered such questions of law as I have deemed necessary as a basis for the opinions expressed below, I am of the opinion that:

1. The Subject Party (i) is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Florida and (ii) has all requisite power and authority to execute and deliver, and to perform its obligations under, the Subject Documents.
2. The execution and delivery by the Subject Party of, and the performance and incurrence by the Subject Party of its obligations and liabilities under, each Subject Document have been duly authorized by all necessary action of the Subject Party. The Subject Party has duly executed and delivered each Subject Document.
3. Each Subject Document constitutes the legal, valid and binding obligation of the Subject Party, enforceable against the Subject Party in accordance with its terms.
4. The execution, delivery and performance by the Subject Party of the Subject Documents do not and will not (i) require any consent or approval of, registration or filing with, or any other action by, any federal, state or local governmental authority including, but not limited to, the Florida Public Service Commission, except such as have been obtained or made and are in full force and effect, (ii) violate any constitutional provision, applicable law or regulation of the state of Florida, (iii) violate or conflict with the charter or other organizational documents of the Subject Party or (iv) violate or result in a default under, or result in the creation of a lien under, any bond resolution, loan or credit agreement or any other material agreement, lease or instrument to which the Subject Party is a party or by which it or its properties are bound.
5. I have no knowledge of any action, suit or proceeding by or before any court, arbitrator or governmental agency (i) with respect to the Subject Documents or any of the transactions contemplated thereby or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would have a material adverse effect on the ability of the Subject Party to perform its obligations under the Subject Documents; *provided*,

that no opinion is rendered with respect to any litigation or proceeding which has been commenced but of which the City has not been notified and of which we have no knowledge.

The foregoing opinions are subject to the effect of, and restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws affecting creditors' rights and judicial discretion and the valid exercise of the sovereign police powers of the State of Florida and of the constitutional power of the United States of America.

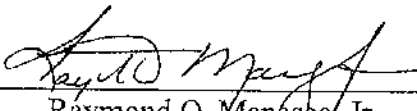
By use of the word "enforceable" in this opinion, I am not rendering any opinion as to the availability of the remedy of specific performance or other equitable relief.

All opinions expressed are limited solely to Florida law and the federal law of the United States of America. No opinion is expressed as to the laws of any other jurisdiction. My opinion is limited in all respects to the laws existing on the date hereof. By providing this opinion to you, I do not undertake to advise you of any changes in the law which may occur after the date hereof.

I am a member of the bar of the State of Florida. This opinion letter is provided to you solely in connection with the above matter. This opinion may not be relied upon by any other person or for any purpose other than in connection with the transactions contemplated by the Credit Agreement without my prior written consent in each instance.

Very truly yours,

OFFICE OF THE CITY ATTORNEY

By 
Raymond O. Manasco, Jr.
Utilities Attorney

EXECUTION VERSION

This CONSENT AND AGREEMENT (this "Agreement") dated as of June 30, 2011, is entered into among THE CITY OF GAINESVILLE, FLORIDA d/b/a GAINESVILLE REGIONAL UTILITIES, a municipal corporation duly organized and validly existing under the laws of the State of Florida ("Purchaser"), GAINESVILLE RENEWABLE ENERGY CENTER, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("Seller") and UNION BANK, N.A., as collateral agent for the Lenders (as defined below) and the other Secured Parties referred to in the Credit Agreement defined below (the "Secured Parties") (in such capacity, together with its successors in such capacity, the "Collateral Agent").

WHEREAS, Seller seeks to construct, own and operate a biomass-fired power production facility anticipated to produce approximately 101.52 MWs to be located in Alachua County, Florida (the "Project");

WHEREAS, Purchaser and Seller have entered into that certain Power Purchase Agreement for the Supply of Dependable Capacity, Energy and Environmental Attributes from a Biomass-Fired Power Production Facility, dated as of April 29, 2009, as supplemented by the Equitable Adjustment for Change of Law dated as of March 16, 2011 (as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, the "Assigned Agreement");

WHEREAS, Seller, the Collateral Agent, the lenders from time to time party thereto (the "Lenders") and certain other Secured Parties are parties to that certain Credit Agreement, dated as of the date hereof (as amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement"), pursuant to which certain funds will be extended to Seller for the development, ownership, construction and operation of the Project and certain related expenses (the "Loans");

WHEREAS, as collateral security for Seller's obligations under the Credit Agreement, Seller has agreed to assign all of its right, title and interest in, to and under the Assigned Agreement to the Collateral Agent for the benefit of the Secured Parties;

NOW, THEREFORE, Purchaser, Seller and the Collateral Agent agree as follows:

1. Definitions. Unless otherwise specified, any capitalized term used but not defined herein shall have the meaning specified for such term as set forth in the Assigned Agreement. In addition, the following capitalized terms shall have the following meanings:

"Agreement" has the meaning set forth in the preamble.

"Assigned Agreement" has the meaning set forth in the recitals.

"Authorization" means any consent, waiver, registration, filing, agreement, notarization, certificate, license, tariff, approval, permit, authorization, exception or exemption from, by or with any Governmental Authority, whether given by express action or deemed given by failure to act within any specified period, and all corporate, creditors', shareholders' and partners' approvals or consents.

"Collateral Agent" has the meaning set forth in the preamble.

"Credit Agreement" has the meaning set forth in the recitals.

"Event of Default" means any event constituting an event of default by Seller under the Financing Documents.

"Financing Documents" means the Credit Agreement and each financing agreement ancillary thereto.

"Governmental Authority" means any United States federal, state, municipal, local, territorial, or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body.

"Ground Lease" means that certain lease agreement, dated as of September 28, 2009, between Seller and Purchaser.

"Lenders" has the meaning set forth in the recitals.

"Loans" has the meaning set forth in the recitals.

"Project" has the meaning set forth in the recitals.

"Purchaser" has the meaning set forth in the preamble.

"Revenue Account" means the account designated as such to be established and maintained in accordance with the Financing Documents.

"Secured Parties" has the meaning set forth in the preamble.

2. Purchaser Representations and Warranties. Purchaser hereby represents and warrants that:

(a) Purchaser is duly organized and validly existing under the laws of the State of Florida. Purchaser is duly qualified to do business and is in good standing in all jurisdictions where necessary in light of the business it conducts and the property it owns and intends to conduct and own and in light of the transactions contemplated by Assigned Agreement. No filing, recording, publishing or other act that has not been made or done is necessary or desirable in connection with the existence or good standing of Purchaser or the conduct of its business.

(b) Purchaser has the full power, authority and legal right to execute, deliver and perform its obligations hereunder and under the Assigned Agreement. The execution, delivery and performance by Purchaser of this Agreement and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action by the City Commission of the City of Gainesville, Florida and no further authorization is necessary. This Agreement and the Assigned Agreement have been duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by and binding effect on the other parties thereto) constitute the legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their respective terms, except as the enforceability thereof may be limited by (i) applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditor's rights generally and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(c) The execution, delivery and performance by Purchaser of this Agreement and the Assigned Agreement do not and will not (i) require any consent or approval of the City Commission of the City of Gainesville, Florida or of any other Person which has not been obtained and each such consent or approval that has been obtained is in full force and effect, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, decree, determination or award having applicability to Purchaser or any provision of Purchaser's charter, (iii) conflict with, result in a breach of or constitute a default under any bond resolution or loan or credit agreement or any other material agreement, lease or instrument to which Purchaser is a party or by which Purchaser or its properties and assets are bound or affected or (iv) result in, or require the creation or imposition of, any lien upon or with respect to any of the assets or properties of Purchaser now owned or hereafter acquired.

(d) No Authorization that has not already been received is required for the execution, delivery or performance of this Agreement and the Assigned Agreement by Purchaser, or, to the actual knowledge of Purchaser, for the exercise by the Collateral Agent of its rights and remedies with respect to this Agreement.

(c) Assuming the due authorization, execution and delivery by, and binding effect on, Seller and the Collateral Agent, as applicable, this Agreement and the Assigned Agreement are in full force and effect.

(f) There is no action, suit or proceeding at law or in equity by or before any Governmental Authority, arbitral tribunal or other body now pending or to the actual knowledge of Purchaser, threatened against or affecting Purchaser or any of its properties, rights or assets which (i) is likely to have a material adverse effect, individually or in the aggregate, on its ability to perform its obligations hereunder or under the Assigned Agreement or (ii) question the validity, binding effect or enforceability hereof or of the Assigned Agreement or any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

(g) Purchaser is not in default under any material covenant or obligation hereunder or under the Assigned Agreement and no such default has occurred prior to the date hereof. To the actual knowledge of Purchaser, Seller is not in default under any material covenant or obligation of the Assigned Agreement and no such default has occurred prior to the date hereof. After giving effect to the assignment by Seller to the Collateral Agent of the Assigned Agreement pursuant to the Financing Documents, and after giving effect to the acknowledgment of and consent to such assignment by Purchaser, to the actual knowledge of Purchaser, there exists no event or condition which would constitute a default, or which would, with the giving of notice or lapse of time or both, constitute a default under the Assigned Agreement. Purchaser and, to the actual knowledge of Purchaser, Seller have complied with all conditions precedent to the respective obligations of such party to perform under the Assigned Agreement applicable to date.

(h) This Agreement, the Assigned Agreement, the Large Generation Interconnection Agreement, effective as of November 16, 2010, between Purchaser and Seller, the Ground Lease and related real property documents, and such fuel source agreements that Purchaser may enter into from time to time constitute and include all agreements entered into by Purchaser relating to, and required from Purchaser for the consummation of, the transactions contemplated by this Agreement and the Assigned Agreement.

3. Seller Representations and Warranties. Seller hereby represents and warrants that:

(a) Seller is duly organized and validly existing under the laws of the State of Delaware. Seller is duly qualified to do business and is in good standing in all jurisdictions where necessary in light of the business it conducts and the property it owns and intends to conduct and own and in light of the transactions contemplated by Assigned Agreement. No filing, recording, publishing or other act that has not been made or done is necessary or desirable in connection with the existence or good standing of Seller or the conduct of its business.

(b) Seller has the full power, authority and legal right to execute, deliver and perform its obligations hereunder and under the Assigned Agreement. This Agreement and the Assigned Agreement have been duly executed and delivered by Seller and (assuming the due authorization, execution and delivery by and binding effect on the other parties thereto) constitute the legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, except as the enforceability thereof may be limited by (i) applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditor's rights generally and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(c) The execution, delivery and performance by Seller of this Agreement and the Assigned Agreement do not and will not (i) require any consent or approval of any Person which has not been obtained and each such consent or approval that has been

obtained is in full force and effect, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, decree, determination or award having applicability to Seller or any provision of Seller's articles of incorporation or by-laws, (iii) conflict with, result in a breach of or constitute a default under any indenture or loan or credit agreement or any other material agreement, lease or instrument to which Seller is a party or by which Seller or its properties and assets are bound or affected or (iv) result in, or require the creation or imposition of, any lien upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired.

(d) No Authorization that has not already been received is required for the execution, delivery or performance of this Agreement and the Assigned Agreement by Seller, or, to the actual knowledge of Seller, for the exercise by the Collateral Agent of its rights and remedies with respect to this Agreement.

(e) Assuming the due authorization, execution and delivery by, and binding effect on, Purchaser and the Collateral Agent, as applicable, this Agreement and the Assigned Agreement are in full force and effect.

(f) There is no action, suit or proceeding at law or in equity by or before any Governmental Authority, arbitral tribunal or other body now pending or to the actual knowledge of Seller, threatened against or affecting Seller or any of its properties, rights or assets which (i) is likely to have a material adverse effect, individually or in the aggregate, on its ability to perform its obligations hereunder or under the Assigned Agreement or (ii) question the validity, binding effect or enforceability hereof or of the Assigned Agreement or any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

(g) Seller is not in default under any material covenant or obligation hereunder or under the Assigned Agreement and no such default has occurred prior to the date hereof. To the actual knowledge of Seller, Purchaser is not in default under any material covenant or obligation of the Assigned Agreement and no such default has occurred prior to the date hereof. Seller and, to the actual knowledge of Seller, Purchaser have complied with all conditions precedent to the respective obligations of such party to perform under the Assigned Agreement applicable to date.

(h) This Agreement, the Assigned Agreement, the Large Generation Interconnection Agreement, effective as of November 16, 2010, between Purchaser and Seller, the Ground Lease and related real property documents, and such fuel source agreements that Seller may enter into from time to time constitute and include all agreements entered into by Seller relating to, and required from Seller for the consummation of, the transactions contemplated by this Agreement and the Assigned Agreement.

4. Consent and Agreement. Purchaser hereby consents in all respects to the pledge and assignment to the Collateral Agent of all of Seller's right, title and interest in, to and under the Assigned Agreement and acknowledges and agrees that:

(a) If the Collateral Agent shall provide written notice to Purchaser that an Event of Default has occurred and is continuing and the Collateral Agent desires to exercise its rights and remedies pursuant to the Financing Documents, the Collateral Agent and any designee thereof shall be entitled to exercise any and all rights of Seller under the Assigned Agreement in accordance with its terms; provided that (i) the Financing Documents provide a grant from Seller to the Collateral Agent to exercise such rights and (ii) to the extent such exercise involves directions to Purchaser involving the physical operation of the Project, the Collateral Agent shall have provided written notice to Purchaser that the Collateral Agent intends to take control of the Project. Without limiting the generality of the foregoing, upon the occurrence and continuation of an Event of Default and the delivery of such written notice to Purchaser that the Collateral Agent desires to exercise its rights and remedies pursuant to the Financing Documents, the Collateral Agent and any designee thereof shall, subject to the terms of the Financing Documents, have the full right and power to enforce directly against Purchaser all obligations of Purchaser under the Assigned Agreement and otherwise to exercise all remedies under the Assigned Agreement and to make all demands and give all notices and make all requests required or permitted to be made by Seller under the Assigned Agreement.

(b) Upon the occurrence of a Seller Event of Default, Purchaser shall not exercise any of its rights set forth in the Assigned Agreement to cancel, terminate or suspend performance under, the Assigned Agreement unless it has first afforded the Collateral Agent or its designee a cure period for a duration of (i) in the case of monetary defaults, 30 days from the expiration of Seller's right to cure such default under the Assigned Agreement; and (ii) in the case of nonmonetary defaults, 60 days from the expiration of Seller's right to cure such default under the Assigned Agreement; provided, in the case of this clause (ii) that the Collateral Agent (or its designee) has commenced in good faith to cure any such Seller Event of Default within 30 days from the expiration of Seller's right to cure such default under the Assigned Agreement.

(c) Purchaser shall deliver to the Collateral Agent at the address set forth in Section 6(b) below, or at such other address as the Collateral Agent may designate in writing from time to time to Purchaser, concurrently with the delivery thereof to Seller, a copy of each notice of material breach by Seller or a Seller Event of Default given by Purchaser pursuant to the Assigned Agreement.

(d) In the event that the Collateral Agent or its designee in accordance with paragraph (c) below succeeds to Seller's interest under the Assigned Agreement, whether by foreclosure or otherwise, the Collateral Agent or its designee shall (i) assume in writing liability for all of Seller's obligations under the Assigned Agreement; provided, that such liability shall not include any liability for claims of Purchaser against Seller arising from Seller's failure to perform during the period ending on the earlier of (x) the date of the Collateral Agent's or such designee's succession to Seller's interest in and under the Assigned Agreement and (y) the date Purchaser could have exercised its right to cancel, terminate, or suspend the Assigned Agreement due to a Seller Event of Default, but such cancellation, termination or suspension was prevented due to the Collateral Agent exercising its right to cure under clause (b) above (for the avoidance of doubt, this

proviso shall not affect the measurement of performance standards under the Assigned Agreement which are measured over time periods that span both pre and post-succession periods), (ii) cure any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to Seller, and (iii) provide Completion Performance Security or PPA Performance Security, as applicable, under the terms of the Assigned Agreement. Except as otherwise set forth in the immediately preceding sentence, none of the Secured Parties shall be liable for the performance or observance of any of the obligations or duties of Seller under the Assigned Agreement and the assignment of the Assigned Agreement by Seller to the Collateral Agent pursuant to the Financing Documents shall not give rise to any duties or obligations whatsoever on the part of any of the Secured Parties owing to Purchaser.

(e) Upon the exercise by the Collateral Agent of any of its remedies under the Financing Documents granting the Collateral Agent the right to assign its rights and interests under the Assigned Agreement or the rights and interests of Seller under the Assigned Agreement, Purchaser consents to the Collateral Agent's assignment of such rights and interests to any purchaser or transferee of the Project, if such purchaser or transferee (i) certifies in writing to Purchaser that it intends to perform the obligations of Seller as and to the extent required under the Assigned Agreement, (ii) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to Seller, (iii) provides Completion Performance Security or PPA Performance Security, as applicable, under the terms of the Assigned Agreement, (iv) provides satisfactory written evidence that it is financially capable of performing Seller's obligations under the Assigned Agreement (provided that a tangible net worth by the entity assuming the Assigned Agreement or its direct or indirect parent entity of at least \$100 million shall be presumed to meet this requirement), and (v) is reasonably capable of so performing. Upon such assignment and assumption, to the extent the Collateral Agent has previously assumed any obligations thereunder, the Collateral Agent shall be relieved of all obligations under the Assigned Agreement arising after such assignment and assumption.

(f) In the event that (i) the Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving Seller or (ii) the Assigned Agreement is terminated as a result of any bankruptcy or insolvency proceeding involving Seller, if within 45 days after such rejection or termination the Collateral Agent or its designee shall have taken ownership of the Project and certified in writing to Purchaser that it intends to perform the obligations of Seller as and to the extent required under the Assigned Agreement, upon the request of the Collateral Agent or its designee, Purchaser will execute and deliver to the Collateral Agent or such designee a new Assigned Agreement which shall be for the balance of the remaining term under the original Assigned Agreement before giving effect to such rejection or termination and shall contain the same conditions, agreements, terms, provisions and limitations as the original Assigned Agreement (except for any requirements which have been fulfilled by Seller and Purchaser prior to such rejection or termination). References in this Agreement to the "Assigned Agreement" shall be deemed also to refer to the new Assigned Agreement.

(g) In the event that the Collateral Agent or its designee, or any purchaser or other transferee of the interests of the Collateral Agent or its designee in the Project assume or become liable under the Assigned Agreement (as contemplated in subsection (d), (e) or (f) above or otherwise), liability in respect of any and all obligations of any such party under the Assigned Agreement shall not extend to any officer, director, employee, shareholder or agent thereof.

5. Special Agreements. Each of Purchaser and Seller hereby further acknowledges and agrees that:

(a) Purchaser shall notify the Collateral Agent no less than 30 days in advance of its intention to exercise its fuel procurement option pursuant to Section 4.1 of the Assigned Agreement;

(b) the words "PTC Adder" in Section 8.2.11 of the Assigned Agreement are hereby deleted and replaced with the words "PTC Adjustment";

(c) Section 25.1.2 of the Assigned Agreement is hereby deleted in its entirety;

(d) the following is inserted at the end of Section 25.4 of the Assigned Agreement: "The legal remedies available to Seller upon the occurrence of a Purchaser Event of Default or by Purchaser upon the occurrence of a Seller Event of Default, shall include, without limitation, direct damages to Seller or Purchaser, as applicable. To the extent such direct damages are sought by Seller or Purchaser, as applicable, such direct damages shall be calculated on the basis of a methodology to be determined by the appropriate arbitrator selected under Section 24.2 or the relevant court of competent jurisdiction; *provided* that the Parties agree that the estimated net present value of the economic loss to the non-defaulting Party due to the termination of this Agreement may be considered in determination of those damages based on, without limitation, factors such as: the estimated future net revenue under this Agreement and then relevant rates, prices, yields, forward yield curves, volatilities, spreads or other market data as applicable for renewable energy and baseload capacity as determined or estimated over the remaining Delivery Term.";

(e) Section 27.2.5 of the Assigned Agreement is amended to insert the following at the end thereof: "Each Qualified Appraiser shall make its determination of the summation of the above components. Notwithstanding the foregoing, if the Qualified Appraiser believes that the summation of the above components produces a Fair Market Value of the Facility that differs materially from the fair market value using another approach it thinks more appropriate for determining the value of the Facility, then the Qualified Appraiser shall use the fair market value derived under the other approach as the Fair Market Value of the Facility, and provide Seller and Purchaser with an explanation thereof.";

(f) a new Section 29.16 is inserted as follows: "Seller and Purchaser intend that this Agreement will be treated as a "service contract" within the meaning of 26 U.S.C. § 7701(e)(3)."

(g) the words "existing substation" in the definition of "Delivery Point" are hereby replaced with the words "the new substation that is to be built by Seller and conveyed to Purchaser upon completion thereof";

(h) Purchaser and Seller shall work in good faith to produce a mutually agreeable template of operating procedures to be inserted into Appendix VI within a reasonable time period in advance of the Commercial Operation Date and the failure to so produce such template by May 15, 2009 shall not be deemed to be a breach by Purchaser or Seller of the Assigned Agreement;

(i) the penultimate sentence of Section 1.6 of Appendix IX to the Assigned Agreement reading "Alternatively, the Seller may establish a new contracted capacity, if agreeable to the Purchaser." is hereby deleted and replaced with: "Alternatively, Seller may propose a new contracted capacity based on the results from the failed Initial Capacity Tests and Seller and Purchaser will discuss and establish an alternative initial Dependable Capacity consistent with the results of the failed Initial Capacity Tests, such establishment not to be unreasonably withheld or delayed."; and

(j) the definition of "Commercial Operation Date" shall be replaced with the following: "Commercial Operation Date" means the first day following the date Seller successfully completes the Initial Capacity Test (as defined in Appendix IX of this Agreement) or the date Parties agree to an initial Dependable Capacity pursuant to Section 1.6 of Appendix IX of this Agreement.

6. Arrangements Regarding Payments. All payments to be made by Purchaser to Seller under the Assigned Agreement shall be made in lawful money of the United States, directly to the Collateral Agent, for deposit into the Revenue Account (Account No. 6711944708), at Union Bank, N.A., 1251 Avenue of the Americas, 19th Floor, New York, New York, 10020, or to such other Person and/or at such other address as the Collateral Agent may from time to time specify in writing to Purchaser.

7. Miscellaneous.

(a) No failure on the part of the Collateral Agent or any of its agents to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

(b) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile with proof of receipt, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties, at the address set forth below:

if to the Collateral Agent, addressed to:

Union Bank, N.A.

Address: 1251 Avenue of the Americas, 19th Fl.
New York, New York 10020

Telecopy: (646) 452-2000

Attention: Hugo Gindraux

Email: hugo.gindraux@unionbank.com

If to Purchaser, addressed to:

Gainesville Regional Utilities

301 S.E. 4th Avenue

Gainesville, FL 32614-7117

Attention: General Manager

Telephone: (352) 393-1007

Telecopy: (352) 334-2277

If to Seller, addressed to:

Gainesville Renewable Energy Center, LLC

75 Arlington St., 5th Floor

Boston, MA 02116

Attention: James Gordon

Telephone: (617) 482-6150

Telecopy: (617) 904-3109

(c) This Agreement may be amended or otherwise modified only by an instrument in writing signed by the party to be bound by the modification. Any waiver shall be effective only for the specified purpose for which it was given.

(d) This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of Purchaser, Seller, and the Collateral Agent (and the Secured Parties). Purchaser shall not assign or transfer its rights hereunder without the prior written consent of the Collateral Agent.

(e) This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall become effective at such time as the Collateral Agent shall have received counterparts hereof signed by all of the intended parties hereto.

(f) If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Collateral Agent in order to carry out the intentions of the parties hereto as nearly as may be possible and (ii) the invalidity or unenforceability of any provision hereof in any

jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

(g) Headings appearing herein are used solely for convenience and are not intended to affect the interpretation of any provision of this Agreement.

(h) **ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF FLORIDA OR THE UNITED STATES OF AMERICA, IN EITHER CASE, LOCATED IN ALACHUA COUNTY FLORIDA. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS, AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS.**

(i) **THE AGREEMENTS OF THE PARTIES HERETO ARE SOLELY FOR THE BENEFIT OF PURCHASER, SELLER, THE COLLATERAL AGENT AND THE SECURED PARTIES, AND NO PERSON SHALL HAVE ANY RIGHTS HEREUNDER.**

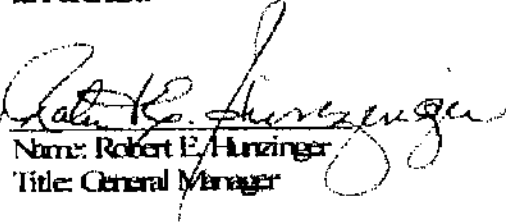
(j) **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF FLORIDA.**

(k) **EACH OF PURCHASER, SELLER AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ASSIGNED AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

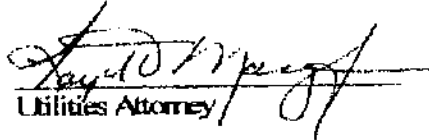
(Signature pages follow)

IN WITNESS WHEREOF, the undersigned by its officer duly authorized has caused this Agreement to be duly executed and delivered as of the date first above written.

THE CITY OF GAINESVILLE d/b/a
GAINESVILLE REGIONAL UTILITIES,
as Purchaser

By 
Name: Robert E. Hunzinger
Title: General Manager

Approved as to form and legality:


Utilities Attorney

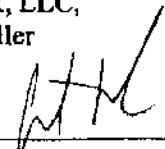
Consent and Agreement (GRU)

#4819-7584-9737

GRU-000025

EX. U

GAINESVILLE RENEWABLE ENERGY
CENTER, LLC,
as Seller

By  _____
Name:
Title:

UNION BANK, N.A.,
as Collateral Agent

By *H. Gindreau*
Name: **Hugo Gindreau**
Title: **Vice President**

#4819-7584-9737

Consent and Agreement (GRU)

GRU-000027

EX. U

AMERICAN ARBITRATION ASSOCIATION

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

v.

GAINESVILLE RENEWABLE ENERGY
CENTER, LLC, AMERICAN RENEWABLES,
LLC, TYR ENERGY, LLC, TYR ENERGY,
INC., ENERGY MANAGEMENT, INC.,
BAYCORP HOLDINGS LTD., STARWOOD
ENERGY GROUP GLOBAL, LLC, STARWOOD
ENERGY GROUP GLOBAL, INC., RON
FAGEN, DIANE FAGEN, AND JOHN DOES
NOS. 1-25.

DEMAND FOR ARBITRATION

AAA COMMERCIAL
ARBITRATION RULE 4(a)

Pursuant to Rule 4(a) of the American Arbitration Association (“AAA”) Commercial Arbitration Rules, Claimant the City of Gainesville, Florida, d/b/a Gainesville Regional Utilities (“GRU”), by its undersigned attorneys, upon information and belief, except as to itself, hereby demands arbitration of a dispute with Respondents Gainesville Renewable Energy Center, LLC (“GREC”), American Renewables, LLC (“American Renewables”), Tyr Energy LLC and Tyr Energy, Inc. (together, “Tyr”), Energy Management, Inc. (“EMI”), BayCorp Holdings, Ltd. (“BayCorp”), Starwood Energy Group Global, LLC and Starwood Energy Group, Inc. (together, “Starwood Energy”), Ron Fagen and Diane Fagen (together, the “Fagens”), and John Does 1-25, arising out of the Power Purchase Agreement, dated April 29, 2009 (the “PPA”), between GRU and GREC, which contains the following arbitration provision:

24.2 Arbitration Procedure. Any controversy, dispute or claim between Seller [GREC] and Purchaser [GRU] arising out of or relating to this Agreement, 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. If the parties fail to agree on an arbitrator within thirty (30) days following the date of a written notice by one party to the other calling for arbitration, the parties shall promptly designate an arbitrator from a list of persons from the National Roster of Arbitrators and Mediators following said Rules and that arbitrator shall select an arbitrator from the National Roster of Arbitrators and Mediators who will adjudicate the

issue. The costs and expenses of arbitration shall be paid as awarded by the arbitrators; otherwise costs and expenses shall be shared equally. Seller and Purchaser shall each abide by and perform any required actions according to any resulting arbitration award. The arbitration award, when issued, shall be final and shall be enforceable in any court of competent jurisdiction. The location for the arbitration shall be Alachua County, Florida.

Clause 24.2 provides for arbitration pursuant to the AAA rules before a single arbitrator in Alachua County, Florida. A copy of the PPA is annexed hereto as Exhibit 1. GRU requests that the Procedures for Large, Complex Commercial Disputes apply to this arbitration, as provided in AAA Rule 1(c).

Parties

1. GRU is a multi-service public utility owned by and an agency of the City of Gainesville, Florida, a municipal corporation of the state of Florida. GRU is the fifth largest municipal electric utility in Florida, supplying approximately 93,000 retail and wholesale customers with electric, natural gas, water, wastewater, and telecommunications services. GRU invests in renewable energy sources in order to provide its customers with safe and reliable utility services in an environmentally responsible manner. GRU's executive offices are located at 301 SE 4th Avenue, Gainesville, Florida 32601.

2. GREC is a Delaware limited liability company with its principal place of business at 20 Park Plaza, Suite 320, Boston, Massachusetts 02116. GREC is the counter-party to GRU in the PPA. Under the PPA, GREC agreed to build, operate, and maintain a biomass-fired electric power production facility in Gainesville, Florida (the "Facility"). In turn, GRU agreed in the PPA to purchase all of the Facility's electricity production for a term of 30 years.

3. American Renewables is a Delaware limited liability company with its principal place of business at 20 Park Plaza, Suite 320, Boston, Massachusetts 02116. At the time GRU and GREC entered into the PPA (April 29, 2009), American Renewables owned 100% of GREC.

4. Tyr Energy LLC is a Delaware limited liability company with its principal place of business at 7500 College Blvd, Suite 400, Overland Park, Kansas 66210. Tyr Energy, Inc. is a

Delaware corporation with its principal place of business at 7500 College Blvd, Suite 400, Overland Park, Kansas 66210. At the time GRU and GREC entered into the PPA (April 29, 2009), Tyr Energy LLC and/or Tyr Energy, Inc. owned 49% of American Renewables and thus indirectly owned 49% of GREC.

5. EMI is a Delaware corporation with its principal place of business at 75 Arlington Street, Boston, Massachusetts 02116. At the time GRU and GREC entered into the PPA (April 29, 2009), EMI owned 25.5% of American Renewables, and thus indirectly owned 25.5% of GREC. GREC is managed on a day-to-day basis by EMI.

6. BayCorp is a Delaware limited liability company with its principal place of business at 1 New Hampshire Avenue, Suite 125, Portsmouth, New Hampshire 03801. At the time GRU and GREC entered into the PPA (April 29, 2009), BayCorp owned 25.5% of American Renewables, and thus indirectly owned 25.5% of GREC.

7. Ron and Diane Fagen are individuals who reside at 108 Miller Circle, Granite Falls, Minnesota 56241. The Fagens are principals of Fagen, Inc., an industrial construction company engaged by GREC to build the Facility. At the time GRU and GREC entered into the PPA (April 29, 2009), the Fagens had no ownership interest in GREC. In June 2011, Tyr, EMI and BayCorp respectively transferred 8.676 %, 4.515 %, and 4.515 % indirect interest in GREC to the Fagens. The Fagens currently own indirectly 17.706% of GREC.

8. Starwood Energy Group Global LLC is a Delaware limited liability company with its principal place of business at 591 West Putnam Avenue, Greenwich, CT 06830. Starwood Energy Group Inc. is a Delaware Corporation with its principal place of business at 591 West Putnam Avenue, Greenwich, CT 06830. At the time GRU and GREC entered into the PPA (April 29, 2009), Starwood Energy had no ownership interest in GREC. On December 30, 2011,

Tyr transferred its indirect interests in GREC to Starwood Energy Group Global LLC and/or Starwood Energy Group Inc. Starwood Energy currently owns indirectly 40.324% of GREC.

9. John Does 1-25 are individuals and/or entities, currently unidentified to GRU, that, between the time GREC and GRU entered into the PPA (on April 29, 2009) to the present, owned and/or currently own, directly or indirectly, interests in GREC.

Pertinent Facts

10. GRU is in the business of supplying power and electricity to customers in Central Florida. As part of an on-going effort to operate in a more environmentally responsible manner, GRU entered into the PPA with GREC on April 29, 2009. Under the terms of the PPA, GREC is to construct, operate, and maintain the Facility, a biomass-fired power production plant, which generates renewable energy and is thus more environmentally sustainable. Also pursuant to the PPA, GRU agreed to purchase all of the Facility's renewable energy supply for the next thirty years, with the possibility of renewal for an additional term.

11. Section 27.3 of the PPA provides as follows:

Right of First Offer. [GREC] may not sell the Facility, either directly or indirectly through a change of control of [GREC], during the term of this Agreement unless [GREC] shall have complied with the following: prior to selling the Facility, [GREC] shall give notice to [GRU] of [GREC's] intent to sell the Facility and [GRU] shall have sixty (60) days from such notice to prepare an offer (the "First Offer") to purchase the Facility. [GREC] shall negotiate in good faith exclusively with [GRU] for a minimum of thirty (30) days from receipt of the First Offer to attempt to reach agreement on the terms of a purchase. If the Parties cannot reach an agreement on sale terms within the thirty (30) days of receipt of the First Offer then [GREC] shall have three hundred sixty (360) days from the date of [GRU] delivering the First Offer to close on a sale of the Facility to an unaffiliated third party for a price and for terms that are no less than the price and no more onerous than the terms in the First Offer. If [GREC] cannot close on the sale within such three hundred sixty (360)-day period, it must make another offer and again comply with the terms of this Section before selling the Facility. In any case, [GREC] may not sell the Facility (directly or indirectly) unless the purchaser of the Facility assumes in writing [GREC's] obligations hereunder. Notwithstanding anything to the contrary, a construction financing or tax equity financing with respect to the Facility shall not be deemed a change of control for purposes of this Section 27.3. (Emphasis added).

12. At the closing of the PPA on April 29, 2009, GREC was a wholly-owned subsidiary of American Renewables. In turn, American Renewables was owned by three stakeholders, Tyr, EMI, and BayCorp, with the following respective ownership interests:

Percent Ownership	Owner
49.0%	Tyr
25.5%	Energy Management, Inc.
25.5%	BayCorp Holdings, Ltd.
100.0%	

13. Sometime in 2011, without notice to GRU, American Renewables was removed as the owner of GREC, and its replacement then owned 100% of GREC. Tyr, EMI, and BayCorp retained their respective ownership interests in the replacement entity. When GRU learned of the transfer of American Renewables' ownership interest to the unknown replacement, it made repeated requests for details about GREC's ownership structure, but GREC to date has failed to provide this information.

14. On or about June 30, 2011, the then indirect owners of GREC, Tyr, EMI and BayCorp, each made a transfer of shares to bring a fourth stakeholder into the GREC ownership structure. Again without prior notice to GRU, 17.706% of the indirect interest in GREC was transferred by Tyr, EMI and BayCorp to Ron and Diane Fagen. As a result of this transaction, as of June 30, 2011, GREC was indirectly owned as follows:

Percent Ownership	Owner
40.324%	Tyr
20.985%	Energy Management, Inc.
20.985%	BayCorp Holdings Ltd.
17.706%	Ron and Diane Fagen
100.000%	

15. On December 27, 2011, Jim Gordon, CEO of EMI and a representative of GREC's Board of Directors, called Robert Hunzinger, General Manager for Utilities of GRU who was then on vacation and advised GRU of a year-end transfer of Tyr's 40.324% ownership interest to Starwood Energy.

16. On that December 27 call, and again by follow-up e-mail on December 28, Mr. Gordon stated that he did not consider the sale of Tyr's ownership interest to Starwood Energy to constitute a change of control of GREC, as contemplated by Section 27.3 of the PPA. Mr. Gordon sought GRU's acquiescence and agreement by return e-mail that no change of control would result from the sale. GRU did not provide the requested acquiescence and agreement.

17. According to a Starwood Energy press release dated January 17, 2012, Starwood Energy's acquisition of Tyr's 40.324% ownership interest in GREC was executed and closed on December 30, 2011.

18. As of December 30, 2011, the shares in GREC were then held indirectly by a group with the following respective ownership interests:

Percent Ownership	Owner
40.324%	Starwood Energy Group Global, LLC
20.985%	Energy Management, Inc.
20.985%	BayCorp Holdings Ltd.
17.706%	Ron and Diane Fagen
100.000%	

19. The December 30, 2011 transfer of shares from Tyr to Starwood Energy constitutes a change of control in GREC, yet GREC did not provide GRU with the mandatory Right of First Offer.

20. Since January 2012, GRU has repeatedly requested additional documentation and information from GREC about its ownership structure. To date, GREC has refused to provide the requested materials and information.

The Claim: Breach of Contract

21. GRU and GREC entered into the PPA, a valid and enforceable contract, for the construction of the Facility and the purchase of the energy produced by the Facility. Section 27.3 of the PPA specifically prohibited GREC from selling the Facility, directly or indirectly through a change of control of GREC, without providing GRU with a Right of First Offer.

22. GRU has duly performed all conditions, covenants, and obligations required on its part to be performed under the PPA.

23. However, GREC has breached the PPA by having transferred control of GREC from the original indirect owners, Tyr, EMI, and BayCorp. to a new ownership group consisting of two new owners Starwood Energy and the Fagens, and EMI and BayCorp. This transfer of control was accomplished without giving the required advance notice to GRU or affording GRU its Right of First Offer. Instead, on the eve of the transfer of Tyr's ownership interest to Starwood Energy, on a holiday phone call to GRU, GREC attempted to downplay the significance of the transfer and, without providing any detail, attempted to get GRU to consent to the transaction.

24. American Renewables, Tyr, EMI and Baycorp directed, aided and abetted GREC in its breach of the PPA as set forth herein.

25. Starwood Energy and the Fagens have unlawfully received and hold their ownership interests in GREC.

26. As a direct and proximate result of Respondent GREC's wrongful breach of its obligation under the PPA, and of the unlawful actions of the other Respondents, and because the Facility is a unique asset and GRU's harm is such that monetary damages would be insufficient to render GRU whole, GRU is entitled to specific performance of the Right of First Offer.

Relief Sought

27. GRU seeks relief against Respondents as follows:

a) finding that Respondents have breached Section 27.3 of the PPA by failing to provide GRU with a Right of First Offer to purchase the Facility;

b) ordering specific performance of the Right of First Offer, specifically to include providing GRU with the opportunity to make an offer to purchase the Facility;
and

c) awarding such other and further relief, both in equity and at law, to put GRU in the position it would have been had the Respondents not breached the PPA.

December 21, 2012

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: _____

J. Peter Coll, Jr.

John Ansbro

Melissa K. DePetris

51 West 52nd Street

New York, New York 10019

(T): 212-506-5000

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Attorneys for Claimant Gainesville Regional Utilities

October 2012 Construction Report

Gainesville Regional Utilities
301 SE 4th Street
Gainesville, FL 32601

Attention: Robert Hunzinger, General Manager
John Stanton, Assistant General Manager

Date: November 19, 2012

This Construction Report is delivered to you pursuant to Appendix V of the Power Purchase Agreement For the Supply of Dependable Capacity, Energy and Environmental Attributes From a Biomass-Fired Power Production Facility between Gainesville Renewable Energy Center ("GREC") and Gainesville Regional Utilities ("GRU") dated April 29, 2009 ("PPA"). All capitalized terms used herein shall have the respective meanings specified in the PPA unless otherwise defined herein or unless the context requires otherwise.

GREC hereby certifies as follows:

1. The individual executing this Construction Report is an Authorized Officer of the Borrower.
2. The Construction Report is true and complete in all material respects.
3. Attached as Appendix A hereto is the October 2012 monthly reporting during the October construction period prepared by GREC.
4. Attached as Appendix B hereto is a summary of the GREC construction schedule.
5. Attached as Appendix C hereto is a collection of GREC construction photos taken during the reporting period.

Part I Factors that could reasonably be expected to have a material adverse effect on the Project:

Factor	Description
No factors exist which will have a material effect on the project.	n/a



Part II Authorizations remaining to be obtained:

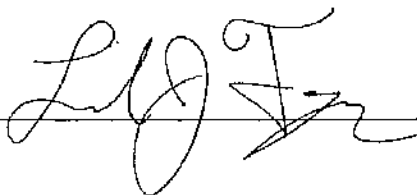
Authorization	Borrower Actions and Dates	Governmental Authority Actions and Dates	Description/Comment/Reason for Delay
Title IV Acid Rain Permit	Need to file notification of the planned date of initial commercial operation 45 days prior to the planned date of initial commercial operation	EPA/FDEP	Application was filed in November 2009 as Attachment A to Appendix B – FDEP Air Permit Application Form, Acid Rain Part of the Site Certification
Title V Air Operating Permit	Application must be submitted at least 90 days prior to expiration of the GREC air construction permit, but no later than 180 days after commencing operation, per FDEP Rule 62-213.420(1)(a)1., F.A.C.	EPA/FDEP	GREC air construction permit expires on December 31, 2014 – 90 days prior is October 2, 2014.

Part III Additional Easements:

Easement	Description/Status
Nothing to report or required	n/a

IN WITNESS WHEREOF, the undersigned has executed this Construction Report as of the date and year first above written.

GAINESVILLE RENEWABLE ENERGY CENTER, LLC

By: 

Name: Leonard Fagan
Title: Vice President of Engineering & Project Manager



Gainesville Renewable Energy Center, LLC

Appendix A
October 2012
Construction Report

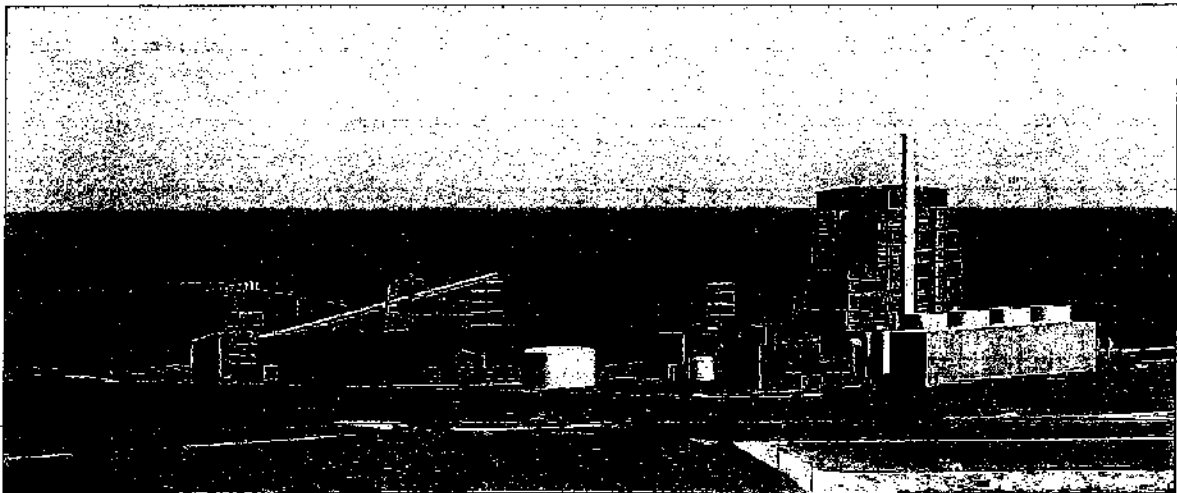




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Appendix B: Construction Schedule Summary

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1. Executive Summary

The Project remains ahead of schedule for Final Completion with a revised date of October 5, 2013, but has slipped the Substantial Completion date by a couple of days from August 30, 2013, to September 4, 2013, as shown on the latest Integrated Schedule that GREC has reviewed. This change was determined after detailed analysis of the start-up/commissioning schedule and activities that need to be accomplished and the most current Metso schedule.

Fagen's site progress during October continues to be on or ahead of schedule by 2- 3%. In addition to their commitment to maintaining a safe and clean job site, Fagen employees demonstrated their commitment to community involvement by forming a team called "*Green Gone Pink*" that raised \$10,663 for the American Cancer Society's local breast cancer awareness campaign. Fagen's team raised the second-highest amount for the campaign in Gainesville and had 45 participants in the walk on October 13th.

The Metso/PIC team continues to make good overall progress but it appears that the boiler hydro date has slipped and is now scheduled for early April. This does not have a significant schedule impact, and GREC will be monitoring the Metso schedule closely.

Engineering efforts by Zachry are complete. The remaining Zachry activities are the preparation of training materials. Zachry does have an electrical engineer on site for support to Fagen.

2. Project Construction Oversight

a. Engineering

Engineering is complete.

b. Procurement

The procurement process is complete.

c. Construction

GREC has continued to monitor the enforcement of safety measures and controls. The Project has achieved 1,163,167 man hours as of the end of October 2012 and had one recordable safety incidents and no lost time accidents during the reporting period. There have been a total of nine recordable incidents with two lost time accidents since the commencement of the Project.



Field Personnel Summary

	Past 30 Days	Next 30 Days
Fagen Inc.	438	442
Metso	167	200
WW Gay	29	19
Other Subs	24	12
Totals	658	673

Project Safety

YTD Safety	2011	2012	2013	Totals
Near Miss Incidents	1	15	0	16
First Aid Cases	61	209	0	270
Equipment Incidents	2	8	0	10
Property Damage	4	37	0	41
Recordable Incidents	2	7	0	9
Lost Time (Hours)	0	2	0	2
Total Man Hours	273,183	889,984	0	1,163,167

GREC continues to monitor the environmental controls that are in place at the job site, and has focused on ensuring that environmental and SWPPP compliance are being maintained by Fagen and subcontractors. GREC has monitored compliance with design regarding overall construction, and there are no new issues that have been encountered during the reporting period.

Fagen continues to place a priority on maintaining a safe and clean job site, and GREC is pleased to report that material handling and control, laydown storage, and site housekeeping have been exceptional to date, promoting a good environment for productive and safe working conditions.

The Project continued to benefit from good weather conditions throughout October with no lost days due to rain. Fagen started a second shift effective Sept. 10, 2012, utilizing 40 craft workers plus overhead support staff. Metso and PIC are working on Saturdays, and Fagen is providing overhead support. GREC is also present on Saturday's to provide oversight.



Fagen is utilizing two site guard gates to control morning arrival traffic and evening departure traffic, and there has been no problem with traffic build-up on US Highway 441. There is also a guard house located in the center of the wood yard to provide security on site including surveillance of copper wire and cable spools.

Manpower has increased to a combined total of 658 at the end of October, and the work force is projected to increase to 673 during November.

The erection of tier 5 boiler steel and handrails and grating remains ongoing, while the placement of the superheaters is complete. Several sections of the boiler water walls have been fabricated and installed and are being permanently mounted to the supporting rod system, and welding of the mid lines of the water walls is in progress. The air preheater modules continued to arrive on site and are being set in place as they are received. The assembly and installation of flue gas ducts and air ducts remain ongoing. Installation of pipe hangers and piping is underway throughout the boiler, and installation of piping and hangers is in progress for the pipe rack. The installation of cable tray is in progress for the first three tiers of the boiler, including the pipe rack area through column line three. Metso continues to fabricate and weld out pressure piping in the laydown areas, and x-rays of boiler tube welds remain ongoing. Installation of support steel for grating at the baghouse continues, and installation of access platforms is also in progress. GREC continues to monitor x-ray results and is satisfied with Fagen QC and Metso QC performance to date.

The administration and control building and the scale house are finalized, with Catamount closing out punch list items to complete their work. The water treatment enclosure equipment alignment is complete, and interconnecting piping and hangers are in progress. Electrical cable tray and conduit installation, including cable pulling, continues.

The placement of the zero liquid discharge (ZLD) equipment is complete with the exception of the ZLD BC vacuum compressor that was dropped during receipt on site, cannot be repaired, and must be replaced. Fagen has filed an insurance claim and their vendor, Aquatech, has a purchase order in place to furnish a new compressor. The lead time has been improved from 30 weeks to 25 weeks, and this delivery date will support the schedule. This activity will be closely monitored to ensure timely delivery.

Wiring and terminations are in progress for all PDC's, and testing of all 4160 and 5KV switch gear for all PDC's is complete. Testing of the 480V switch gear is in progress. ~~Low and medium-voltage transformers are being wired throughout the site, and the GSU~~



transformer was received by rail and has been set in place. The GSU and SST transformers have been energized and soaked, and oil samples have been taken and found to be acceptable.

The two process water wells and potable water well are complete, tested, and installation of the pumps is in progress. The monitoring well has been installed and is ready for installation of the monitoring assembly by SRWMD. GREC continues to interface with GE Water regarding water sampling and analysis.

Major wood yard construction activities included the final alignments for all equipment. Conveyor belt installation and vulcanizing were accomplished for Conveyors 1, 2, 3, 4, 7, 8 and 11. Cable pulling is in progress throughout the wood yard and is nearing 90% complete. The dust collection piping and ductwork is in progress and is 50% complete. The stacker reclaimer assembly remains in progress, and installation of Conveyor 10 at the boiler house is underway. The focus is shifting from bulk assembly to start-up system punch list walk downs, and turnover package assembly in preparation of commissioning the wood yard.

The cooling tower cable pulling and terminations are in progress.

The battery building enclosure is complete, and batteries and UPS components are installed, with cable pulling and terminations underway as well.

The Hague Switchyard and the GREC Substation are both complete. The Hague Switchyard was formally turned over to GRU in October. GRU now has operational control of the facility.

Fagen is utilizing W.W. Gay to install the 5,000-foot natural gas pipeline and sanitary sewer line, including a new lift station that begins at the GRU interconnect point located across from the entrance of the GRU administration building and travels the site roads to the GREC interconnect point near the cooling tower. This offsite project is on schedule and is 90% complete.

Progress to date has been very good with respect to the schedule. GREC continues to witness, inspect, and monitor progress with attention to detail as set forth by the Contract, Minimum Design Criteria, and applicable codes and standards.



d. Major Construction Accomplishments

Past 30 Days

- Completed conveyors #1, 2, 3, 4, 6, 7 and 8.
- Continued erection of tier 5 structural steel and setting equipment at the boiler
- Continued installing pipe hangers and piping at the pipe rack
- Installed the arm of the stacker reclaimer
- Continued installing the natural gas line and sanitary sewer line to GRU
- Installed mechanical equipment and tanks in the water treatment enclosure
- Installed piping to mechanical skids in the water treatment enclosure
- Continued installing the ZLD system
- Completed installing the ash silo
- Commissioned the diesel fire pump

Next 30 Days

- Continue with conveyors and associated structural steel
- Install ZLD piping
- Continue installing cable tray and lighting and pulling wire throughout the site
- Continue installing piping at the water treatment enclosure
- Continue installing liner panels and siding on the truck receiving structure
- Continue installing dust collection system
- Prepare equipment to backfeed and energize SST

e. Major Work Activities

Past 30 Days

- Continued installing water walls at the boiler structure
- Used 400 series crane for assembling the stacker reclaimer as well as the reclaimer boom sections
- Continued orbital welding of tertiary steam tubes
- Continued welding mid-line water wall tubes
- Continued installing miscellaneous pipe supports in boiler structure
- Worked on air heater soot blowers
- Continued fit-up and welding of boiler feed water valve station to the tie point and economizer on elevation 260'
- Continued fitting and welding generating bank down comers
- Continued fabricating and installing high- and low-pressure steam pipes
- Continued installing duct work from air heaters to economizers



- Continued installing economizer beams and shim packs
- Worked on pre-assembly of baghouse iron and walkways
- Fitted and welded tube shields to generating bank coils in lay down yard
- Milled and prepped generating bank coils and super heater elements in lay down yard
- Continued welding on upper left sidewall membrane
- Pinned second pass roof panels
- Installed secondary super heater elements
- Worked on instrument air supports

Next 30 Days

- Continue grouting equipment, structural steel and conveyor supports throughout the site
- Continue installation of the natural gas and sanitary sewer lines to GRU
- Continue electrical work at the boiler
- Continue pipe work at the pipe rack
- Continue assembly of the stacker reclaimer

f. Status of Work Outside of EPC Contractor Scope

The work outside the Fagen, Inc. scope is the reclaimed water pipeline which will be built by the City of Alachua and paid for by GRU. The current plan is for the pipeline to be completed and operational by July 1, 2013.

g. Status of Electrical Interconnect

The switchyard commissioning and testing phase was completed in September. Line 18 was energized on October 3rd to allow the GSU and SST Transformers to soak for 24 hours. The current plan is to backfeed the auxiliary transformer in late November and subsequently to energize the North PDC to allow commissioning of equipment.

3. Safety

The site has achieved 1,163,167 man hours to date with only nine recordable incidents and two lost time accidents. Fagen conducts its regularly scheduled tool box safety meetings, and all new employees must attend and pass the Safety Orientation and Training Course.

Fagen has installed a security fence on site for storage of cable spools and electrical gear to discourage and prevent theft.

~~GREC and Fagen continued to meet with the GRU Plant Manager to enforce the security~~



plan, and the GRU Plant and GREC site utilize the same security company to enhance communications between guards located at the entrance gates of each facility.

4. Environmental

There were no environmental issues during October to report.

5. Quality Control

GREC has monitored the EPC contractor's implementation of quality control, including but not limited to document control, material control including receipt, storage, and handling, and an independent third-party inspector's performance regarding soils and concrete testing, and submittal of detailed reports. Quality control surveillance and monitoring have been in place since mobilization on March 21, 2011, and the current status is that the Project is operating in accordance with industry standards.

The GREC team continues to closely monitor hydro tests, coating and wrapping of pipe, ensuring that Fagen's attention to weld control and welder certifications remains high level, and continues to monitor material receipt and control including preventative maintenance.

6. Start-up and Commissioning

The start-up and commissioning team continues to complete activities associated with electrical testing and check out and ongoing planning and scheduling. UEI has set up the lock-out tag-out (LOTO) trailer and the individual who is managing this activity. The bid package for chemical cleaning, hydrolyzing, steam blows and high velocity STG oil flush have been prepared. UEI has attended multiple meetings on site including with Wolf and Metso. UEI currently has three individuals on site with more coming in December.

7. Operations and Maintenance (O&M)

Planning and budget review activities continued throughout October. Items that are being worked on include ordering spare parts, evaluating tools and equipment and preparing manuals. GREC has ordered most of the office furniture and computer hardware (i.e. servers, switches and transceivers) for the plant's telecommunications network. Delivery and installation is expected to occur in December after Fagen's subcontractor has completed the punch lists for the administration building and scale house. Windstream technicians have installed the copper trunk cable into the patch panel in the DCS Room and are ready to test their internet service when the building has permanent power.



NAES staff conducted the following activities during October:

- Plant manager attended NAES annual plant manager conference. Great exchange of information, update on new regulations, and exposure to several innovative vendors.
- Began selection process for Maintenance Supervisor, Operations Supervisor, Office Supervisor, and Maintenance Planner. Maintenance Supervisor will be brought on early to replace Greg Thomas, who resigned effective October 19, 2012.
- Met with GRU on coordinating GREC planned outages with the GRU generating units. Developed a mutually acceptable plan.
- Met with BRM on fuel coordination issues during upcoming commissioning.
- Met with Fagen and Wolf for wood yard commissioning kick-off.
- Met with new Deerhaven Production Manager to establish relationship.
- Visited Florida Works with GREC.
- Conducted phone meeting with NAES Environmental Support Services (ESS) to discuss and plan activities needed for environmental compliance- CBMS operating plan, CAIR DR/Agent setup
- Continued working with Windstream and CNE to get site network and LAN infrastructure established.
- Continued obtaining prices and quotes on tools, fuel tank, lawn mower, front-end loader, etc.
- Continued witnessing grout pours, alignment checks, x-ray reviews, hydro tests, and motor megging.
- Participated in two Alachua county EPD site visits
- Delivered rev. 0 of safety procedures and maintenance procedures manuals.
- Transmitted all existing OEM manuals, spares lists to NAES Technical Support Services for their use in writing operations, maintenance, and training procedures.
- Began compiling tool, equipment and spare parts spreadsheets to aid in procurement of those items.

8. Insurance

There is nothing to report for October.

9. Permits

All permits to construct are in place. There is nothing to report for October.

Appendix B: Construction Schedule Summary

The overall construction plan shows the project to be on schedule. A summary of the GREC construction schedule is attached as Appendix B.



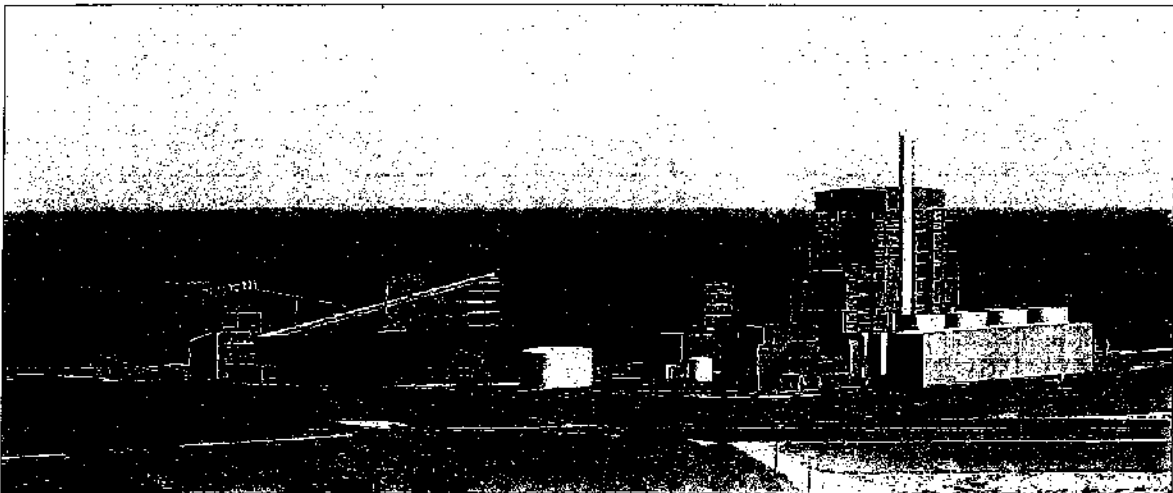
Appendix C: Construction Photos

A collection of construction photos for October 2012 is attached as Appendix C.



Gainesville Renewable Energy Center, LLC

Appendix B Construction Schedule Summary





GREC Construction Schedule Summary

Activity	Completion Date
Early Construction Activities Commenced	3/16/2011
Financing Closed	6/30/2011
Final Notice to Proceed Given to Fagen, Inc.	6/30/2011
Notice of Construction Commencement Issued to GRU	6/30/2011
<i>Construction Commencement Date</i>	<i>6/30/2011</i>
Boiler Foundation Complete	12/22/2011
Metso Mobilization on Site for Start of Boiler Erection	2/11/2012
Metso Steel Erection Start	3/12/2012
Construction of GRU Hague Switchyard Complete	5/07/2012
Steam Turbine Generator (STG) Foundation Complete	5/15/2012
138-kV Transmission Line	8/16/2012
GREC Substation Complete	9/28/2012
Backfeed and Soak Generator Step-Up Transformer	10/03/2012
Wood Yard Foundations Complete	10/08/2012
STG Delivered to Site	11/19/2012
Set and Install STG	2/14/2013
Boiler Hydro Test	3/04/2013
Solid Fuel Delivered to Site	3/18/2013
Boiler Refractory and Checks Complete	5/01/2013
CEMS Calibrated and In Service	5/08/2013
Chemical Clean Complete	5/09/2013
STG on Turning Gear	5/13/2013
First Fire Natural Gas	5/29/2013
Firing on Solid Fuel	6/12/2013
Commissioning and Testing Period Commences	6/26/2013
Steam Blow	7/13/2013
STG Steam to Turbine First Roll	7/15/2013
CEMS Drift Test	7/17/2013
Initial STG Sync	7/18/2013
STG Outage - Remove Fine Screens	8/01/2013
STG Full Load	8/07/2013
Notice of Substantial Completion Performance Tests	8/18/2013
Boiler and System Tuning Commences	8/21/2013
Boiler and System Tuning Completed	9/04/2013
Substantial Completion Performance Tests Completed	9/08/2013
Notice of Substantial Completion	9/09/2013



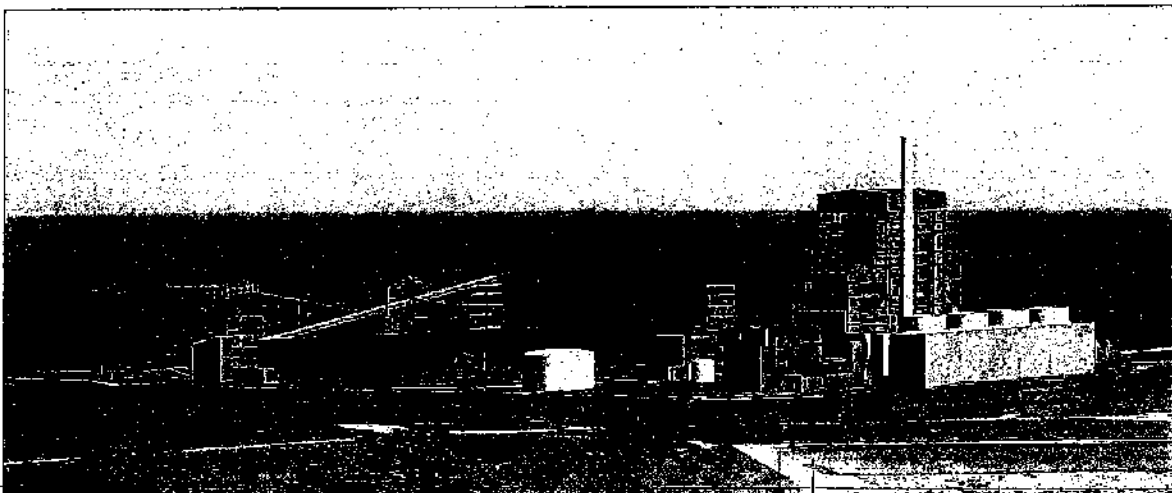
GREC Construction Schedule Summary (continued)

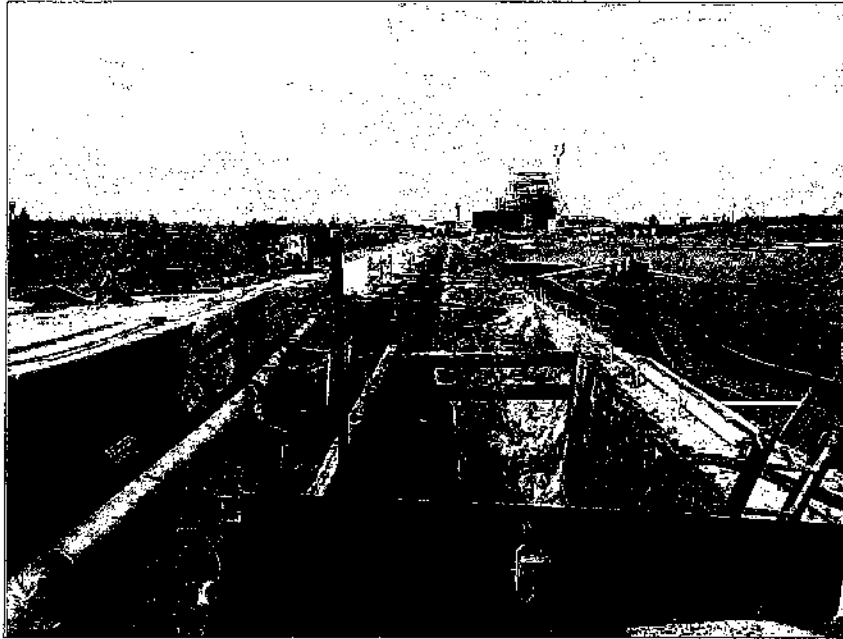
Activity	Completion Date
Substantial Completion Date / Placed in Service Date	9/09/2013
Notice of Final Completion Performance Tests	9/06/2013
Final Completion Performance Tests Completed	9/10/2013
CEMS Rata Tests	9/27/2013
CEMS Stack Tests	9/28/2013
Final Completion	10/08/2013
Capacity Test Performed for GRU	10/08/2013
Commercial Operation Date	10/09/2013
Notice of Punch List Completion	3/06/2014
Punch List Completion Date	6/06/2014



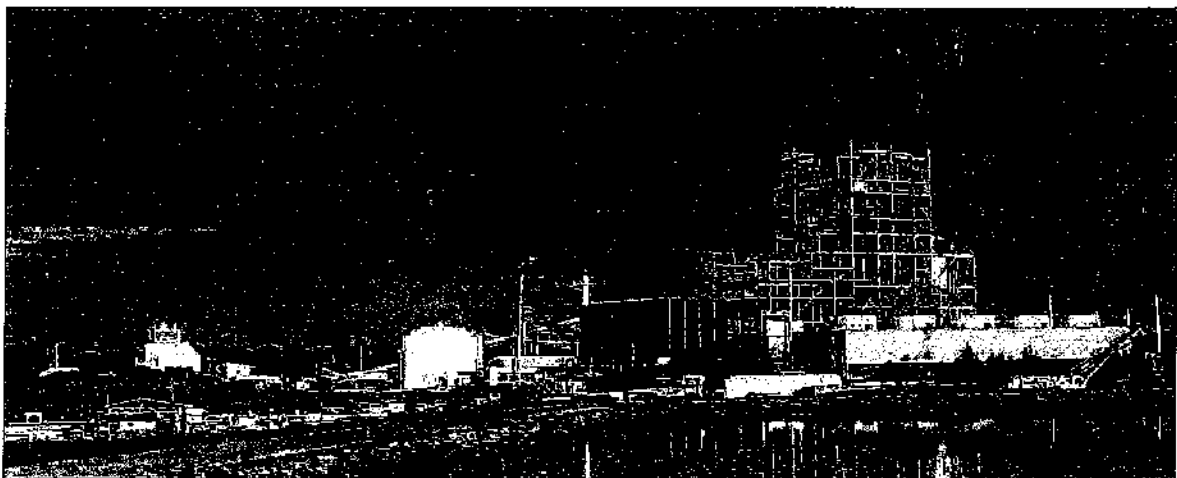
Gainesville Renewable Energy Center, LLC

Appendix C
October 2012
Construction Photos

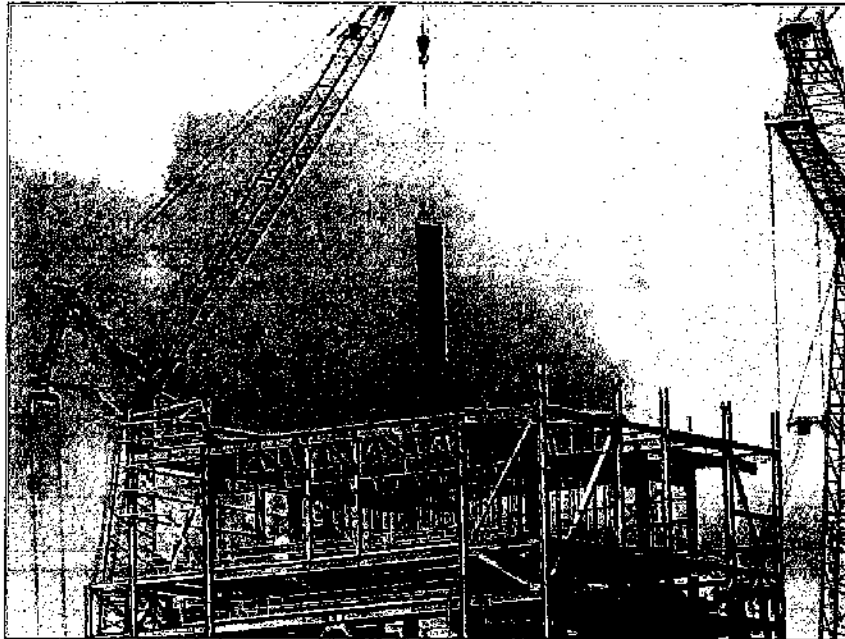




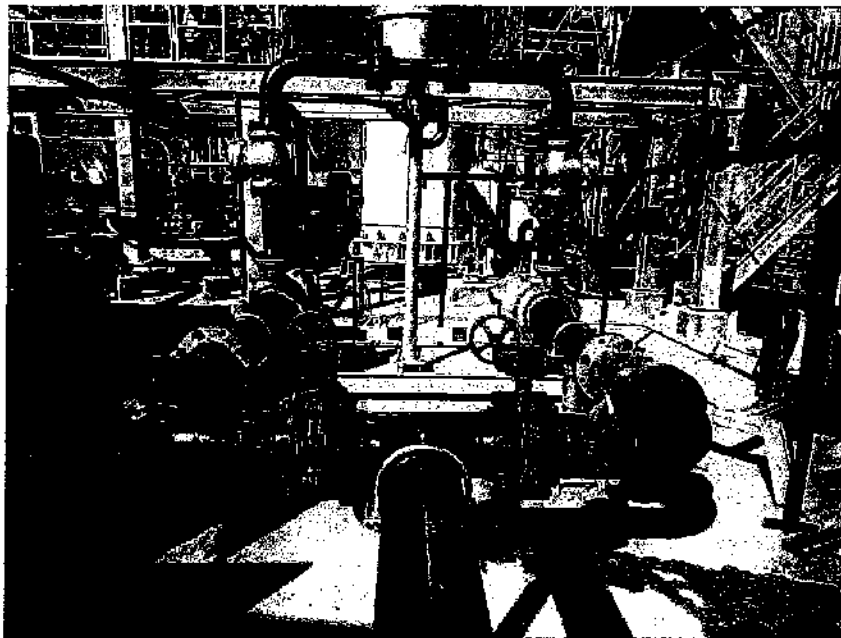
Trenching in Zone 4 for Forcemain &
Natural Gas Pipeline
(02-Oct-2012)



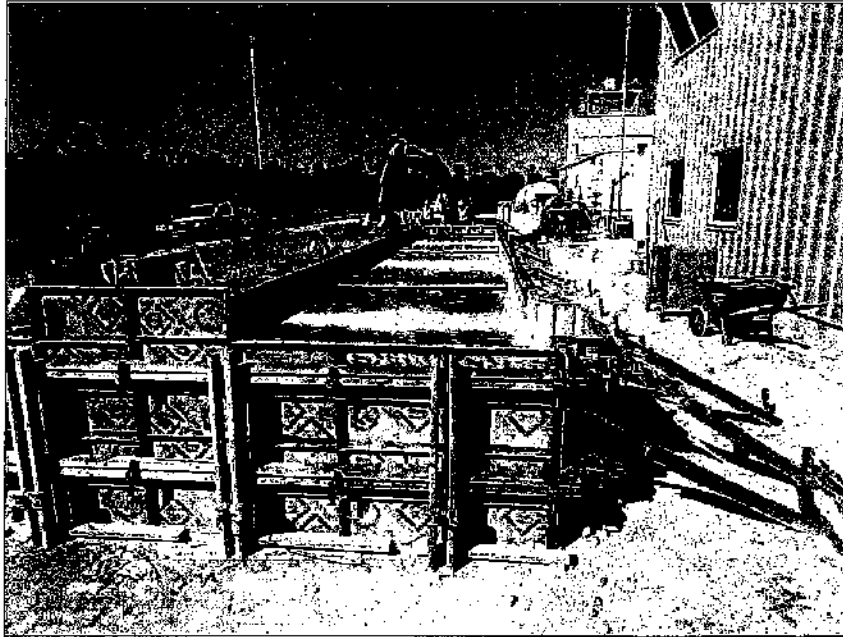
GREC Panoramic View from Southeast
(04-Oct-2012)



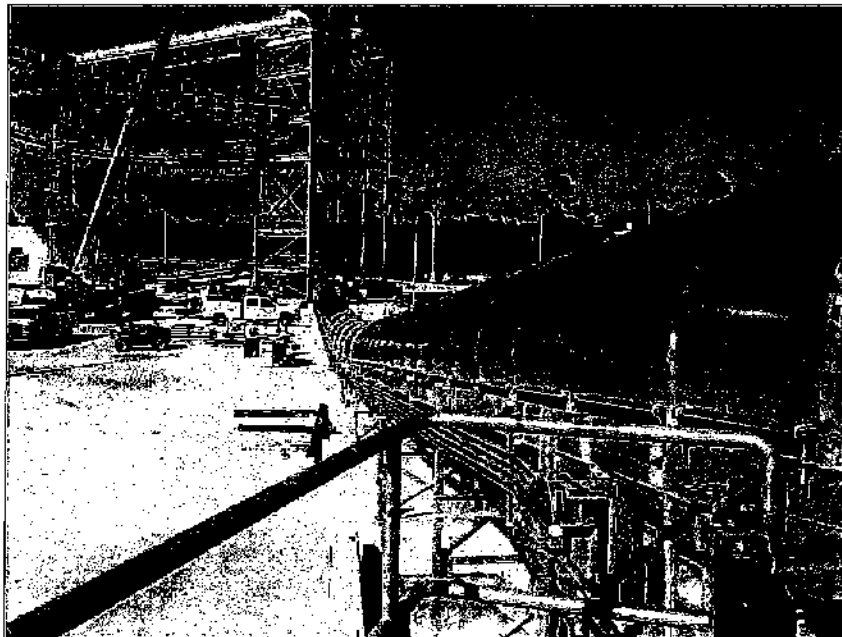
Boiler Tube Bundle Placement
(05-Oct-2012)



ZLDS Waste Water Collection Pumps &
Suction Piping
(12-Oct-2012)



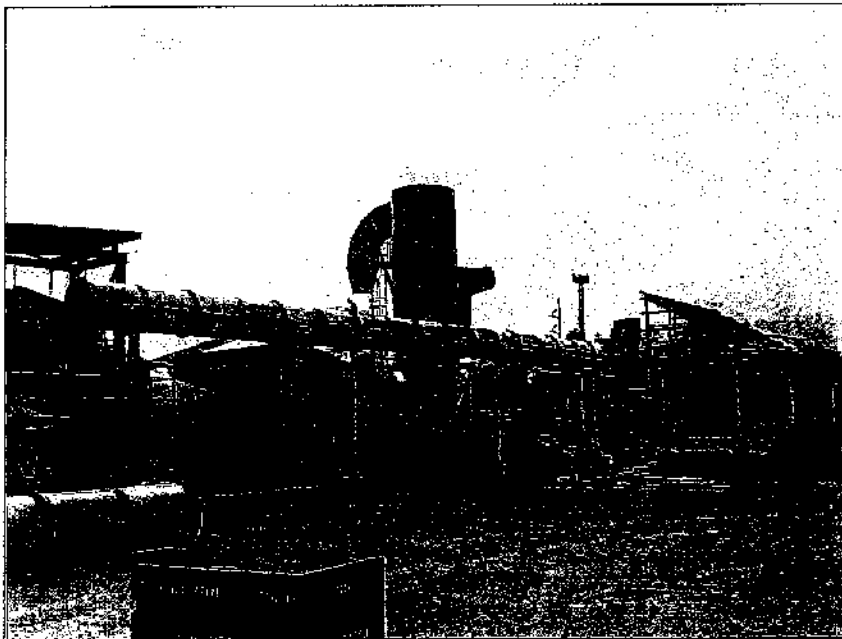
Concrete Foundation at In-Bound Truck Scale
(12-Oct-2012)



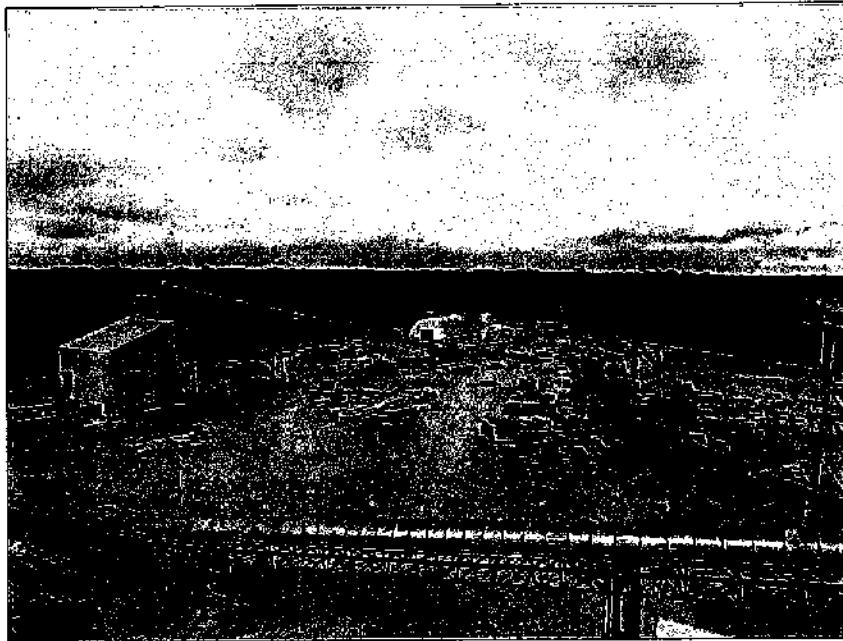
Conveyor #8 Looking Towards Transfer Tower #1
(16-Oct-2012)



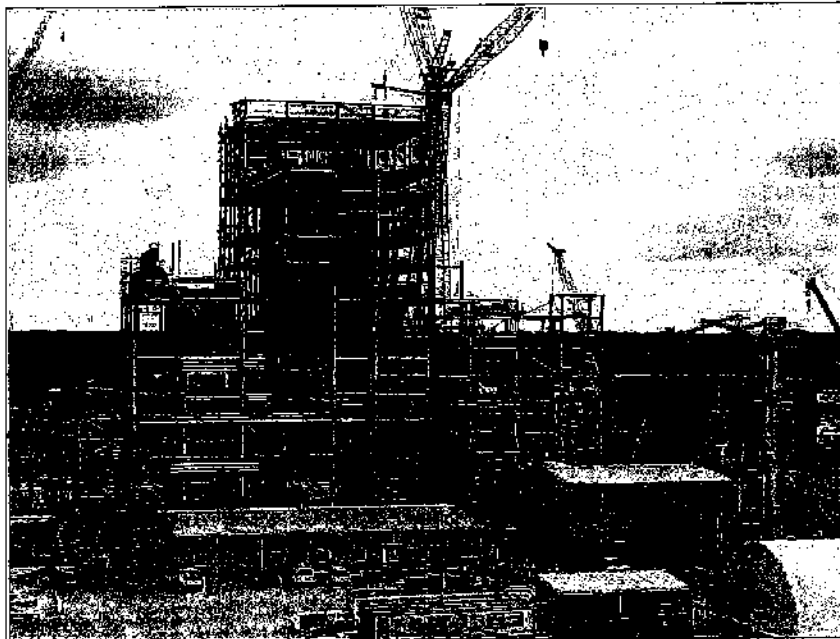
Assembling Stacker Reclaimer
(17-Oct-2012)



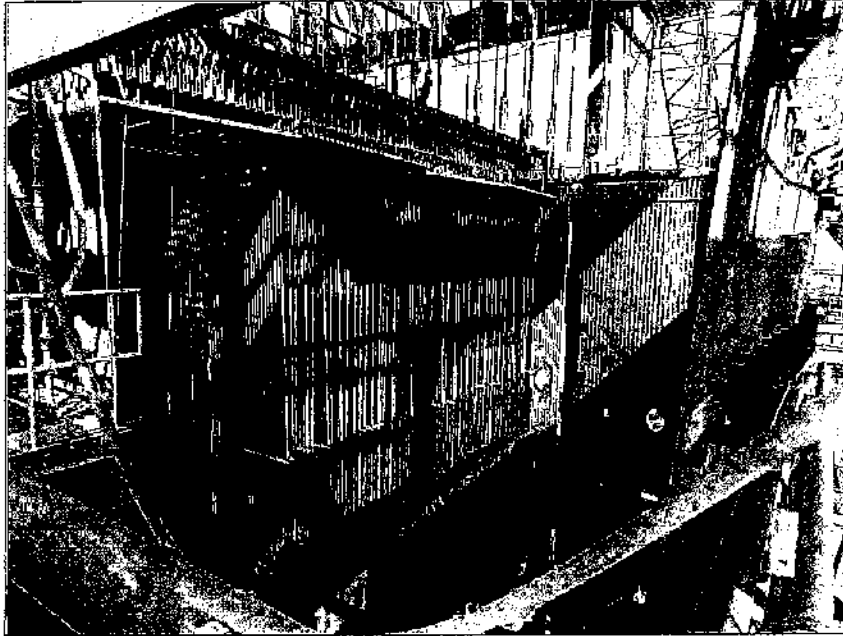
Dust Collector System along Conveyor #1
(17-Oct-2012)



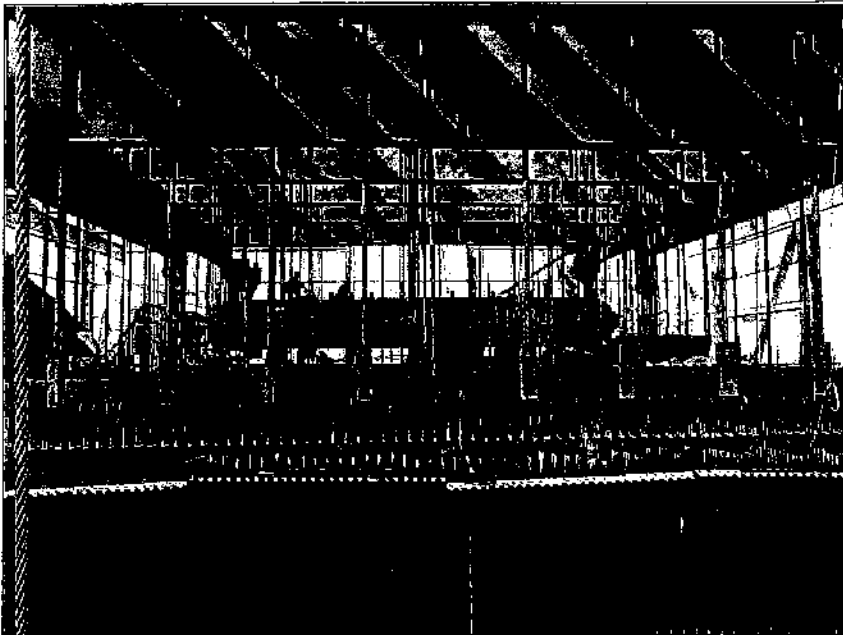
View from Conveyor #6 Looking
Towards Main Entrance
(19-Oct-2012)



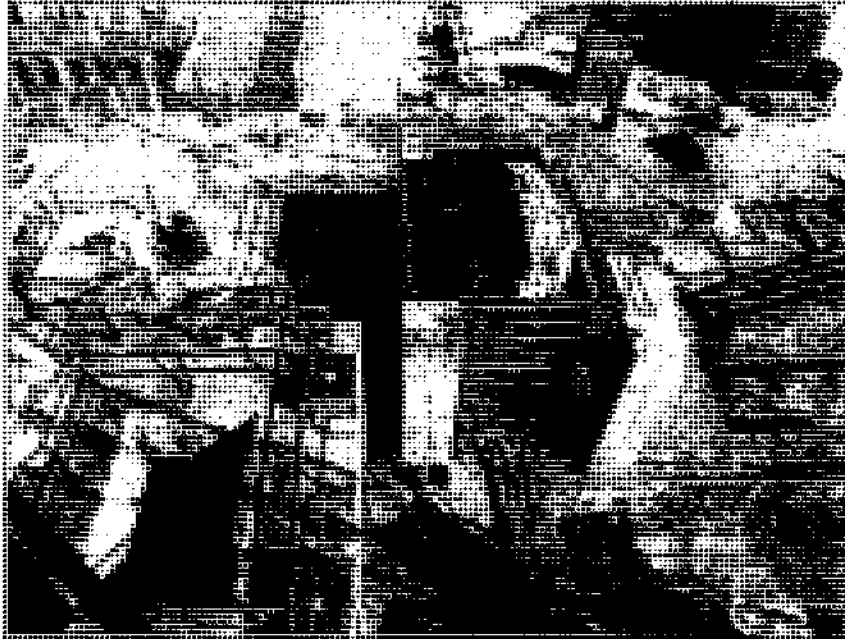
View from Conveyor #6 Looking East
(19-Oct-2012)



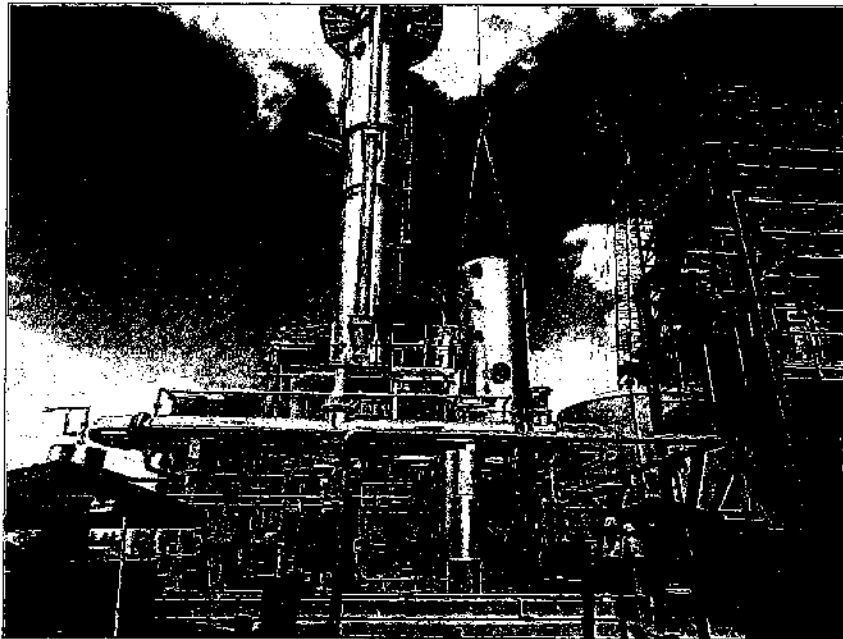
Superheater Tube Bundles & Water Walls in Place
(19-Oct-2012)



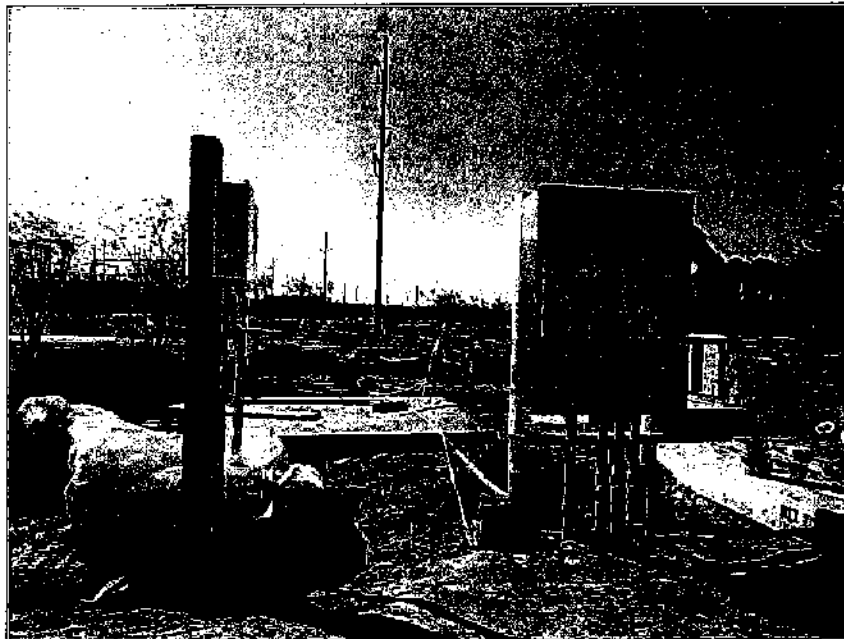
Superheater Tube Bundles, Supports & Steam Drum
(19-Oct-2012)



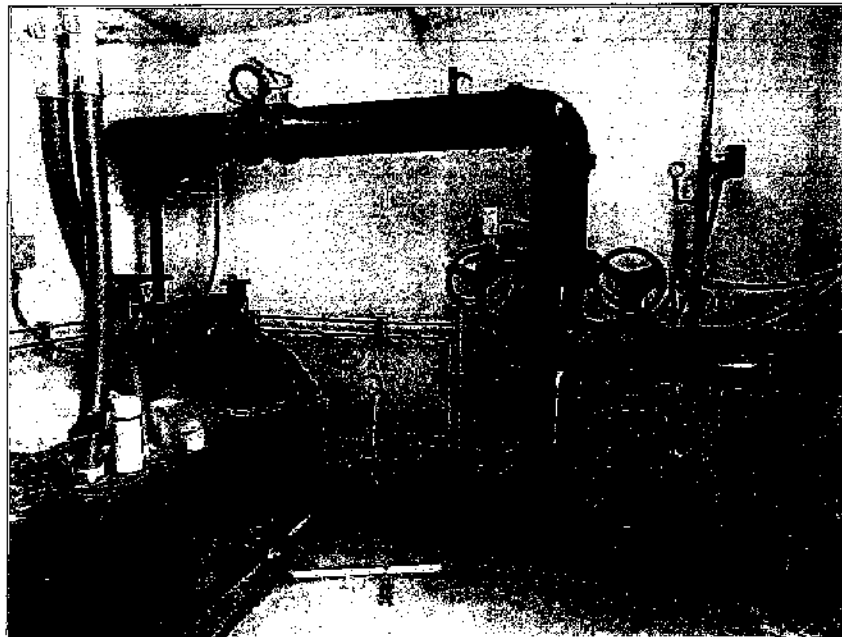
Condenser Box
(22-Oct-2012)



Installation of ZLDS Flash Tank
(23-Oct-2012)



Control Panel at GRU- Sanitary Sewer Lift Station
(309-Oct-2012)



Electric Motor Driven Fire Pump Compartment
(31-Oct-2012)

City of Gainesville

Edward B. Braddy, Mayor

February 12, 2014

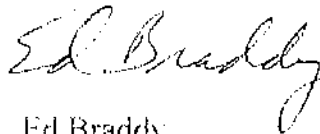
Mr. Jim Gordon, President
Gainesville Renewable Energy Center, LLC
20 Park Plaza, Suite 320
Boston, MA 02116

Mr. Gordon:

Although the City of Gainesville, d/b/a Gainesville Regional Utilities, continues to pay the GREC invoices, the City's legal counsel is continuing to review and evaluate issues related to the Equitable Adjustment for Change in Law. As always, we will keep you and your staff apprised of any concerns or issues related to the plant and the contract. We also welcome your assistance in resolving any matters that may come from our continued analysis and evaluation.

Please do not hesitate to contact me should you have any questions.

Sincerely,



Ed Braddy
Mayor

cc: City Commission Members
Kathy Viehe, Interim General Manager

City of Gainesville

City Hall
200 East University Avenue
Gainesville, Florida 32601



Meeting Agenda - Final

January 16, 2014

1:00 PM

MODIFIED AGENDA

City Hall Auditorium

City Commission

Mayor Ed Braddy (At Large)
Commissioner Lauren Poe (At Large)
Commissioner Thomas Hawkins (At Large)
Commissioner Yvonne Hinson-Rawls (District 1)
Commissioner Todd Chase (District 2)
Commissioner Susan Bottcher (District 3)
Mayor-Commissioner Pro Tem Randy Wells (District 4)

Persons with disabilities who require assistance to participate in this meeting are requested to notify the Office of Equal Opportunity at 334-5051 or call the TDD phone line at 334-2069 at least two business days in advance.

RECOMMENDATION

The City Commission 1) receive a presentation from staff, and 2) direct the City Attorney to draft and the City Clerk to advertise revisions to the City of Gainesville Ordinance Section 27-28 as recommended.

Legislative History

12/19/13 City Commission Continued

130582 FA Ordinance Revision Presentation 20140116

CITY ATTORNEY

130642.

City Attorney Memorandum re: Equitable Adjustment for Change of Law of the Power Purchase Agreement (NB)

Modification - Added to the Agenda

Explanation: On December 19, 2013, the City Attorney provided a memorandum to the City Commission that explained the inquiry conducted by the City Attorney into the Equitable Adjustment document, and the discovery of another document (a "Consent and Assignment") that includes amendments to the PPA and explored whether it would be advisable to bring legal action to invalidate the Equitable Adjustment as an ultra vires act of the former General Manager for Utilities. The City Attorney concluded that legal action would not likely be successful and recommended further policy actions that could help prevent a similar situation in the future. However, the memorandum acknowledged it is up to the City Commission whether it desires to initiate a legal challenge and that GRU staff would anticipate placing GREC on notice that the portion of payments made under the PPA that are attributable to the Equitable Adjustment would be paid "under protest," pending City Commission action on this matter.

GRU received the first invoice for post-"commercial operations" power from GREC and the City Attorney's Office discussed the anticipated payment under protest with the Chief Financial Officer (CFO) for GREC. The CFO responded that "as discussed, GREC's receipt of a letter or other indication from GRU that payments are made "under protest" or otherwise casting doubt on the legality of payments under the PPA, as modified by the Equitable Adjustment, would cause real monetary damages to GREC as it would cause adverse consequences under GREC's existing financing arrangements and contemplated re-financings and/or in connection with a potential sale." "It is our hope that, especially in light of the City Attorney's position, GRU will make the full payment owed without any qualification that will cause damages to GREC for which GRU and the City will be liable."

The City Attorney brings this item for the purpose of requesting City

Commission action on the memorandum and to inform the City Commission of GREC's position concerning payment.

RECOMMENDATION

The City Commission: 1) Hear a brief presentation from the City Attorney; 2) confirm that the City Commission does not desire to initiate litigation seeking to invalidate the Equitable Adjustment as an ultra vires act, such that would require payments to be made under protest at this time; and 3) refer the recommendations contained in the memorandum to the Audit, Finance and Legislative Committee to be taken up as part of the pending referral (made by the City Commission on December 5, 2013) concerning an audit of GRU.

CITY AUDITOR

EQUAL OPPORTUNITY DIRECTOR

COMMITTEE REPORTS (PULLED FROM CONSENT)

RECREATION, CULTURAL AFFAIRS AND PUBLIC WORKS COMMITTEE

PERSONNEL & ORGANIZATION STRUCTURE COMMITTEE

PUBLIC SAFETY COMMITTEE

AUDIT, FINANCE AND LEGISLATIVE COMMITTEE

ADVISORY BOARDS/COMMITTEES (APPOINTMENTS/REPORTS)

OUTSIDE AGENCIES

MEMBERS OF THE CITY COMMISSION

COMMISSION COMMENTS (if time available)

RECESS

RECONVENE

PLEDGE OF ALLEGIANCE (5:30pm)

PROCLAMATIONS/SPECIAL RECOGNITIONS

City of Gainesville

City Hall
200 East University Avenue
Gainesville, Florida 32601



Minutes - Final

Wednesday, January 29, 2014

5:00 PM

City Hall Auditorium

Audit, Finance and Legislative Committee

Mayor Ed Braddy, Chair
Mayor-Commissioner Pro Tem Randy Wells, Member

Persons with disabilities who require assistance to participate in this meeting are requested to notify the Equal Opportunity Department at 334-5051 or call the TDD phone line at 334-2069 at least two business days in advance.

CALL TO ORDER

ROLL CALL

ADOPTION OF THE AGENDA

The agenda was adopted as circulated.

Adopted

APPROVAL OF MINUTES

130657. Audit, Finance and Legislative Committee minutes of November 20, 2013 (B)

Attachments: [11-20-13 AFLC Minutes.pdf](#)

The minutes from the November 20, 2013 Audit, Finance and Legislative Committee meeting were approved as circulated.

RECOMMENDATION *The Audit, Finance and Legislative Committee approve the minutes as circulated.*

Approved as Recommended

DISCUSSION OF ITEMS

130658. Review of CRA Capital Project Contracts (B)

Attachments: [#337 - Review of CRA Capital Project Contracts.PDF](#)

City Auditor Brent Godshalk gave a brief presentation.

RECOMMENDATION *The Audit, Finance and Legislative Committee recommend the City Commission:*
1) Accept the City Auditor's report and the response from the CRA Executive Director; 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.

Approved as Recommended

130659. Review of Payroll System (B)

Attachments: [#334 - Review of Payroll System.PDF](#)

City Auditor Brent Godshalk reviewed the report and Assistant City Auditor Eileen Marzak responded to questions from the audience. Finance Director Mark Benton provided information as to the implementation of the new payroll system for the

Police Department.

RECOMMENDATION

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

- 1) Accept the City Auditor's report and the response from the City Manager, 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.*

Approved as Recommended

130547.

Audit of GRU (B)

Attachments:

- [130547-A-Equitable Adjustment for Change of Law of the Power Purchase A](#)
- [130547-B-GREC LLC Dispute - Equitable Adjustment Analysis-Outside Attor](#)
- [130547-C-RFP-External Investigative Review of GRU-Agenda Item.PDF](#)
- [130547-D-Draft RFP External Investigative Review of GRU.PDF](#)
- [130547-E-AFLC REVISED DRAFT RFP EXTERNAL INVESTIGATIVE REVI](#)
- [130547-F - Memo from Godshalk to Commission.pdf](#)
- [130547-G -Proposal Evaluation Summary 6-19-14.pdf](#)
- [130547 MOD H Powerpoint Presentation 20140619.pdf](#)
- [130547I MOD Navigant Proposal 20140619.pdf](#)
- [130547J MOD Navigant Cost Proposal 20140619.pdf](#)
- [130547K MOD EnerVision Proposal 20140619.pdf](#)
- [130547L MOD Windham Brannon Proposal 20140619.pdf](#)
- [130547M MOD Windham Brannon Cost Proposal 20140619.pdf](#)
- [130547A Contract - Navigant - Professional Investigative Review Services 2](#)
- [130547B RFP No. CAUD140037-DH Issued April 10 2014 20141016.pdf](#)
- [130547C Addendum 1 Dated April 30 2014 20141016.pdf](#)
- [130547D Navigant Response May 7 2014 20141016.pdf](#)
- [130547E Navigant Cost Proposal May 7 2014 20141016.pdf](#)
- [130547F Navigant Power Point for Oral Interview June 10 2014 20141016.r](#)
- [130547G Ray Washington Letter 20141016.pdf](#)
- [130547H Speech 20141016.pdf](#)
- [130547I Navigant Contract - Additional Fee Request 20150115.pdf](#)
- [130547J NCI Investigative Review-COG 20150415.pdf](#)
- [130547K Jim Konish documents 20150415.pdf](#)
- [130547L NCI Summary of GRU Recommendations - COG 20151117.pdf](#)

The City Commission referred this issue to the Audit, Finance and Legislative Committee during their December 5, 2013 meeting.

On January 29, 2014, the Audit, Finance and Legislative Committee met and discussed this item. The Committee received extensive public input focused on

numerous issues of concern related to past management practices and business decisions primarily related to the multi-year development and implementation of the Power Purchase Agreement (PPA) between Gainesville Regional Energy Center (GREC), LLC and the City of Gainesville d/b/a Gainesville Regional Utilities (GRU) dated April 29, 2009 and approved by the City Commission on May 7, 2009. There was also considerable discussion regarding the background and financial impact of the "Equitable Adjustment for Change of Law" agreement dated March 16, 2011.

Committee discussions focused on possible actions that could be taken from a management, legal, financial, policy and control perspective to prevent reoccurrence of the actions involved in implementing the GREC PPA and to positively affect the financial outlook of GRU, especially in the area of energy supply and energy delivery.

Committee members agreed to report to the City Commission on February 6, 2014 a joint recommendation for the City to move forward with an external review focusing primarily on GRU past management practices and business decisions related to the implementation and any amendments to the GREC PPA, and including a forward focus on recommendations having positive financial impacts on GRU energy supply and delivery.

RECOMMENDATION

The Audit, Finance and Legislative Committee discuss the item and take appropriate action.

Recommended for Approval, as amended

MEMBER COMMENT

CITIZEN COMMENT

NEXT MEETING DATE

ADJOURNMENT

City of
Gainesville

Inter-Office Communication

March 5, 2014

TO: Audit, Finance and Legislative Committee
Mayor Ed Braddy, Chair
Mayor-Commissioner Pro Tem Randy Wells, Member

FROM: Brent Godshalk, City Auditor

SUBJECT: Issuance of Request for Proposals for an External Investigative Review of Gainesville Regional Utilities

Recommendation

The Audit, Finance and Legislative Committee recommend the City Commission authorize the issuance of a Request for Proposals (RFP) for an external investigative review of Gainesville Regional Utilities (GRU) utilizing the proposed methodology and selection factors.

Explanation

On December 5, 2013, the City Commission referred the issue of a special audit of GRU to the Audit, Finance and Legislative Committee (AFLC). On January 29, 2014 the AFLC met and discussed this item. The Committee received extensive public input focused on numerous issues of concern related to past management practices and business decisions primarily related to the multi-year development and implementation of the Power Purchase Agreement (PPA) between Gainesville Renewable Energy Center (GREC), LLC and the City of Gainesville d/b/a Gainesville Regional Utilities (GRU) dated April 29, 2009 and approved by the City Commission on May 7, 2009. There was also considerable discussion regarding the background and financial impact of the "Equitable Adjustment for Change of Law" agreement dated March 16, 2011.

Committee discussions focused on possible actions that could be taken from a management, legal, financial, policy and control perspective to prevent reoccurrence of the actions involved in implementing the GREC PPA and to positively affect the financial outlook of GRU, especially in the area of energy supply and energy delivery.

Committee members agreed to report to the City Commission on February 6, 2014 a joint recommendation for the City to move forward with an external review focusing primarily on GRU past management practices and business decisions related to the implementation and any amendments to the GREC PPA, and including a forward focus on recommendations having positive financial impacts on GRU energy supply and delivery.

On February 6, 2014, after Commission discussion and additional citizen input, the City Commission authorized the City Auditor to prepare an RFP for an external review to address:

- 1) Opportunities for financial and operational benefit to GRU related, but not limited to the GREC PPA; and
- 2) Recommendations of institutional controls that can be implemented that would help avoid the management discrepancies of the past and help strengthen the working relationship between GRU management and the City Commission.

Proposal Evaluation Process

All responsive proposals will be evaluated according to established criteria consistent with the City's Professional Services Evaluation Handbook. Proposals will be evaluated in the following two major areas:

- 1) Technical qualifications, which includes the Consultant's qualifications, ability of professional personnel and capability to meet time and budget requirements, and
- 2) Written proposals, which includes the Consultant's proposed approach to the project based on its understanding of the scope of work.

Purchasing staff will open Fee Proposals for responsive proposals and assign points to each proposal with higher points given to the lowest submitted Fee Proposal. Based on the combined proposal evaluations, the City may request oral presentations from the top ranked vendors, where additional information will be provided regarding firm qualifications, approach to the project and ability to furnish the required services. In accordance with the City's Local Preference Ordinance, qualified local businesses with responsive proposals will be assigned an additional five percent of the total evaluation points.

Proposed Contract Award

Responsive proposals will be ranked based on a combination of technical qualifications, written proposals, fee proposals and oral presentations, if necessary. Recommended rankings of proposals will be presented to the Audit, Finance and Legislative Committee for review, approval and recommendation to the City Commission. The City Commission will be requested to approve the recommended rankings and authorize negotiation and execution of a contract beginning with the top ranked vendor.

Proposed Time Table


The anticipated schedule for the RFP, evaluation process and approvals of ranking recommendations is as follows:

City Commission Approval of RFP	March 20, 2014
RFP available for distribution	March 27, 2014
Deadline for receipt of questions	April 10, 2014
Deadline for receipt of proposals	April 24, 2014
Completion of Evaluation process	May 8, 2014
Oral presentations, if conducted	May 19-22, 2014
Ranking & recommendation presented to Audit, Finance & Legislative Committee	June 12, 2014
Approval of recommendation by City Commission	June 19, 2014

City of
Gainesville

Inter-Office Communication

June 19, 2014

TO: Honorable Mayor and Members of the City Commission
FROM: 
Brent Godshalk, City Auditor
SUBJECT: Proposed Ranking of Requests for Proposals for an External Investigative Review of Gainesville Regional Utilities

Recommendation

The City Commission:

- 1) Approve the ranking of the proposals received for an external investigative review of Gainesville Regional Utilities (GRU),
- 2) Identify funding and establish a budget for the investigative review,
- 3) Authorize the City Auditor to execute a professional services contract with the top ranked firm, subject to approval of the City Attorney as to form and legality, and
- 4) Direct all charter officers and their staff to participate fully with the firm selected and to provide immediate and full access to all relevant records at their disposal.

Explanation

On December 5, 2013, the City Commission referred the issue of a special audit of GRU to the Audit, Finance and Legislative Committee (AFLC). On January 29, 2014 the AFLC met and discussed this item. The Committee received extensive public input focused on numerous issues of concern related to past management practices and business decisions primarily related to the multi-year development and implementation of the Power Purchase Agreement (PPA) between Gainesville Renewable Energy Center (GREC), LLC and the City of Gainesville d/b/a Gainesville Regional Utilities (GRU) dated April 29, 2009 and approved by the City Commission on May 7, 2009. There was also considerable discussion regarding the background and financial impact of the "Equitable Adjustment for Change of Law" agreement dated March 16, 2011. Committee discussions focused on possible actions that could be taken from a management, legal, financial, policy and control perspective to prevent reoccurrence of the actions involved in implementing the GREC PPA and to positively affect the financial outlook of GRU, especially in the area of energy supply and energy delivery.

Committee members reported to the City Commission on February 6, 2014 a joint recommendation for the City to move forward with an external review focusing primarily on GRU past management practices and business decisions related to the implementation and any amendments to the GREC PPA, and including a forward focus on recommendations having positive financial impacts on GRU energy supply

and delivery. After Commission discussion and additional citizen input, the City Commission authorized the City Auditor to prepare a Request for Proposals (RFP) for an external review to address:

- 1) Opportunities for financial and operational benefit to GRU related, but not limited to the GREC PPA; and
- 2) Recommendations of institutional controls that can be implemented that would help avoid the management discrepancies of the past and help strengthen the working relationship between GRU management and the City Commission.

On March 5, 2014, the AFLC discussed proposed RFP language, received extensive public input, provided detailed input to the City Auditor regarding desired clarifications in RFP language, and recommended the City Commission approve the modified RFP language and recommended process. This recommendation was adopted by the City Commission on April 3, 2014 after being continued from the March 20, 2014 City Commission meeting.

On April 10, 2014, an RFP for an External Investigative Review of GRU was issued by the General Government Purchasing Department. The City received three proposals by the due date of May 8, 2014, which were then evaluated according to the City's standard practice for professional services proposals. Based on the evaluated technical qualifications, written proposals, fees related to each proposal and oral presentations from the three proposers, proposals have been ranked first, second and third, as provided in the attached proposal evaluation.

Accordingly, it is recommended that the City Commission approve the ranking of the proposals received, identify funding and establish a budget for the investigative review, authorize the City Auditor to execute a professional services contract with the top ranked firm, subject to approval of the City Attorney as to form and legality, and direct all charter officers and their staff to participate fully with the firm selected and to provide immediate and full access to all relevant records at their disposal. If, for any reason, an agreement with the selected proposer cannot be reached, the City Auditor will initiate negotiations with the second ranked firm, continuing through the rankings until an agreement is reached or all proposals are rejected.

Jim Konish
4/15/15
#130547

Navigant Investigative Review

Questions:

- 1) On what date was a Navigant Draft Final Report, electronically or otherwise, provided to the City of Gainesville or it's current or former employees and/or contractors?
- 2) Did the City request changes to the final draft report released to the public on April 8, 2015?
- 3) If the answer to Question 2 is Yes:
 - a) Who suggested the changes?
 - b) What were the changes?
 - c) When were the changes made?
- 4) Is there a list of persons Navigant interviewed during its investigation?
- 5) Did any person invoke their 5th amendment right against self-incrimination during the investigation?
- 6) Was Pegeen Hanrahan or Robert Hunzinger interviewed by Navigant?
- 7) Navigant is licensed by the Florida Department of Agriculture Lic. No. A2900360. What is their Florida License?
- 8) Please identify all members of the Florida Bar and their Fla. Bar No.(s) responsible for the legal conclusions reached by Navigant regarding:

a) Whether the GREC contract or equitable adjustment was voidable.
(p.19)

b) Whether there was a change in law to support the equitable adjustment
(p. 20)

c) Whether GRU staff acted within the scope of their authorization (p. 20).

9) When and where was Navigant authorized by City of Gainesville to render legal conclusions?

10) Did Navigant disclose to the City of Gainesville its indirect relationship with GREC regarding its promotion of wind power in the Northeast?

11) On page 13, bottom paragraph, the report references "iii. guidance provided by the (former) City Auditor and City Commission in providing oversight during the investigative process" (emphasis added). Please explain.

12) On page 176, Navigant incorrectly characterizes Perry's HB 1325 legislation and touts an advisory board as a viable alternative to an independent board. These conclusions are contrary to the conclusions reached by the Chamber's Study Group. On page 35, contrariwise, Navigant references Moody's bond rating service's preference for a governing board that "minimizes political interference in the professional management..." Please explain.

13) Why did Navigant not investigate the 2nd Amendment to PPA dated June 30, 2011 titled as a Consent and Agreement regarding GREC financing?

Up in the Air

What the Northeast States
Should Do Together
on Offshore Wind
Before It's Too Late



City of Gainesville

City Hall
200 East University Avenue
Gainesville, Florida 32601



Minutes - Final

Wednesday, April 15, 2015

5:00 PM

City Hall Auditorium

City Commission

Mayor Ed Braddy (At Large)
Commissioner Lauren Poe (At Large)
Commissioner Helen Warren (At Large)
Commissioner Yvonne Hinson-Rawls (District 1)
Mayor-Commissioner Pro Tem Todd Chase (District 2)
Commissioner Craig Carter (District 3)
Commissioner Randy Wells (District 4)

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ADOPTION OF THE AGENDA

A motion was made by Commissioner Poe, seconded by Commissioner Carter, that the Matter be Adopted. The motion carried by the following vote:

Aye: 6 - Mayor Braddy, Commissioner Poe, Commissioner Carter, Commissioner Warren, Commissioner Wells, and Mayor-Commissioner Pro Tem Chase

Absent: 1 - Commissioner Hinson-Rawls

ROLL CALL

The meeting was called to order at 5:10 PM.

AGENDA STATEMENT

CITY COMMISSION

130547. Navigant Consulting Investigative Review (B)

Eileen Marzak, Todd Lester, Jim Peterson and Dan Stalhos made presentations.

Ray Washington, Jim Konish, John Devies, Paula Stahmer, Nancy Doren, Rob Brinkman, Annie Orlando, Don Glendening, Robby Teal, Joa Beaty, Donald Spepherd, Kali Blount, Mathew Humphries and Carolyn Weston spoke to the matter.

1st Motion: accept report and refer to Audit and Finance Committee. Motion carried 6-0.

2nd Motion: A motion was made by Commissioner Poe, seconded by Commissioner Carter ask staff to include Navigant recommendations for economic opportunity options in agenda item to be heard in May. Motion carried 6-0.

RECOMMENDATION *Receive a report from Navigant Consulting, Inc. regarding their investigative review and take appropriate action.*

A motion was made by Mayor-Commissioner Pro Tem Chase, seconded by Commissioner Wells, that this Matter be Referred to the Audit and Finance Committee, due back on 10/15/2015. The motion carried by the following vote:

Aye: 6 - Mayor Braddy, Commissioner Poe, Commissioner Carter, Commissioner Warren, Commissioner Wells, and Mayor-Commissioner Pro Tem Chase

Absent: 1 - Commissioner Hinson-Rawls

ADJOURNMENT

The meeting adjourned at 10:06 PM.

Kurt Lannon, Clerk of the Commission



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Letters to the Editor for Oct. 25, 2013

Published: Friday, October 25, 2013 at 6:01 a.m.

Edge of catastrophe

A little over one year ago, incumbent U.S. Rep. Cliff Stearns was challenged in the Republican primary election. The vote was split among four candidates: James Jett, who got 13.5 percent of the vote; Steve Oelrich, who got 19 percent; Stearns, who got 33 percent; and the current incumbent Ted Yoho, who got 34.4 percent.

Considering that this result unseated a long-sitting incumbent and the fact that two out of every three Republicans voting in that primary voted for someone other than Ted Yoho, doesn't this suggest a way for the GOP to oust this darling of the tea party?

The 3rd Congressional District is weighted in favor of the Republican Party, so this would not cost the Republicans a seat in the House, but it would help them fight back against the minority group that has taken our country and the party to the edge of catastrophe.

Russ Nekorchuk,

Gainesville

Need to know

Gainesville Regional Utilities General Manager Bob Hunzinger is resigning. It seems too convenient, now that the biomass plant is coming online. Ever since he came to GRU, his decisions concerning the biomass plant seem to favor the Gainesville Renewable Energy Center, not Gainesville or GRU.

He approved a rate increase favorable to GREC. He ignored legal advice. He charged GRU customers fuel charges to limit rate increases when the plant came online.

From the beginning, nothing he has done, concerning the biomass plant, favors GRU or the citizens of Gainesville. Before he leaves town and disappears, there needs to be an investigation.

Kurt Baumgartner,

Gainesville

Causes of disease

The problem with the Affordable Care Act — besides being pure corporate welfare for bloated insurers, drug makers and hospitals — is that it ignores the causes of disease and many inexpensive therapies. Since most of the enormous bill is due to chronic disease like cancer, heart, arthritis and diabetes, we should first look to our chemically grown, grain-based food supply, the toxic soup of industrial chemicals/metals we live in and the psychological stresses of income inequality within the feel-good illusion of an American dream.

We know corporate influence rules our political system, but few recognize the involvement of universities in perpetuating the pillage of the public's health, wealth and our common environment. Higher education has become the incubator not of

innovation to benefit all, but to graduate corporate soldiers to fight for the opulence enjoyed by the 1 percent.

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Randall Lance,

Wellborn

Rarely ticketed

On a recent Saturday, I had the unfortunate experience of being on 39th Avenue when a group of 15 to 20 bicyclists turned west on the street. They filled the entire turn lane with their bikes.

When the light turned yellow, they proceeded through with most of the bicyclists running the red light. If they had all been in the intersection prior to the light change this would have been legal, but unfortunately none of the bikes were. On 51st Street, at least six bicyclists were not in the designated bike lane.

Yes, I know that motorists are guilty of running yellow and red lights as well as infringing on the designated bike lanes. However, if I am caught doing so I will get a ticket, whereas bicyclists rarely get ticketed.

We are correctly told to share the road with bicyclists, but bicyclists need to also share the road with motorists.

Marilyn Bates,

Gainesville

Beyond our means

During President Obama's time in office, his liberal and progressive spending policies have exploded our national debt to more than \$53,000 per U.S. citizen. Incredibly, our national debt now exceeds the gross national product of the United States.

This means that if we sold all the goods and services our country generates in an entire year, it would still not be enough to pay off our debt. Could this mean a good part of America will be owned by foreign governments in an effort to become solvent?

Meanwhile, we still continue to spend beyond our means and still let our debt increase unabated. Are we near that tipping point where we become like the bankrupt city of Detroit or the debt strangled country of Greece?

Regrettably, our children and grandchildren will find out.

Ernie Taylor,

Gainesville

Larger amount

The ten best-educated states voted for President Obama in 2012, according to statistics from Foxbusiness.com and the U.S. Census bureau.

What else can I say? Oh yes, nine of the 10 least-educated states voted for Mitt Romney. GOP propaganda assures us that the Democrats will win by a larger amount next election.

George Snowden,

Gainesville

GREC

17 Jun 11

- Damages (not looking to modify the clause)
- it is determined by who we've est. in the PPA already which is an arbitrator & judge @ Ct level
 - don't want an appraiser that they choose as a term of the deal
 - don't limit it or try to come up w/ all inclusive list → use language as listed in PPA
 - high discount rate is better to GRU
 - ~~if they want to~~
 - if there are damages, how do you compare \$ they would have got under the PPA?
 - not mentioning net revenues, but gross revenues

p.9 5(i) John Stanton wants no change to the original language
Appendix IV, para 1.6

↓
has to be w/i 3% of design capacity, if it's above 97 MW, avg the 3 & we will take that & GREC will take the hit for not hitting 100 MW capacity

2(h) Fuel Supply - given seller indemnity or what we provide

TIC w/ GREC Team

17 JUN 11

Damages

- Carl 5(d) - no support for proposition that the docs have ^{formalistic} ~~practical~~ approach to damages w/ Millbank on other side
- provide future guidance to the 3rd person making the evaluation
- Eric - ok allowing a 3rd party to choose the arbiter

J. Cole - both parties would provide experts to arbitrator & then arbiter would make some thorough decision

Eric - our concern is that it is difficult to apply concepts that there's no liquid market; to finance, a factor that has to be considered is the payment stream under the K is what it's intended to be

incl. of
arbitrators
vs. 1

arbitrator

Appraiser vs. arbitrator (knows more about damages) then the appraiser would.

factors - net revenues as est. to be produced under this K at re remainder of its term

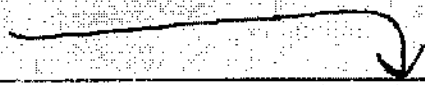
net

rev - avoided costs

- reimbursements

- phrase it as "net revenues" b/c they are worried about stranded costs & how you est. Fwd which is thru market discrepency
- reference \$87 purchase option price (b/c it has a minimum
- forward curves are coming out of ISAs which aren't good b/c 70 months

diff b/t ↓



- if we default, (net rev of term of K) - (net rev out of a replacement K) want know if there is anyone who ~~wants~~ wants such a long K

- bundling of other assets like we are going to do here at GRU makes it marketable as R.E.

- market w/ an RPS & a market w/ R.E.

Difference b/t K price & market value

factors that may be taken into account w/ other factors, which doesn't mean they must be applied if not applicable

What should damages be?

↓

AW K price

an amt whole for diff for what we would have pd &

→ what is market value? to sell the energy on the market

bank/BREC

Eric → If Grille defaults, we'd have duty to mitigate the firm capacity, energy attributes

pg. 9/§ 5(i) should be 97 MW (reasonable figure) - introducing maximum capacity here

failed to get to 100 3 times to get in this situation (3 tests should be in the 97-98, 99 b/c if its not reaching 97, then they will abandon the test & start again)

- Chris from American Renewables

↓

Capacity test (its seasonal) 2x a year (Initial & seasonal)

↓

After failure of 3 tests, as low as lowest value exceeds 97, take corrective engineering steps to reach 97 MW

Rabro
Pamuk

Appendix IX 1.6

↓ After failed 3x on 3 diff 12 hr tests, demonstrated and its 97 MW, we can accept lowest of 3 tests unless it is below 97 MW

- trying to est. 3 tests of dependable capacity, should be easy to get 3 tests at dependable #s, as a minimum requirement

Traki →

- if the test demonstrates 92, 95, 97, plant will be accepted at that MW capacity. a condition under which PPA now becomes effective

App. 9 - 1.6 & 1.7 involves a lot of retesting & have to be read together

PPA 25.1.4 - If initial cap. test is 97 MW & then its determined 97 MW is the dependable capacity, then the commercial operation date is completed / met

TTC w/ Jonathan on 17 Jun 11

C.O.D - trigger ~~events~~ ~~from~~ ~~test~~ ~~get~~ ~~active~~

McDermott, Timothy (Ptnr-Jax)

From: Lyon, Carl F. <cflyon@orrick.com>
Sent: Wednesday, November 20, 2013 2:09 PM
To: McNeill, Shayla L
Subject: FW: Consent and Agreement

From: Lyon, Carl F.
Sent: Tuesday, November 19, 2013 7:42 PM
To: 'waratukeea@cityofgainesville.org'
Subject: Consent and Agreement

I have reviewed the C&A and I do think that the change to the damages provision is the most detrimental change, but also of importance are the deletion of Section 25.1.2 which was a cross default to the sellers financing and Section 27.2.5 affecting the purchase option price. I am sure you are aware of the rep in section 2.5 to the effect that no commission approval is required.

We do believe that the PPA arbitration provision would not carry over to a challenge to the validity of this agreement.



O R R I C K

CARL F. LYON

Partner

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75 Arlington Street
5th Floor
Boston, MA 02116

June 30, 2011

Robert E. Hunzinger, General Manager
Gainesville Regional Utilities
301 S.E. 4th Avenue
Gainesville, FL 32614-7117

Re: Gainesville Renewable Energy Center Notice of Construction Commencement

Dear Mr. Hunzinger:

Gainesville Renewable Energy Center, LLC ("GREC"), hereby issues a Notice of Construction Commencement to Gainesville Regional Utilities ("GRU") for the Gainesville Renewable Energy Center.

Today, GREC has closed construction financing for the Facility as well as issued a Final Notice to Proceed to begin construction of the Facility to our EPC contractor, Fagen Inc. In addition, as of December 28, 2010, GREC has obtained all prerequisite governmental approvals for the construction of the Facility. Therefore, GREC has completed the requirements of the definition of "Construction Commencement Date" contained within the Power Purchase Agreement for the Supply of Dependable Capacity, Energy and Environmental Attributes From a Biomass-Fired Power Production Facility (the "PPA"; capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the PPA) and the date hereof shall be the "Construction Commencement Date" under the PPA.

With respect to defining the Construction Cost Adjuster pursuant to the PPA which will be used in determining the Non-Fuel Energy Charge, GREC and GRU agree that, using the formula contained in the PPA, they will establish the Construction Cost Adjuster in a separate letter to be exchanged by the parties in the near future.

Thank you for your tremendous support of our project. We are looking forward to constructing and operating the GREC Facility to provide Gainesville with clean, renewable electricity.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua H. Levine".

Joshua H. Levine
Director of Project Development

City of Gainesville

City Hall
200 East University Avenue
Gainesville, Florida 32601



Minutes - Final

Thursday, July 16, 2015

1:00 PM

City Hall Auditorium

City Commission

Mayor Ed Braddy (At Large)
Commissioner Harvey Budd (At Large)
Commissioner Helen Warren (At Large)
Commissioner Charles Goston (District 1)
Commissioner Todd Chase (District 2)
Mayor-Commissioner Pro Tem Craig Carter (District 3)
Commissioner Randy Wells (District 4)

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PLAN BOARD PETITIONS**DEVELOPMENT REVIEW BOARD PETITIONS****SCHEDULED EVENING AGENDA ITEMS****CITY ATTORNEY****RECESS - 11:29 PM****RECONVENE - July, 20, 2015, 5:40 PM****CITY AUDITOR****150149. Referral on the Navigant Report Recommendation Matrix for GRU (NB)**

Referral: General Manager to report back on the Navigant Report Recommendations with a set of strategic recommendations moving forward.

Nathan Skop, Jim Konish, Ernesto Martinez, Debbie Martinez, Jo Beaty, Annie Orlando and John Brushwood spoke to the matter.

RECOMMENDATION *The City Commission discuss the recommendation matrix and take action deemed appropriate.*

A motion was made by Commissioner Wells, seconded by Mayor-Commissioner Pro Tem Carter, that this Matter be Referred to the General Manager for Utilities, due back on 1/16/2016. The motion carried by the following vote:

Aye: 7 - Mayor Braddy, Mayor-Commissioner Pro Tem Carter, Commissioner Warren, Commissioner Wells, Commissioner Chase, Commissioner Goston, and Commissioner Budd

150562. City Auditor to Report Back with Options for a Possible Forensic Audit of the GREC Contract

Clerk's Note: The City Commission discussed having the General Manager assist as needed.

RECOMMENDATION *Refer to City Auditor*

A motion was made by Commissioner Goston, seconded by Commissioner Chase, that this Matter be Referred to the City Auditor, due back on 1/16/2016. The motion carried by the following vote:

Aye: 6 - Mayor Braddy, Mayor-Commissioner Pro Tem Carter, Commissioner Wells, Commissioner Chase, Commissioner Goston, and Commissioner Budd