

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.

SUPPLEMENTAL AND AMENDED
DEMAND FOR ARBITRATION

AAA COMMERCIAL
ARBITRATION RULE 4(a)

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 supplements its demand for 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 Global, 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 rules of the American Arbitration Association (“AAA”) 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 enterprise owned by the City of Gainesville, 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 Massachusetts corporation with its principal place of business at 20 Park Plaza, 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, Connecticut 06830. Starwood Energy Group Global, Inc. is a Delaware Corporation with its principal place of

business at 591 West Putnam Avenue, Greenwich, Connecticut 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 Global, 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:

<u>Percent Ownership</u>	<u>Owner</u>
49.0%	Tyr
25.5%	Energy Management, Inc.
<u>25.5%</u>	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:

<u>Percent Ownership</u>	<u>Owner</u>
40.324%	Tyr
20.985%	Energy Management, Inc.
20.985%	BayCorp Holdings Ltd.
<u>17.706%</u>	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:

<u>Percent Ownership</u>	<u>Owner</u>
20.985%	Energy Management, Inc.
20.985%	BayCorp Holdings Ltd.
17.706%	Ron and Diane Fagen
<u>40.324%</u>	Starwood Energy Group Global, LLC
100.000%	

19. Tyr's December 30, 2011 transfer of its 40.324% ownership interest in GREC to Starwood Energy (following on from the June 30, 2011 transfer to the Fagens of their 17.706% ownership interest in GREC) resulted in a change of control of GREC, which, pursuant to Section 27.3 of the PPA, constituted a sale of the Facility. 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. GRU had an exclusive Right of First Offer under Section 27.3 to make an offer to GREC to purchase the Facility and GREC was obligated to negotiate exclusively with GRU for 30 days toward a potential purchase of the Facility by GRU. Section 27.3 provides that it is only in the events that (i) if and after GRU is afforded notice and an opportunity to offer to purchase the Facility and (ii) if and after GRU and GREC cannot reach agreement on such purchase, that GREC may thereafter (for a period of 360 days) seek to sell 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 of the [GRU] First Offer.”

25. GRU was ready, willing, and able to purchase the Facility in accordance with Section 27.3 of the PPA.

26. American Renewables, Tyr, EMI and Baycorp directed, aided and abetted GREC in its breach of the PPA as set forth herein.

27. Starwood Energy and the Fagens have unlawfully received and hold their ownership interests in GREC.

28. As a direct and proximate result of 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.

29. However, because, as of December 30, 2011, the Facility had already been sold for purposes of Section 27.3 of the PPA due to the change in control of GREC, an order, now or in the future, granting GRU specific performance of its Right of First Offer would not place GRU in the position it would have been had no breach occurred.

30. Accordingly, in order to make GRU whole, GREC should be directed to sell the Facility to GRU for a price that is calculated based on the value of the Facility as reflected by the price and terms of Tyr's December 30, 2011 transfer of its interests in GREC to Starwood Energy.

Relief Sought

31. GRU seeks relief and an order 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 GREC to sell the Facility to GRU for a price to be determined based on the price paid by Starwood Energy for Tyr's 40.324% ownership interest in GREC; 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.

April 15, 2013

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 

J. Peter Coll, Jr.
John Ansbro
Igor Margulyan
51 West 52nd Street
New York, New York 10019
(T):212-506-5000
(F): 212-506-5151

Attorneys for Claimant Gainesville Regional Utilities