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citizen comment
Harold Saive

NACOGDOCHES POWER, LLC 110496

MEMORANDUM

To: Ed Regan, Gainesville Regional Utilities

From: Josh Levine

Date: September 26, 2008

RE: Issues with Termination for Convenience Clause within GREC/GRU PPA

At the request of Gainesville Regional Utilities (GRU), we have included a Termination for Convenience Clause (Section 29) within the PPA between GRU and Gainesville Renewable Energy Center, LLC (GREC). From our ongoing discussions, you stated that this clause was requested by one or more Gainesville City Commissioners.

During our meeting in Boston on September 8, 2008, you stated that the Termination Fee (Development Expenses plus a Development Fee of $32 million) within this clause was expensive. Our response to your concern was such a Termination for Convenience Clause was highly unusual and could jeopardize the project, but we are willing to consider the addition of a clause like this within the PPA if the Termination Fee was of a level which strongly discourages GRU from exercising it. You have requested that we provide you with some additional information on why the addition of this clause causes Nacogdoches Power and its potential investors and lenders an issue.

- The inclusion of a Termination for Convenience Clause allows GRU the ability to cancel the contract at any point between the Effective Date (the signing of the PPA) and the Construction Commencement Date. Between the Effective Date and the Construction Commencement Date, we will be investing a significant amount of our capital and resources into this project. If the Termination Fee was not significant enough to strongly discourage GRU from exercising this option, we could potential spend almost two years and a significant amount of capital developing this project simply to have GRU cancel it shortly before the Construction Commencement Date. While we would receive reimbursement for the development expenses we would have spent if GRU exercised this option, the more significant cost would be the opportunity cost associated with the equity value created through our development of a different biomass energy facility that we would own and operate. The Development Fee mentioned above captures the lost development fee that we would receive plus some of this opportunity cost. However, from Nacogdoches Power's standpoint, this would not cover the complete opportunity cost.
- Having a Termination for Convenience Clause in the PPA causes us difficulties as we move through the development process and seek project financing for the facility as well as negotiate

contracts for the supply of major equipment for the Facility, contracts for the construction of the Facility and fuel contracts.

  - Having a secure PPA is a very important step in providing the Project with the credibility necessary to seek and obtain project financing and the necessary contracts with equipment and construction vendors. As we are experiencing with our TX facility, it is very much a "seller's market" when it comes to negotiating equipment and construction for facilities of this type. There is high global demand for these products and services and the vendors can afford to be choosey and exert significant influence on the terms that they agree to work under.
  - With the current state of the credit markets, the only projects that are getting considered for financing are those projects which have significant credibility and relatively low risk.
  - The addition of a clause like the one proposed in Section 29 weakens the credibility and negotiating value of the PPA. As the contracts for equipment, construction and fuel supply need to be negotiated months and in some cases years before the start of construction, counterparties are going to be reluctant to invest the time, effort and significant financial resources necessary to prepare bids and negotiate with us if there is a possibility that the project can be terminated for any reason, or even for no reason, by GRU.
  - This would be the exact same case for the credit markets where financial advisers and potential lenders would be hesitant to invest the time and money necessary to understand this project to the point of being able to commit capital to it. Financial advisors and banks only make money if the project reaches financial closing and moves forward. GRU having an unfettered right to terminate the contract creates a significant level of uncertainty around the project. These concerns of being able to fully engage the credit markets are especially heightened given the current state of the global credit market.

In addition to the points raised above, I thought it would also be helpful if we explained why we believe that the inclusion of a Termination for Convenience Clause is not necessary within this PPA.

- First, there is limited risk to GRU in the instance where the Facility is never completed. If GREC fails to begin construction or to finish construction of the Facility, Section 16 (Schedule Guarantees and Liquidated Damages) clearly lays out remedies where GRU can begin drawing down the Performance Guarantees.
- Second, there is no risk to GRU in the instance where the Facility costs more than we anticipate it will. The cost overrun risk lies squarely with GREC. GRU's rates under the PPA will not change if the costs go up or there are overruns.