



Legislation Text

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AMEND THE RETENTION LETTER WITH WINSTON & STRAWN LLP, FOR REPRESENTATION OF THE CITY D/B/A GAINESVILLE REGIONAL UTILITIES (CITY) IN THE GAINESVILLE RENEWABLE ENERGY CENTER, LLC (GREC) ARBITRATION DEMAND AGAINST THE CITY (NB)

On March 10, 2016, GREC filed an Arbitration Demand with the American Arbitration Association ("AAA"), AAA Case No. 01-16-0000-8157, to resolve a dispute between GREC and the City concerning GREC's Planned Maintenance Outage in April 2016. The City Attorney's Office worked with the General Manager for Utilities to select qualified outside counsel to represent the City in the arbitration proceedings. On March 17, 2016, the City Commission approved the retention of Winston & Strawn LLP to represent the City in the arbitration regarding GREC's Planned Maintenance Outage in April 2016, with a maximum cap on fees and expenses of \$1,000,000.

On June 17, 2016, GREC submitted a Notice of Claim to the City regarding the City withholding payments to GREC based on (1) Shutdown Charges, (2) Available Energy Payments During Startup, (3) Withholding of Previously Paid Amounts, and (4) Purported Payment Decrease. On July 21, 2016, GREC amended its arbitration claim to add the four (4) additional claims to the ongoing arbitration. As a result, at its August 4, 2016 Regular Meeting, the City Commission approved increasing the scope and maximum fees and expenses for the arbitration up to \$2,500,000.

As of the drafting of this agenda item, Winston & Strawn's billings for the arbitration total approximately \$1.9 million and expenses total approximately \$50,000. Thus, only \$550,000 remains before reaching the current cap on fees and expenses. Winston and Strawn were asked to review their current fee and expense estimate in light of ongoing developments in the arbitration - in particular, the scope of the arbitration has broadened substantially as a result of additional claims brought by both parties - GREC is now advancing nine claims and GRU is advancing six claims. In addition, discovery obligations and disputes have added time and cost to the arbitration process. The parties have filed dispositive motions and several of the claims may be resolved by the Arbitrator without the need for extensive additional legal work. Should this occur, the scope of the final Arbitration hearing, currently scheduled for June 2017, is expected to decrease.

However, Winston & Strawn now estimates its fees may reach \$3.5 million and expenses (e.g., expert witness fees, travel) may reach \$500,000.) Accordingly, it is necessary to amend Winston & Strawn's retention letter to increase the maximum cap on fees and expenses to \$4,000,000.

The rates billed by Winston & Strawn LLP are hourly rates of \$310-\$935. Winston & Strawn has agreed to continue to bill the City at its 2016 rates, and not at its increased 2017 rates. The City Attorney's Office will remain engaged in this matter, and assist outside counsel, in an effort to contain costs. Funding for outside counsel will be paid either from GRU budgeted funds for legal expenses or from unanticipated cost savings that GRU realizes.

Authorize the Office of the City Attorney, on behalf of the General Manager for Utilities, to amend the retention letter for Winston & Strawn to increase the maximum cap on fees and expenses to \$4,000,000.