

Legislative #

160245

June 16, 2016

Edward J. Bielarski, Jr., General Manager  
Gainesville Regional Utilities  
301 S.E. 4th Avenue  
Gainesville, FL 32614-7117

**Re: Notice of Claim Regarding (1) Shutdown Charges, (2) Available Energy Payments During Startup, (3) Withholding of Previously Paid Amounts, and (4) Purported Payment Decrease**

Dear Ed:

Pursuant to Section 24.1 of the parties' Power Purchase Agreement (PPA), GREC submits this claim notice that GRU has violated the PPA in several material respects relating to (1) Shutdown Charges, (2) Available Energy payments during startup periods, (3) an improper withholding of previously paid amounts, and (4) GRU's position regarding a purported Payment Decrease.

First, GRU breached the PPA by failing to pay Shutdown Charges in the amount to date of approximately \$129,859, excluding interest. Under the PPA, GREC has a right to be paid "Shutdown Charges," which consist of startup fuel and certain operational and maintenance costs. GRU's obligation is triggered whenever GRU requests a "complete shutdown" of the Facility's generation, and such charges are billed and payable when the Facility is next started up following such requested shutdown. On several occasions, when the Facility was in complete shutdown status, GRU has ordered the Facility to run and then ordered GREC to return to its "pre-operational test condition" or "pre-operational dispatch status", which in either case was one of complete shutdown. On two such occasions GRU has breached the PPA by failing to pay GREC (a) Shutdown Charges of \$66,003 in connection with the complete shutdown ordered by GRU following the September 2015 operational test (and subsequent November start-up); and (b) Shutdown Charges of \$63,856 in connection with the complete shutdown ordered by GRU following the November 2015 dispatch (and subsequent March 2016 start-up).<sup>1</sup> It is also clear now from the fact that GRU has done this on successive shutdowns that GRU intends to continue this improper conduct going forward.

Second, GRU breached the PPA by failing to pay "Available Energy" charges in the amount of \$643,596 based on a new interpretation of the PPA whereby GRU now deems GREC, when in standby reserve status and "available", to become "unavailable" from the moment it orders GREC to start up until the breaker is closed connecting GREC to the grid. GRU has thereby improperly withheld from GREC \$222,737 from the September 2015 startup, \$228,436 from the November 2015 startup, and \$192,423 from the March 2016 startup. It is clear from GRU's engaging in this conduct for these successive periods that GRU intends to continue this improper conduct going forward. GRU also improperly withheld \$163,407 in Available Energy charges relating to GREC's entering into a maintenance outage in August 2015, when prior to the outage the Facility had been "available" in the standby reserve status ordered by

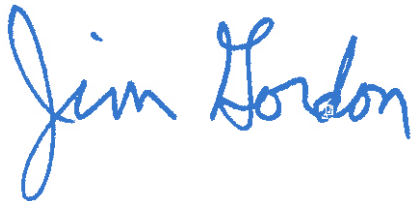
<sup>1</sup> GREC recently invoiced GRU the Shutdown Charges of \$62,680 in connection with the March 2016 operational test and return to complete shutdown ordered by GRU (and subsequent May 2016 start-up). The Shutdown Charges in connection with the May 2016 operational test and complete shutdown ordered by GRU ordered will be determined the next time GRU orders GREC to run.

GRU. GRU improperly deemed the Facility to have become "unavailable" for a period of time prior to the commencement of the outage, as well as "unavailable" for a period of time following completion of the outage and return to standby reserve status ordered by GRU.

Third, with regard to the September 2015 startup, GRU breached the PPA by retroactively withholding the previously paid \$222,737 amount from a subsequent invoice, which is not permitted under the PPA. Specifically, by letter dated November 24, 2015, GRU raised for the first time a "dispute" over \$222,737 of Available Energy charges related to the September 2015 startup, which amount GRU had already paid to GREC pursuant to an earlier invoice. Conceding that this amount had already been paid, GRU nonetheless "subtracted" and withheld such amount from the invoice for October. No provision of the PPA allows GRU to engage in self-help by withholding this previously paid amount from a subsequent payment.

Fourth, GRU has wrongfully withheld \$529,439 purportedly based on Section 12.4.1 of the PPA. GRU has not and cannot identify grounds for a "Payment Decrease" under Section 12.4.1 of the PPA. The data for the Billing Period supplied by GRU confirms that GREC did not fail to meet the operating level specified by GRU by more than 5% and, moreover, such provision is aimed at performance as measured over a full Billing Period, as opposed to a short-term capacity test. Please pay the improperly withheld amounts outlined above immediately.

Sincerely,



Jim Gordon

July 14, 2016

VIA FACSIMILE AND E-MAIL

Gainesville Renewable Energy Center, LLC  
Attention: Mr. James Gordon  
20 Park Plaza, Suite 320  
Boston, MA 02116

Re: GREC's Notice of Claim, dated June 16, 2016

Dear Mr. Gordon,

Gainesville Regional Utilities ("GRU") provides this response to your correspondence dated June 16, 2016, in which Gainesville Renewable Energy Center, LLC ("GREC") provided notice of claim ("Claim") and invoked the Dispute Resolution Process pursuant to §24.1 of the Power Purchase Agreement between GRU and GREC ("PPA"). Capitalized terms used in this letter have the meanings set forth in the PPA. GRU has thoroughly reviewed the circumstances identified in GREC's Claim, and provides the findings and recommendations described below.

1. Shutdown Charges

With respect to the events identified in GREC's Claim, at no time did GRU provide GREC with a dispatch order to perform a "Purchaser Shutdown". GRU did not request that GREC shut down the Facility's generation. Upon a lightning strike event on August 7, 2015, GREC's Facility went offline. GRU did not request that GREC shut down the Facility's generation. Thus, no Purchaser Shutdown occurred with respect to that event.

On September 19, 2015, March 6, 2016, and on May 25, 2016, pursuant to Section 2.3(a) of Appendix IX of the PPA, GRU instructed GREC to perform Dependable Capacity Tests. At the conclusion of the Dependable Capacity Tests, GRU instructed GREC to return the Facility to the pretest condition of standby. GRU has exercised its dispatch rights under Section 10.5 of the PPA, and has done so in a manner consistent with the PPA. GRU disputed such amounts in its correspondence submitted with timely payment of the uncontested amounts, and explained the reasons for the disputes in the prior correspondence, copies of which are attached hereto.

2. Available Energy

The PPA defines the Available Energy that qualifies for payment of the Non-Fuel Energy Charge and the Fixed O&M Charge under Appendix III of the PPA. GRU has a responsibility to its ratepayers to ensure that GRU only pays for MWh that meet the definition of Available Energy under the PPA. GRU is making good faith efforts to confirm and verify that all MWh claimed as Available Energy actually satisfy the contractual standard for payment. Again, this will be necessary to ensure that GRU only pays for MWh that satisfy the contractual definition of Available Energy. GRU disputed such amounts in its correspondence submitted with timely

payment of the uncontested amounts, and explained the reasons for the disputes in the prior correspondence, copies of which are attached hereto.

3. Withholding of Previously Paid Amount

Pursuant to Section 8.5 of the PPA, Billing Statements or Payments may be contested within one (1) year of the receipt of the Billing Statement. In November of 2015, upon review of GREC OPER 201510 (the Billing Statement received in October 2015), GRU became aware that GRU paid GREC \$222,736.62 in Non-Fuel Energy Charges which amount should not have been paid to GREC. Upon realization that GRU paid GREC for what should have been a contested portion of the October 2015 Billing Statement, which GRU has a contractual right to withhold pursuant to Section 8.5, GRU subtracted the contested portion from the next invoice. GRU disputed such amounts in its correspondence submitted with timely payment of the uncontested amounts, and explained the reasons for the disputes in the prior correspondence, copies of which are attached hereto.

4. Failure to meet operating level pursuant to Section 12.4.1 of the PPA

Pursuant to Section 12.4.1 of the PPA, for each instance where GREC fails to meet the operating level specified by GRU by more than five percent (5%) for a Billing Period, the Dependable Capacity for that Billing Period shall be decreased by ten percent (10%). Section 12.4.1 specifies that the integrated hourly net output (i.e., Delivered Energy) will be used to determine if the Facility was within five percent (5%) of the specified operating level for a Billing Period. The integrated hourly net output for the Billing Period covered by the invoice for the Billing Period of March 2016 shows that GREC failed to meet the operating level specified by GRU by more than 5% for such Billing Period. Accordingly, as required by Section 12.4.1, the Dependable Capacity for the above-identified Billing Period shall be decreased by 10%. GRU calculated that reduction and the resulting payment deduction is \$529,439.49. As such, GRU decreased the line item on Invoice Number GREC OPER 201603 in the amount of \$529,439.49. GRU disputed such amount in its correspondence submitted with timely payment of the uncontested amounts, and explained the reasons for the disputes in the prior correspondence, copies of which are attached hereto.

We look forward to working with you in an effort to resolve these disputes in a prudent and timely manner.

Sincerely,

  
Edward J. Bielski, Jr.  
General Manager for Utilities

xc: Len Fagan, VP Engineering & Construction, EMI  
Al Morales, Chief Financial Officer, EMI  
Stuart Sohn, Controller, EMI  
Gainesville City Commission  
GRU Executive Staff

Enclosures



June 27, 2016

VIA FACSIMILE AND E-MAIL

Gainesville Renewable Energy Center, LLC  
Attention: Mr. James Gordon  
20 Park Plaza, Suite 320  
Boston, MA 02116

Re: Dispute Regarding Invoice Number: GREC OPER 201605

Dear Mr. Gordon,

Pursuant to Sections 8.5 and 24.1 of the Power Purchase Agreement ("PPA") between the City of Gainesville d/b/a Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC ("GREC"), please accept this correspondence as notice of a dispute regarding the above-referenced invoice. Upon review of the above-referenced invoice, GRU disputes the invoice line items titled "Products produced and delivered" in the amount of \$208,261.06, "Shutdown charges" in the amount of \$62,680.22, and "Past due balance including interest through 5/31/16" in the amount of \$5,646,546.86. The reasons for the dispute are explained below. In accordance with Section 8.5 of the PPA, GRU is paying the uncontested amounts at this time, and withholding the disputed amounts.

First, GRU disputes approximately \$208,261.06 of the invoiced Available Energy Charges. This dispute is based on the events occurring in connection with the test of Dependable Capacity that GREC was directed to perform pursuant to Section 2.3(a) of Appendix IX of the PPA. GRU issued the order for the test on May 25, 2016. GRU should not have been invoiced for any Available Energy Charges from the time the order was given (approximately 0600 hours on 5/25/2016) until the time the breaker closed and GREC tied to the grid (approximately 0450 hours on 5/26/2016). Between the time GRU gave the order to perform a test of Dependable Capacity and the time when GREC tied to the grid, GREC is not owed payment for any Available Energy because GREC did not generate and deliver any Energy to the Delivery Point. GRU therefore disputes approximately \$208,261.06 of the Available Energy Charges in the line item titled: "Products produced and delivered".

Second, GRU disputes the invoice line item titled "Shutdown charges" in the amount of \$62,680.22 resulting from the test of Dependable Capacity performed pursuant to Section 2.3(a) of Appendix IX of the PPA. Upon the conclusion of the test, GREC was instructed to return to GREC's pre-operational test condition. As such, at no time did GRU provide GREC with a dispatch order to "shutdown".


Third, GRU disputes the invoice line item titled "Past due balance including interest through 5/31/16" in the amount of \$5,646,546.86. These amounts are from invoices that were issued for previous Billing Periods (i.e., Billing Periods before May 2016). GRU disputed those amounts in

Jim Gordon  
June 27, 2016  
Page 2

its correspondence submitted with timely payment of the uncontested amounts, and explained the reasons for the disputes in the prior correspondence, copies of which are attached hereto.

Please note that pursuant to Section 8.5 of the PPA, GRU intends to pay the above-referenced invoice total minus the disputed amounts, for a total of \$5,903,192.73. We look forward to working with you to resolve this invoice dispute in a prudent and timely manner.

Sincerely,



Edward J. Bielarski, Jr.  
General Manager for Utilities

xc: Len Fagan, VP Engineering & Construction, EMI  
Al Morales, Chief Financial Officer, EMI  
Stuart Sohn, Controller, EMI  
Gainesville City Commission  
GRU Executive Staff



April 26, 2016

VIA FACSIMILE AND E-MAIL

Gainesville Renewable Energy Center, LLC  
Attention: Mr. James Gordon  
20 Park Plaza, Suite 320  
Boston, MA 02116

Re: Dispute Regarding Invoice Number: GREC OPER 201603

Dear Mr. Gordon,

Pursuant to Sections 8.5 and 24.1 of the Power Purchase Agreement ("PPA") between the City of Gainesville d/b/a Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC ("GREC"), please accept this correspondence as notice of a dispute regarding the above-referenced invoice. Upon review of the above-referenced invoice, GRU disputes the invoice line items titled "Products produced and delivered" in the amount of \$1,539,540.84, "Shutdown charges" in the amount of \$64,381.40, and "Past due balance including interest through 3/31/16" in the amount of \$753,296.80.

First, GRU disputes approximately \$192,423.15 of the invoiced Available Energy Charges. This dispute is based on the events occurring in connection with the test of Dependable Capacity that GREC was directed to perform pursuant to Section 2.3(a) of Appendix IX of the PPA. GRU issued the order for the test on March 6, 2016. GRU should not have been invoiced for any Available Energy Charges from the time the order was given (approximately 0600 hours on 3/6/2016) until the time the breaker closed and GREC tied to the grid (approximately 0255 hours on 3/7/2016). Between the time GRU gave the order to perform a test of Dependable Capacity and the time when GREC tied to the grid, GREC is not owed payment for any Available Energy because GREC did not generate and deliver any Energy to the Delivery Point. GRU therefore disputes approximately \$192,423.15 of the Available Energy Charges in the line item titled: "Products produced and delivered".

Additionally, pursuant to Section 12.4.1 of the PPA, for each instance where GREC fails to meet the operating level specified by GRU by more than five percent (5%) for a Billing Period, the Dependable Capacity for that Billing Period shall be decreased by ten percent (10%). Section 12.4.1 specifies that the integrated hourly net output (i.e., Delivered Energy) will be used to determine if the Facility was within five percent (5%) of the specified operating level for a Billing Period. The integrated hourly net output for the Billing Period covered by the above-referenced invoice shows that GREC failed to meet the operating level specified by GRU by more than 5% for such Billing Period. Accordingly, as required by Section 12.4.1, the Dependable Capacity for the above-identified Billing Period shall be decreased by 10%. GRU has calculated that reduction



and the resulting payment deduction is \$529,439.49. As such, GRU decreased the line item on the invoice titled: "Products produced and delivered" in the amount of \$529,439.49.

Second, GRU disputes the invoice line item titled "Shutdown charges" in the amount of \$64,381.40 resulting from the test of Dependable Capacity performed pursuant to Section 2.3(a) of Appendix IX of the PPA. Upon the conclusion of the test, GREC was instructed to return to GREC's pre-operational test condition. As such, at no time did GRU provide GREC with a dispatch order to "shutdown".

Third, GRU disputes the invoice line item titled "Past due balance including interest through 3/31/16" in the amount of \$753,296.40. This matter has been addressed on multiple occasions in prior monthly invoice correspondence.

Please note that pursuant to Section 8.5 of the PPA, GRU intends to pay the above-referenced invoice total minus the disputed amounts, for a total of \$4,844,269.11. We look forward to working with you to resolve this invoice dispute in a prudent and timely manner.

Sincerely,



Edward A. Bielarski, Jr.  
General Manager for Utilities

xc: Len Fagan, VP Engineering & Construction, EMI  
Al Morales, Chief Financial Officer, EMI  
Stuart Sohn, Controller, EMI  
Gainesville City Commission  
GRU Executive Staff



March 22, 2016

VIA FACSIMILE AND E-MAIL

Gainesville Renewable Energy Center, LLC  
Attention: Mr. James Gordon  
20 Park Place, Suite 320  
Boston, MA 02116

Re: Dispute over Invoice number: GREC OPER 201602

Dear Mr. Gordon,

Pursuant to Sections 8.5 and 24.1 of the Power Purchase Agreement ("PPA") between the City of Gainesville d/b/a Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC ("GREC"), please accept this correspondence as notice of a dispute related to the above-referenced invoice. Upon review of the above-referenced invoice, GRU disputes the invoice line item titled "Past due balance including interest through 2/29/16" in the amount of \$750,002.95, which disputed amount has been addressed on prior monthly invoice correspondence.

Please note that pursuant to Section 8.5 of the PPA, GRU intends to pay the above-referenced invoice total minus the disputed amount, for a total of \$5,646,561.00, until the disputed charges have been resolved. We look forward to working with you to resolve this invoice dispute in a prudent and timely manner.

Sincerely,



Edward J. Bielarski, Jr.  
General Manager for Utilities

xc: Len Fagan, VP Engineering & Construction, EMI  
Al Morales, Chief Financial Officer, EMI  
Stuart Sohn, Controller, EMI  
Gainesville City Commission  
GRU Executive Staff



February 23, 2016

VIA FACSIMILE AND E-MAIL

Gainesville Renewable Energy Center, LLC  
Attention: Mr. James Gordon  
20 Park Plaza, Suite 320  
Boston, MA 02116

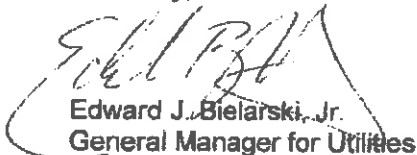
Re: Dispute over Invoice number: GREC OPER 201601

Dear Mr. Gordon,

Pursuant to Sections 8.5 and 24.1 of the Power Purchase Agreement ("PPA") between the City of Gainesville d/b/a Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC ("GREC"), please accept this correspondence as notice of a dispute related to the above-referenced invoice. Upon review of the above-referenced invoice, GRU disputes the invoice line item titled "Past due balance including interest through 1/31/16" in the amount of \$746,915.46, which disputed amount has been addressed on prior monthly invoice correspondence.

Please note that pursuant to Section 8.5 of the PPA, GRU intends to pay the above-referenced invoice total minus the disputed amount, for a total of \$6,035,979.00, until the disputed charges have been resolved. We look forward to working with you to resolve this invoice dispute in a prudent and timely manner.

Sincerely,



Edward J. Bielarski, Jr.  
General Manager for Utilities

xc: Len Fagan, VP Engineering & Construction, EMI  
Al Morales, Chief Financial Officer, EMI  
Stuart Sohn, Controller, EMI  
Gainesville City Commission  
GRU Executive Staff



January 26, 2016

VIA FACSIMILE AND E-MAIL

Gainesville Renewable Energy Center, LLC  
Attention: Mr. James Gordon  
20 Park Place, Suite 320  
Boston, MA 02116

Re: Dispute over Invoice number: GREC OPER 201512

Dear Mr. Gordon,

Pursuant to Sections 8.5 and 24.1 of the Power Purchase Agreement ("PPA") between the City of Gainesville d/b/a Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC ("GREC"), please accept this correspondence as notice of a dispute related to the above-referenced invoice. Upon review of the above-referenced invoice, GRU disputes the invoice line item titled "Past due balance including interest through 12/31/15" in the amount of \$743,912.74, which disputed amount has been addressed on prior monthly invoice correspondence.

Please note that pursuant to Section 8.5 of the PPA, GRU intends to pay the above-referenced invoice total minus the disputed amount, for a total of \$6,035,979.00, until the disputed charges have been resolved. We look forward to working with you to resolve this invoice dispute in a prudent and timely manner.

Sincerely,



Edward J. Bielarski, Jr.  
General Manager for Utilities

xc: Len Fagan, VP Engineering & Construction, EMI  
Al Morales, Chief Financial Officer, EMI  
Stuart Sohn, Controller, EMI  
Gainesville City Commission  
GRU Executive Staff



December 17, 2015

VIA FACSIMILE AND E-MAIL

Gainesville Renewable Energy Center, LLC  
Attention: Mr. James Gordon  
20 Park Place, Suite 320  
Boston, MA 02116

Re: Dispute over Invoice number: GREC OPER 201511

Dear Mr. Gordon,

Pursuant to Sections 8.5 and 24.1 of the Power Purchase Agreement ("PPA") between the City of Gainesville d/b/a Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC ("GREC"), please accept this correspondence as notice of a dispute related to the above-referenced invoice. Upon review of the above-referenced invoice, GRU disputes the following amounts: (1) invoice line item titled "Past due balance including interest through 11/30/15" in the amount of \$615,090.29; (2) invoice line item titled "Shutdown charges" in the amount of \$66,763.75; (3) the Non Fuel Energy Charges related to GREC's use of the Euro to Dollar exchange rate in the amount of \$56,826.00; and (4) approximately \$228,436.16 in Available Energy Charges related to the November 3, 2015 start-up, which disputed amounts are described below in additional detail.

First, GRU disputes the invoice line item titled "Past due balance including interest through 11/30/15" in the amount of \$615,090.29. This matter was first addressed in GRU's correspondence to GREC, dated September 11, 2015, and has been addressed on subsequent monthly invoice correspondence.

Second, GRU disputes the invoice line item titled "Shutdown charges" in the amount of \$66,763.75 resulting from the operational test performed pursuant to Section 2.3(a) of Appendix IX of the PPA. Upon the conclusion of the operational test, GREC was instructed to return to GREC's pre-operational test condition. As such, at no time did GRU provide GREC with a dispatch order to "Shut-down".

Third, GRU disputes the Non Fuel Energy Charges of approximately \$56,826.00 of Available Energy for the above-referenced invoice. This overcharge in the Non-Fuel Energy Charges results from GREC's use of the Euro to Dollar exchange rate when calculating the Construction Cost Adjuster, rather than the contractually required Dollar to Euro exchange rate when calculating the Construction Cost Adjuster, which was first addressed in GRU's correspondence to GREC, dated October 13, 2015.

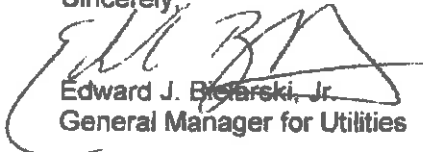
Fourth, GRU disputes the Available Energy Charges of approximately \$228,436.16 of Available Energy related to the November 3, 2015 start-up. Upon the dispatch order to start-up, GRU should not have been invoiced for Available Energy Charges from the time the dispatch order was given (approximately 1413 hours on 11/3/15) until the time the breaker closed and GREC tied to the grid (approximately 1629 hours on 11/4/15). Between the time that GRU gave the notice of dispatch to start-up and the time when GREC tied to the grid, the Facility failed to generate and deliver any MWh of Energy to the Delivery Point and, as a result, no "Available



Energy" can be charged under the PPA for such period. Following the breaker being closed at 1629 hours on November 4, 2015, the Available Energy should have been charged equal to Delivered Energy until minimum load of 70 MW (which occurred at 1948 hours on November 4, 2015) was achieved. At which point, Available Energy should be charged based on declared "Dependable Capacity" of 102.5 MW. As such, GREC overcharged GRU in the amount of \$228,436.16 of Available Energy Charges.

Please note that pursuant to Section 8.5 of the PPA, GRU intends to pay the above-referenced invoice total minus the disputed amounts described in detail above, for a total of \$6,103,814.42, until the disputed charges have been resolved. We look forward to working with you to resolve this invoice dispute in a prudent and timely manner.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Bielarski, Jr.', is written over a horizontal line. Below the signature, the name and title are printed.

Edward J. Bielarski, Jr.  
General Manager for Utilities

xc: Len Fagan, VP Engineering & Construction, EMI  
Al Morales, Chief Financial Officer, EMI  
Stuart Sohn, Controller, EMI  
Gainesville City Commission  
GRU Executive Staff



November 24, 2015

VIA FACSIMILE AND E-MAIL

Gainesville Renewable Energy Center, LLC  
Attention: Mr. James Gordon  
20 Park Place, Suite 320  
Boston, MA 02116

Re: Dispute Regarding Invoice Number: GREC OPER 201510

Dear Mr. Gordon,

Pursuant to Sections 8.5 and 24.1 of the Power Purchase Agreement ("PPA") between the City of Gainesville d/b/a Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC ("GREC"), please accept this correspondence as notice of a dispute related to the above-referenced invoice. Initially capitalized terms used but not defined in this letter have the meanings assigned in the PPA. Upon review of the above-referenced invoice, GRU disputes the following amounts: (1) invoice line item titled "Past due balance including interest through 11/30/15" in the amount of \$335,603.41; (2) the Available Energy Charges related to the September 19, 2015 test of Dependable Capacity ("Operational Capacity Test") in the amount of \$222,736.62; and (3) the Non Fuel Energy Charges related to GREC's use of the Euro to Dollar exchange rate in the amount of \$58,720.20.

First, GRU disputes the invoice line item titled "Past due balance including interest through 11/30/15" in the amount of \$335,603.41. This matter was first addressed in GRU's correspondence to GREC, dated September 11, 2015, and has also been addressed on subsequent correspondence.

Second, GRU disputes the Available Energy Charges of approximately \$222,736.62 related to the Operational Capacity Test performed on September 19, 2015, pursuant to Section 2.3(a) of Appendix IX of the PPA. Although GRU paid GREC on the prior invoice in the amount of \$222,736.62 of Available Energy Charges related to the September 19, 2015 Operational Capacity Test, GRU has identified this amount as an overcharge. GRU therefore disputes such amount and has subtracted \$222,736.62 from the above-referenced invoice to account for such overcharge on the prior invoice. Upon notice of the dispatch order to perform an Operational Capacity Test (provided to GREC on September 19, 2015, at approximately 0856 hours), GRU was overcharged the Available Energy Charges from the time the dispatch order was given (approximately 0856 hours on 9/19/2015) until the time the breaker was closed and GREC tied the Facility to the grid (approximately 0745 hours on 9/20/15). Between the time that GRU gave the notice of dispatch to perform an Operational Capacity Test and the time when GREC tied to the grid, the Facility failed to generate and deliver any MWh of Energy to the Delivery Point and, as a result, no "Available Energy" can be charged under the PPA for such period. As such, GREC overcharged GRU in the amount of \$222,736.62 of Available Energy Charges.

Third, GRU disputes the Non Fuel Energy Charges of \$58,720.20. This overcharge in the Non Fuel Energy Charges results from GREC's use of the Euro to Dollar exchange rate when calculating the Construction Cost Adjuster, rather than the contractually required Dollar to Euro



exchange rate when calculating the Construction Cost Adjuster, which was first addressed in GRU's correspondence to GREC, dated October 13, 2015.

Please note that pursuant to Section 8.5 of the PPA, GRU intends to pay the above-referenced invoice total minus the disputed amounts described in detail above, for a total of \$13,304,027.58, until the disputed charges have been resolved. We look forward to working with you to resolve this invoice dispute in a prudent and timely manner.

Sincerely,

Justin M. Locke  
Chief Financial Officer, on behalf of the General Manager for Utilities

xc: Len Fagan, VP Engineering & Construction, EMI  
Al Morales, Chief Financial Officer, EMI  
Stuart Sohn, Controller, EMI  
Gainesville City Commission  
GRU Executive Staff





September 29, 2015

VIA FACSIMILE AND E-MAIL

Gainesville Renewable Energy Center, LLC  
Attention: Mr. James Gordon  
75 Arlington St., 5<sup>th</sup> Floor  
Boston, MA 02116

Re: Dispute over Invoice number: GREC OPER 201508

Dear Mr. Gordon,

Pursuant to Sections 8.5 and 24.1 of the Power Purchase Agreement ("PPA") between the City of Gainesville d/b/a Gainesville Regional Utilities ("GRU") and Gainesville Renewable Energy Center, LLC ("GREC"), please accept this correspondence as notice of a dispute related to the above-referenced invoice. Upon reconciling GRU's data for August and comparing such data to the above-referenced invoice, GRU disputes the invoiced Available Energy and its associated charges for August 7, 2015 and for the period of the maintenance outage which occurred August 25-29, 2015.

GRU's verification of data for August 2015 illustrates total Available Energy of 66,700.39 MWh. In comparison, GREC invoiced GRU for an additional 2,011.52 MWh of Available Energy, which resulted in an additional \$159,211.81 in Available Energy and its associated charges that GRU believes are incorrect.

GRU believes that GREC under charged GRU for 52.99 MWh of Available Energy and its associated charges of \$4,194.16 for August 7, 2015. As a result, GRU has included this additional \$4,194.16 in our payment to GREC for the above-referenced invoice. Further, GRU notes that GREC invoiced GRU 2,064.51 MWh of Available Energy and its associated charges of \$163,405.97 in error for the period of the maintenance outage which occurred August 25-29, 2015. As a result, GRU has subtracted \$163,405.97 in our payment to GREC from the total invoiced amount. For your convenience, the calculation of those charges is enclosed.

Further, GRU also disputes the past due balance of \$63,037.43 and the associated interest charges of \$579.42. This matter was earlier addressed in GRU's correspondence to GREC, dated September 11, 2015.

Jim Gordon  
September 29, 2015  
Page 2

Please note that pursuant to Section 8.5 of the PPA, GRU intends to pay the above-referenced invoice total minus the disputed amounts, until the disputed charges have been resolved. We look forward to working with you to resolve the invoice dispute in a prudent and timely manner.

Sincerely,

A handwritten signature in black ink, appearing to read 'EJB', with a long horizontal stroke extending to the right.

Edward J. Bielarski, Jr.

Enclosure

cc: Al Morales, Managing Director, Energy Management, Inc.  
Gainesville City Commission  
GRU Executive Team



September 11, 2015

VIA FAX & EMAIL

Jim Gordon, President  
Gainesville Renewable Energy Center, LLC  
20 Park Plaza, Suite 320  
Boston, Massachusetts 02116

Re: June 2015 GREC Invoice billing dispute pursuant to Section 8.5 of the PPA

Dear Jim:

Regarding the June 2015 GREC Invoice and the resulting billing dispute which caused GRU to withhold payment in the amount of \$63,037.43, GRU has reviewed all relevant information as well as the information you provided in your July 30, 2015 correspondence. Upon review, GRU again requests a revised invoice that reflects that GRU owes \$63,037.43 less than specified in the initial June 2015 GREC Invoice.

On June 7, 2015, between 0014 hours-0800 hours, the GREC Facility was not capable of generating any MWh of Energy for delivery to the Delivery Point. GREC therefore is not entitled to receive payment for "Available Energy" with respect to that period. As such, GRU requests and is due a revised June 2015 GREC Invoice. Enclosed is a timeline of events agreed to by both GREC and GRU along with the substantiating documentation provided by the transcribed telephone calls between GREC and GRU personnel. Based on the above-described timeline of events, below is a summary of GRU's position on the GREC Facility trip and the evidence demonstrating that GREC was not available to generate "Available Energy" during that period.

On June 6, 2015, at approximately 1706 hours, the GREC Facility tripped offline. In order for GRU to offset the lost capacity from the GRE Facility trip, GRU made two power purchases totaling 70 MW in order to offset the lost capacity from the GREC Facility during the outage. These power purchases of 70 MW allowed GRU to provide customers with power and offset the GREC Facility trip.

At approximately 2353 hours on June 6, 2015, GREC advised GRU that the unit was expected "to tie to the grid" at approximately 0100 hours on June 7, 2015 and approximately 2 hours later to be "lighted". Based on this communication from GREC, the earliest time at which the GREC Facility could have started generating "Available Energy" for delivery to the Delivery Point was 0100 hours on June 7, 2015. At the time

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of the call, GRU advised GREC that the combination of GRU generation in service and the market power GRU purchased to offset the GREC Facility trip "may not work" for GRU to schedule GREC at 0100 hours on June 7, 2015.

Then, at approximately 0013 hours on June 7, 2015, GRU informed GREC that GRU was unable to schedule GREC until 0800 hours on June 7, 2015. Later at 0403 hours on June 7, 2015, Rod from GREC called GRU and advised that GREC would not be able to put "fires back in our boiler until 0934 which gives us 9 hours of being down from the time we pulled the fires out of the boiler." This communication from GREC demonstrated that as of 0034 hours on June 7, 2015, the GREC Facility was not capable of generating any MWh of Available Energy for delivery to the Delivery Point. GREC's action of pulling the fires from the boiler ensured that the Facility would not be available to tie in until 0934 and start generating Available Energy until 1100 hours on June 7, 2015, at the earliest.

As a result of GREC's decision to take the fires out of the boiler at 0034 hours on June 7, 2015, the GREC Facility was not available to generate or capable of generating "Available Energy" for delivery to GRU until 1100 hours on June 7, 2015 at the earliest. GREC's action in choosing to take the fires out of the boiler belies its prior communication predicting a tie to the grid at 0100 on June 7, 2015. The communication from GRU regarding expected dispatch does not entitle GREC to payment for the period at issue, because GREC was not available to generate "Available Energy" during that period. This is clear under the PPA, which defines "Available Energy" as "each MWh of Energy generated by the Facility and delivered to the Delivery Point;" plus "each MWh of Energy that could have been generated by the Facility and delivered to the Delivery Point". GREC therefore is not entitled to payment for "Available Energy".

The June 2015 GREC Invoice charges GRU for Available Energy (NFEC + FOM) at full Declared Dependable Capacity (DDC) beginning at 0014 hours on June 7, 2015. Clearly this was not possible since GREC predicted that it would not be available to generate Energy until 0100 on June 7, 2015 at the earliest, and then subsequently rendered its Facility unavailable at 0034 hours on June 7, 2015 when GREC opted to remove the fires from the boiler. Thus, at no time between the GREC Facility trip which occurred at 1707 hours on June 6, 2015, and 2216 hours on June 7, 2015, was GREC capable of generating "Available Energy" for delivery to the Delivery Point. GREC is not entitled to payment for any "Available Energy" during that period pursuant to the terms as defined in the PPA.

Per my previous letter dated July 9, 2015, please revise the June invoice to reflect that GRU owes \$63,037.43 less in availability charges resulting from the June 6, 2015 GREC Facility trip and the resulting events. Also, I note that the September invoice for

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the August billing period also includes availability charges in the amount of \$63,037.43 plus interest, which should be revised to reflect that GRU owes \$63,037.43 less in availability charges, plus interest. We look forward to resolving this invoice dispute in a timely and prudent manner.

Sincerely,



Edward J. Bielarski, Jr.  
General Manager

EJB/rib

Enclosure:

GRU GREC Timeline of Events with attachments of the transcribed recordings

cc: Albert Morales, Managing Director, Energy Management, Inc.  
Gainesville City Commission  
GRU Executive Team

AMERICAN ARBITRATION ASSOCIATION

Gainesville Renewable Energy Center, LLC,

Claimant,

v.

The City of Gainesville Florida,  
d/b/a Gainesville Regional Utilities,

Respondent.

AAA Case No.  
01-16-0000-8157

**SECOND AMENDMENT TO GREC'S ARBITRATION DEMAND**

GREC files this Second Amendment ("**Second Amendment**") to its Amended Arbitration Demand ("**First Amendment**") in order to address further actions by GRU that relate directly to GRU's continuing efforts to exert leverage against GREC as described in that earlier pleading. These additional claims became ripe after the First Amendment, which was filed June 7, 2016. As part of its continuing pattern of conduct, GRU committed further breaches by improperly: withholding payments for Shutdown Charges and for Available Energy on multiple occasions; deducting a previously paid amount from a later invoice; and deducting \$529,439 based on a new and pretextual "Payment Decrease" reading that GRU has applied to Section 12.4.1 of the PPA.<sup>1</sup>

**I. FACTS RELEVANT TO ADDITIONAL CLAIMS**

**A. GRU Fails To Pay Shutdown Charges Required by the PPA**

1. GRU is the "Purchaser" under the PPA. PPA at p.1.
2. Schedule I of the PPA defines "Purchaser Shutdown" to mean a "requested complete shutdown of the Facility's generation by [GRU] other than a request that is prompted

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<sup>1</sup> Capitalized terms and abbreviations in this filing have the same meanings as in GREC's earlier pleadings and the PPA. The actions described in this amendment became ripe for arbitration when, by letter dated July 14, 2016, GRU rejected GREC's demand letter dated June 16. See **Exhibit 40** (6/16/16 GREC demand letter); **Exhibit 42** (7/14/16 GRU Response letter). The exhibits for this amendment are attached hereto and sequentially numbered beginning with the next in order from the Exhibits to GREC's First Amendment.

by a System Emergency. . . .”

3. The status of “reserve shutdown” requires the complete shutdown of the Facility’s generation.<sup>2</sup>

4. Whenever GRU orders a Purchaser Shutdown, GRU is required by §10.7 of the PPA to pay GREC a “Shutdown Charge.”

5. Each Shutdown Charge is due from GRU when GRU next orders the Facility to start up.

6. Appendix III of the PPA defines “Shutdown Charge” as the Startup Fuel Cost plus the Startup O&M Cost. Schedule I of the PPA defines Startup Fuel Cost as:

[T]he sum of (i) the actual cost of natural gas used to start the Facility during the most recent startup plus (ii) the cost of 1,250 tons of biomass fuel at the Actual Fuel Price plus (iii) the cost of Auxiliary Power during the most recent startup.

Schedule I defines Startup O&M Cost to mean “an allowance of Five Thousand Dollars (\$5,000) for chemicals and water used during startup.”

7. On several occasions to date, GRU has wrongly refused to pay GREC “Shutdown Charges” as defined in the PPA.

8. On each occasion, the Facility was in a reserve shutdown status when GRU ordered the Facility to run for operational or reliability purposes. Upon completion of the requested test or operation, GRU deliberately avoided using the word “shutdown” when it ordered GREC to completely shut down generation. Instead, GRU replaced the word “shutdown” with functional equivalents (*e.g.*, ordering GREC to return to its “pre-operational test condition” or “pre-operational dispatch status,” which in either case was complete shutdown). Despite the wordplay, the directive was to perform a complete shutdown of the Facility’s generation.

9. GRU engaged in this expedient wordplay to avoid clear contractual obligations to

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<sup>2</sup> Other synonyms for the complete shutdown or reserve shutdown of the Facility’s generation are “cold standby” and “reserve standby.” In this filing, GREC uses the term “reserve shutdown” for consistency.

pay Shutdown Charges.

10. This new GRU wordplay is of recent vintage, in that GRU did not engage in it prior to approximately September 2015.

11. GRU ordered Purchaser Shutdowns by ordering GREC to start up and then to completely shut down the Facility's generation in September 2015, November 2015, March 2016, and May 2016.

12. GRU has wrongly refused to pay Shutdown Charges of approximately \$190,619 for three of these Purchaser Shutdowns reflected in invoices that GREC submitted in November 2015 (\$66,003 for the September 2015 shutdown), March 2016 (\$63,856 for the November 2015 shutdown), and May 2016 (\$60,760 for the March 2016 shutdown). See **Exhibit 40** (6/16/16 Gordon letter to Bielarski) and **Exhibit 41** (6/27/16 Bielarski letter to Gordon).

13. GREC invoiced GRU for a partial Shutdown Charge for the May shutdown in connection with a startup that GRU ordered in June 2016 but countermanded a short time later with an order to shut down.

14. GRU's expedient wordplay and actions in failing to pay the invoiced Shutdown Charges are in breach of the PPA. For the three Purchaser Shutdowns described above that have been billed already, GRU owes the unpaid Shutdown Charges, with interest under the PPA.

15. GRU's successive actions demonstrate that it will continue with similar breaches going forward during the remaining term of the PPA, resulting in further damages to be demonstrated in this action and requiring appropriate declaratory relief.

**B. GRU Fails To Pay Available Energy Charges During Ramp-Up**

16. In connection with four startups/shutdowns that GRU ordered since September 2015 and one maintenance outage that GREC took in August 2015, GRU has devised yet another new interpretation of the PPA that contradicts its earlier interpretations.

17. GRU's new interpretation deems GREC, when it is available in reserve shutdown and receiving availability payments, to instantaneously *become* "unavailable" from the moment



that GRU orders GREC to start up until the breaker is closed connecting GREC to the GRU grid.

18. As is standard in the industry, and common knowledge, facilities such as GREC's do not start delivering energy with the flip of a switch. To the contrary, they require ramp-up time as complex machinery is started up and run in sequence before connecting to the grid.

19. For GREC, this can take up to approximately 35 hours, depending on conditions that include whether it is starting up from a "cold" shutdown status.

20. GRU's new interpretation deems GREC, although admittedly available in reserve shutdown, to become unavailable immediately upon GRU's giving a startup order.

21. GRU devised this new interpretation in order to avoid paying GREC Availability Payments that are due under the PPA.

22. GRU applied this new interpretation to GREC for the first time in November 2016.

23. GRU's new interpretation contradicted the interpretation that GRU had applied since the inception of the Facility's operations.

24. To date, GRU has failed to pay Available Energy charges totaling about \$1,015,264 across five instances between August 2015 and June 2016.

25. One instance occurred in connection with GRU's order for GREC to startup and then shut down the Facility in September 2015. On September 19, 2015, GREC was in reserve shutdown status and earning Available Energy payments when GRU ordered GREC to perform an Operational Capacity Test (which GREC successfully performed).

26. GREC's October 2015 invoice billed GRU for the September Billing Period, including \$222,737 for Available Energy charges for the period when the Facility ramped up to perform the test ordered by GRU.

27. GRU paid this bill without protest.

28. On November 24, 2015 GRU retroactively deducted the previously-paid \$222,737 amount in Available Energy payments from the November invoice (which covered the subsequent October Billing Period), giving the following reason:

Although GRU paid GREC on the prior invoice in the amount of \$222,736.62 of Available Energy Charges related to the September 19, 2015 Operational Capacity Test, GRU has identified this amount as an overcharge. GRU therefore disputes such amount and has subtracted \$222,736.62 from [GREC's November] invoice to account for such overcharge on the prior invoice.

See **Exhibit 37** (11/24/15 Bielarski letter to Gordon).

29. GRU's retroactive deduction of the \$222,737 amount breached the PPA, which does not allow such retroactive self-help after an invoice is paid.

30. General Manager Edward Bielarski directed that the deduction be made. He did so despite having received legal advice from counsel that the retroactive deduction was not allowed by the PPA. See **Exhibit 36** (11/24/15 email exchange between Bielarski and Attorney McNeill). He also did so despite himself publishing a column in the Gainesville Sun on October 25, 2015 admitting that to do so was in breach of the PPA, where he wrote: "Unfortunately, the contract does not provide for withholding contested portions of previously paid amounts from current billings." See **Exhibit 35**.

31. In addition to being in breach by the manner in which GRU deducted a previously paid amount, GRU substantively breached the PPA by failing to pay GREC the \$222,737 in Available Energy payments. The Facility was fully available in reserve shutdown status immediately before GRU ordered GREC to run and earned Available Energy payments during the ramp-up period. GRU breached the PPA by failing to pay these Available Energy charges. See **Exhibit 40**.

32. GRU has repeated this interpretation and wrongful failure to pay GREC Available Energy payments on five separate occasions to date as follows, withholding a total of \$1,015,264:

- a. GRU's failure to pay for \$222,737 in Available Energy charges in connection with GRU's September 2015 startup order just described above;
- b. GRU's failure to pay GREC for \$228,436 in Available Energy charges in connection with GRU's November 2015 startup order when the Facility was available in reserve shutdown status. See **Exhibit 38** (12/17/15 GRU letter) and **Exhibit 40** (6/16/16 GREC letter).

- c. GRU's failure to pay GREC \$192,423 in Available Energy charges in connection with GRU's March 2016 startup order (for an operational test) when the Facility was available in reserve shutdown status. See **Exhibit 39** (4/26/16 GRU letter) and **Exhibit 40** (6/16/16 GREC letter).
- d. GRU's failure to pay GREC \$208,261 in Available Energy charges in connection with GRU's May 2016 startup order (for an operational test) when the Facility was available in reserve shutdown status. See **Exhibit 41** (6/27/16 GRU letter) and **Exhibit 40** (6/16/16 GREC letter).
- e. GRU's failure to pay GREC \$163,407 in Available Energy charges in connection with GRU's August 2015 maintenance outage when the Facility was available in reserve shutdown status immediately before that outage and returned to that status immediately after that outage. See **Exhibit 40** (6/16/16 GREC letter).

33. The basic facts regarding paragraphs a.-d. immediately above are similar to each other. The facts regarding paragraph e. are slightly different but address essentially the same interpretation by GRU to improperly avoid paying GREC for Available Energy.

34. As to the August event, GRU breached the PPA by failing to pay GREC \$163,407 in Available Energy charges in connection with GREC performing a maintenance outage in August 2015.

35. Immediately prior to, and immediately after, the maintenance outage, the Facility was available in the reserve shutdown status ordered by GRU. Because the Facility was already in reserve shutdown mode, it was not generating Energy, and, hence, did not have to ramp down. Instead, the Facility went immediately into the maintenance outage and thus became unavailable only when the outage commenced.

36. Similarly, after the outage, the Facility returned to reserve shutdown status and thus became available immediately upon completion of the outage, and there was no post-outage ramp-up time.

37. Despite that there was no actual ramp-down or ramp-up, GRU deemed the Facility "unavailable" by devising a fictional "ramp-down" period of hours before the outage started and a fictional "ramp-up" period of hours after the outage ended in order to improperly deny GREC \$163,407 in Available Energy payments in breach of the PPA.

38. GRU's repeated actions described above demonstrate that GRU will continue

applying the improper availability interpretations prospectively and that appropriate declaratory relief is required.

**C. GRU's Improper \$529,439 Deduction based on a "Payment Decrease" Interpretation under Section 12.4.1 of the PPA**

39. In connection with a Dependable Capacity test that GRU ordered in March 2016, GRU has devised another interpretation to justify an improper deduction it made from a recent GREC invoice, this time under Section 12.4.1 of the PPA.

40. Section 12.4.1 provides as follows:

Payment Decreases. For each instance where Seller fails, after written notification from Purchaser, to meet the operating level specified by Purchaser, pursuant to Section 10, *Dispatch and Scheduling*, by more than five percent (5%) for a Billing Period, the Dependable Capacity for that Billing Period shall be decreased by ten percent (10%). The integrated hourly net output will be used to determine if the Facility was within five percent (5%) of the specified operating level for a Billing Period.

41. GRU alleged a "Payment Decrease" under Section 12.4.1 to justify deducting \$529,439 from the amount due under GREC's April invoice. *See Exhibit 42* (7/14/16 Bielarski letter to Gordon).

42. GRU has not meaningfully explained its "interpretation," but, based on limited information that GRU has provided, it appears to be that GRU used various calculations concerning only the few days of the brief testing period of the Dependable Capacity test to justify the alleged "Payment Decrease."

43. The data for the Billing Period supplied by GRU, however, confirms that GREC did not fall below the operating levels specified by GRU by more than 5% as provided in Section 12.4.1 and, further, that GRU ignored the GREC facility's full availability for the 29 non-testing days of March. *See Exhibit 42* (7/14/16 Bielarski letter to Gordon).

44. GRU's action here is in breach of the PPA.

45. Given GRU's actions described in GREC's pleadings to reduce amounts earned by GREC, appropriate declaratory relief will also be needed to prevent prospective application of

this new and improper interpretation.

## II. ADDITIONAL CLAIMS

### Count 6 (Breaches of the PPA -- Shutdown Charges)

46. GREC incorporates here by reference the allegations contained in all preceding paragraphs and in its First Amendment.

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

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

49. GRU breached the PPA in connection with each of the September 2015, November 2015, and March 2016 shutdown orders by, on each occasion, failing to pay the required Shutdown Charges after ordering Purchaser Shutdowns.

50. GRU's pattern of conduct demonstrates that it will apply the same breach to deny payment to GREC for GRU's May 2016 shutdown order in connection with the June 2016 invoice.

51. GREC has been damaged by GRU's actions, including, but not limited to, the amounts that GRU wrongly failed to pay for each Shutdown Charge noted above, will fail to pay when they become due during the pendency of this action, and that GRU threatens to refuse to pay prospectively given its pattern of behavior to date.

### Count 7 (Breaches of the PPA -- Available Energy Amounts During Startup)

52. GREC incorporates here by reference the allegations contained in all preceding paragraphs and in its First Amendment.

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

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

55. GRU breached the PPA by failing to pay the required Available Energy Charges during the ramp-up period of each startup from reserve shutdown ordered by GRU and for the fictitious ramp-up and ramp-down periods deemed by GRU for the August 2015 maintenance outage.

56. GREC has been damaged by GRU's actions, including, but not limited to, the amounts that GRU wrongly failed to pay, will fail to pay when they become due during the pendency of this action, and the threat of continued failures to pay for Facility startups prospectively.

**Count 8**

**(Breach of the PPA -- Payment Decrease under Section 12.4.1)**

57. GREC incorporates here by reference the allegations contained in all preceding paragraphs and in its First Amendment.

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

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

60. GRU breached the PPA by its Payment Decrease actions under Section 12.4.1.

61. GREC has been damaged by GRU's actions, including, but not limited to, the amounts that GRU wrongly failed to pay and the threat of continued application of this new interpretation prospectively.

**Count 9**

**(Declaratory Judgment)**

62. GREC incorporates here by reference the allegations contained in all preceding paragraphs and in its First Amendment.

63. In addition to the disputes identified in the First Amendment, disputes also exist as to the parties' rights under the PPA, including with regard to

- i. GRU's breach of the PPA with regard to Shutdown Charges;
- ii. GRU's breach of the PPA with regard to its assertions regarding unavailability in connection with startup orders and shutdown orders and a maintenance outage;
- iii. GRU's breach of the PPA in deducting amounts from later invoices that it had paid under prior invoices without protest;
- iv. GRU's breach of the PPA with regard to the "Payment Decrease" under Section 12.4.1 of the PPA; and
- v. GRU's continued acts of interference with GREC's business relations.

64. There is an actual and present need for declarations as to the contract, its meaning, and the parties' respective rights under the relevant provisions of the PPA, including those

referenced above.

### III. RELIEF

For the reasons stated above and in the First Amendment, GREC respectfully requests that the Arbitrator:

1. Make declarations warranted by the evidence, including those sought in the First Amendment and that:
  - a. GRU's efforts to avoid paying Shutdown Charges by directing GREC to return to its pre-test condition or preoperational dispatch status of reserve shutdown were improper and, prospectively, GRU must pay GREC Shutdown Charges whenever it orders GREC to return to a status of reserve shutdown (regardless of the wordplay GRU uses);
  - b. GRU's efforts to not pay GREC for Available Energy from the moment GRU orders GREC to start-up the Facility from reserve shutdown status until GREC closes the breaker to GRU's system were improper and, prospectively, GRU must pay GREC for Available Energy for such periods of time;
  - c. GRU's effort to not pay GREC for Available Energy during the ramp-up and ramp-down periods of outages described above was improper and GRU must pay for such periods prospectively;
  - d. Appropriate declaratory relief denying GRU's new Payment Decrease interpretation under Section 12.4.1 of the PPA;
  - e. GRU's actions as described in the First Amendment and in this amendment were deliberate, in bad faith, in breach of GREC's legal and contractual rights, and caused damage to GREC;
  - f. GRU has interfered with GREC's business relations; and
  - g. Such other declaratory relief as is warranted by the facts presented.
2. Award GREC all damages sustained by GRU's actions;
3. Award interest as provided in §8.6 of the PPA or as otherwise available at law;
4. Award attorney's fees and costs incurred in this arbitration, in an amount to be determined after hearing this case; and
5. Grant injunctive and other equitable relief to GREC barring GRU from further interference with GREC's relations with lenders, potential lenders, and other third parties such as

rating agencies and potential investors.

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

**GAINESVILLE RENEWABLE ENERGY  
CENTER, LLC,**

By its attorneys,

/s/ Andrew C. Phelan

Andrew C. Phelan

Siobhan E. Mee

Emma D. Hall

**MORGAN, LEWIS & BOCKIUS LLP**

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Dated: July \_\_, 2016

**CERTIFICATE OF SERVICE**

I certify that on July \_\_, 2016, I caused a copy of the foregoing to be served on all counsel of record and on the AAA by electronic mail pursuant to the AAA's Direct Exchange Procedures.

/s/ Emma D. Hall

Emma D. Hall