

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
ALACHUA COUNTY, FLORIDA

GAINESVILLE CITIZENS
CARE, INC.

Case No.: 012012CA001346

Plaintiff,

Division: J

vs.

CITY OF GAINESVILLE
d/b/a
GAINESVILLE REGIONAL UTILITIES
Defendant,

GAINESVILLE RENEWABLE ENERGY
CENTER, LLC
Intervenor.

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT
CITY OF GAINESVILLE

TO: CITY OF GAINESVILLE, FLORIDA, a political subdivision of the State of Florida

Pursuant to Rule 1.340, Florida Rules of Civil Procedure, you are requested to answer the interrogatories attached hereto under oath within thirty (30) days from the date hereof, in accordance with the following Definitions and Instructions. If the space is insufficient for any answer, attach additional sheets making reference to the number of the interrogatory being answered.

Definitions and Instructions

1. As used herein, the terms “you,” “your,” and/or “yours,” shall refer to the City of Gainesville, Florida d/b/a Gainesville Regional Utilities and/or Gainesville Regional Utilities, Florida, its agents, partners, associates, employees, servants, representatives, and any other person acting or purporting to act on its behalf.

2. The term “person” refers to any natural person, individual, proprietorship, partnership, association, corporation, organization, joint venture, firm or business enterprise, governmental body, group of natural persons, or any other entity or association or organization of any type.

3. The terms “and” or “or” shall mean “and/or” where appropriate.

4. That which “concerns,” “refers,” or “relates” to any given subject is that which constitutes, contains, embodies, reflects, advises, states or is in any way relevant to that given subject.

5. The word “any” is not used herein as a phrase of limitation and requires all the information referenced to be provided.

6. The word “document” is used in its broadest sense and shall mean, without limitation any written, recorded or graphic matter, whether produced, reproduced or stored on paper, cards, tape, film, electronic facsimile, computer storage devices or any other medium. It includes, for example, papers, books, letters, photographs, objects, tangible things, correspondence, telegrams, cables, telex messages, facsimile, email, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of other meetings, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, estimates, proposals, budgets, data, projections, charts, diagrams, schedules, specifications, maps, flow sheets, certifications, organizational charts, contracts, agreements, leases, journals, statistical records, logs, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer printouts, data processing input and output, microfilms, all other records kept by electronic, photographic or mechanical means, things similar to any of the foregoing however denominated and all originals, copies (with or without notes or changes thereon) and drafts of any of them.

7. The term "Defendant" means the City of Gainesville d/b/a Gainesville Regional Utilities.

8. The term "Binding Proposal" means the proposal submitted by Gainesville Renewable Energy Center LLC ("GREC") f/k/a Nagadoches Power LLC and accepted by the Defendant in May 2008.

9. The term "Contract" means any and all document(s), emails (in native format), including attachments related to implementing the Binding Proposal between Gainesville Renewable Energy Center ("GREC") f/k/a Nagadoches Power LLC and the Defendant.

10. The term "Power Purchase Agreement" or "PPA" means 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, LLC and the Defendant dated April 29, 2009.

11. A request to identify a document will be satisfied by production of the document, to the extent that the information covered by the interrogatories appearing on the document's face and provided that the production of the document is accompanied by a statement of the specific discovery interrogatory pursuant to which the document was produced. Except as otherwise provided herein, a request to identify a document constitutes a request for a statement of the type of document (e.g., letter, memorandum, etc.); the identify of the person or persons preparing the document; a description of its subject matter; the number of pages in the document; the identity of each addressee or recipient; the date on which the document was prepared, distributed or transmitted; the present location of each copy of the document; and the identity of the present custodian of each copy of the document.

12. A request to identify any and all communications constitutes a request to identify the individual(s) with whom you communicated, the date(s) upon which such communications occurred, the location of the communications or, if not in person, then the medium through which the communication occurred, the substance of each communication, and the names of all other persons present for the communications.

13. A request to identify an event or an occurrence constitutes a request to describe the substance of what transpired at the time referred to, to identify who was present or who was involved in any respect, to identify all documents relating to what transpired and to state the date and place of the event or occurrence. If precise

dates are not known, state the best estimate of such date and the basis of such estimate.

14. When specific interrogatories are said to “include” a request for particular information, such description is an example only and not a limitation upon the normal scope of the interrogatory.

15. In answering these interrogatories, furnish all information which is available to you, including information in the possession of your agents, employees, representatives, and all others from whom you may freely obtain it, as well as from your attorneys and their investigators.

16. If you cannot answer any one, or any sub-part of these interrogatories in full, after exercising due diligence to secure the information to do so, explicitly so state. Answer every other interrogatory and sub-part and give any information in your possession which may partially answer the interrogatory or sub-part which you cannot answer in full, or which may lead to petitioner discovering the answers thereto.

INTERROGATORIES

1. Please list the names and addresses of persons (the “Participants”), including attorneys, who were consulted by or otherwise utilized by Hunzinger to assist him in preparing and negotiating the terms of the Contract and/ or PPA.

SEE ATTACHED

2. Please list the time, date and location of any meeting or telephone conference between or among the persons identified in #1 above with 1) Hunzinger, 2) each other and/or 3) any representative or agent of Gainesville Renewable Energy Center, LLC with respect to the Binding Proposal, the Contract or the Power Purchase Agreement. (the "Meetings").

SEE ATTACHED

3. Please explain who agreed on behalf of the Defendant that the "back door out" clause, alternatively referred to as a "termination for convenience clause," which was discussed at the May 12, 2008 City Commission meeting, did not have to be in the Power Purchase Agreement and describe the steps that lead to the omission of the "back door out" clause, alternatively referred to as a "termination for convenience clause," from the Power Purchase Agreement.

SEE ATTACHED

4. Please explain who agreed on behalf of the Defendant that the duration of the Power Purchase Agreement could be increased from 20 years to 30 years and describe the steps that led to the inclusion of a 30 year term in the Power Purchase Agreement.

SEE ATTACHED

5. Please describe in detail the sequence of events that occurred between acceptance of the Binding Proposal and ratification of the Power Purchase Agreement, providing the full names and titles of all individuals who participated in these events.

SEE ATTACHED

6. Is it the City of Gainesville's position that this action is brought in bad faith?
If so please explain why the City of Gainesville believes that this action was brought in bad faith.

SEE ATTACHED

7. Is it the City of Gainesville's position that this action is frivolous? If so please explain why the City of Gainesville believes that this action is frivolous.

SEE ATTACHED

8. Provide a statement of all facts relating to defendant's affirmative defense of laches within its response to the subject complaint, and identify any records that relate to those facts and every person who has knowledge of those facts.

SEE ATTACHED

BY: _____
City of Gainesville

STATE OF FLORIDA

COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this _____ (date) by
_____ (name and title) for City of Gainesville d/b/a
Gainesville Regional Utilities. He/she is personally known to me or has produced
_____ (type of identification) as identification.

Notary Public
State of Florida

My Commission Expires:

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT

1. Richard D. Bachmeier
System Planning Director
Gainesville Regional Utilities
P.O. Box 147117, Station A136
Gainesville, FL 32614-7117

Jonathan Cole
Orrick, Herrington & Sutcliffe, LLP
666 Fifth Avenue
New York, NY 10103-0001

Ed Hoffman
Former Managing Utility Analyst - Planning
2400 SE CR 21B
Melrose, FL 32666

Raymond O. Manasco, Jr.
Former Utility Attorney
2071 NW 21st Lane
Gainesville, FL 32605

Ed Regan
Former Strategic Planning Assistant General Manager
10003 SW 67th Drive
Gainesville, FL 32608

John Stanton
Assistant General Manager – Energy Supply
Gainesville Regional Utilities
P.O. Box 147117, Station A134
Gainesville, FL 32614-7117

2. Object as to the relevance of this Interrogatory for the time period after May 7, 2009. In accordance with this objection, the City has made available to the Plaintiff in response to Plaintiff's Request to Produce Number 1, the calendars and emails of Bob Hunzinger, Skip Manasco, Ed Regan, John Stanton, Rick Bachmeier, and Ed Hoffman for the time period May 1, 2008 to May 7, 2009. The City has also made available the calendar entries of Jonathan Cole relating to the Power Purchase Agreement (PPA) and his emails relating to the PPA. With the production of these calendars and emails, the answer to this Interrogatory may be ascertained from these records, and the burden of ascertaining the answer is substantially the same for the Plaintiff as it is for the City.

3. During the course of the negotiations that led to the Power Purchase Agreement, many discussions took place between the City and GREC about various provisions that would

ultimately become part of the PPA. Proposals went back and forth as well as drafts of the PPA. The “termination for convenience” clause was in the initial drafts of the PPA. During the negotiations, GREC explained the problems that a “termination for convenience” would cause, what the City would have to pay for such a clause, and that such a clause would likely result in no financing for the project. The City asked GREC to put these concerns in writing. GREC prepared a memo which is attached to these answers and has previously been provided to the Plaintiff through its public records requests. The termination for convenience clause appeared in October and November drafts of the PPA. After evaluating the information contained in GREC’s Memoranda, Bob Hunzinger, General Manager of Utilities, made the decision during negotiations to eliminate it from further consideration, and the “termination for convenience” clause was eliminated by the time of the December 23, 2008 draft of the PPA. The City Commission ultimately approved and ratified the PPA on behalf of the City without the “termination for convenience” clause at its Public Meeting on May 7, 2009.

4. During the course of the negotiations that led to the PPA, many discussions took place between the City and GREC about various provisions that would ultimately become part of the PPA. Proposals went back and forth as well as drafts of the PPA. During the give and take of the negotiations, the term of the lease was increased as a result of certain concessions by GREC that included price, operational flexibility, and other factors. Bob Hunzinger, General Manager of Utilities made the decision during negotiations to increase the term from 20 to 30 years. The City Commission ultimately approved and ratified the PPA on behalf of the City with the increase in duration to 30 years at its Public Meeting on May 7, 2009.

5. During the course of the negotiations that led to the Power Purchase Agreement, many discussions took place between the City and GREC about various provisions that would ultimately become part of the PPA. Proposals went back and forth as well as drafts of the PPA. Those drafts, which have previously been provided to Plaintiff through public records requests, have also been made available in response to Plaintiff’s Request to Produce. The City has also provided to Plaintiff calendars, emails, and other documents, including minutes of some of the meetings, which reflect the dates of these meetings, the subject matter of the discussions and the individuals attending these meetings. The individuals listed in Plaintiff’s Interrogatory Number 1 participated in the meetings and telephone conversations as well as

Leonard Fagan
Gainesville Renewable Energy Center
20 Park Plaza, Suite 320
Boston, MA 02116

James Gordon
Gainesville Renewable Energy Center
20 Park Plaza, Suite 320
Boston, MA 02116

Robert E. Hunzinger
General Manager for Gainesville Regional Utilities
P.O. Box 147117, Station A134
Gainesville, FL 32614-7117

Joshua H. Levine
Gainesville Renewable Energy Center
20 Park Plaza, Suite 320
Boston, MA 02116

Ari Mervis
Gainesville Renewable Energy Center
20 Park Plaza, Suite 320
Boston, MA 02116

Schef Wright, Esquire
Gardner, Bist, Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308

6. Yes. While discovery is ongoing, and while it reserves the right to supplement this response with additional discovered information, the City's belief is based on the following considerations: Prior to the commencement of this action on April 4, 2012, the Plaintiff's investigation, including its Public Records' requests, and the City's responses thereto, affirmatively revealed that, applying the governing Florida law, including that found in *Sarasota Citizens For Responsible Government, v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010), there was no good faith factual basis for the claim made in the Complaint that there was a Sunshine Law violation. This is true at all levels, including Mr. Hunzinger's activities, and those of his staff members, and the activities of the City Commission at its May 7, 2009 meeting. Even if a Sunshine Law violation did occur, which the City maintains did not, the City Commission meeting of May 7, 2009 acted as a legal and effective cure for any alleged violations. Additionally, given the facts of public record, including those known by the Plaintiff as of April 4, 2012, the claim of a Sunshine Law violation was an objectively frivolous one that was either knowingly or recklessly made by the Plaintiff in this action. This includes the fact that the Plaintiff made such a claim after it was a matter of public record that the City Commission, after due public notice, and after due public discussion, ratified and approved the PPA in question. The Sunshine Law violation claim was not only without factual basis, but was also contradicted by the overwhelming public evidence.

7. Yes. See the immediately prior Response which is incorporated herein by reference, since the City believes it reflects not only a "bad faith" basis of the action, but also its "frivolous" nature.

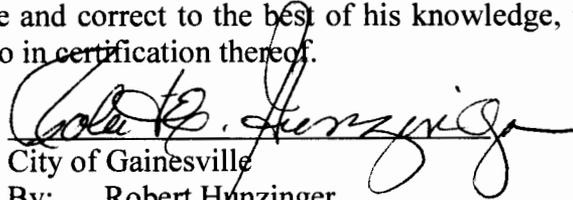
8. As of May 12, 2008, it was public knowledge, per the discussions had at the City Commission's public meeting held that day, and as further reflected in its Meeting Minutes issued thereafter, that Mr. Hunzinger was authorized to negotiate a contract for a long term PPA. It was likewise a matter of public knowledge, per the advance Notice of the City Commission meeting to be held on May 7, 2009, as well as per the discussions had at the City Commission's meeting held on May 7, 2009, and as further reflected in its Meeting Minutes issued thereafter, that Mr. Hunzinger provided an extensive presentation to the Commission as to his contract negotiations and the resultant PPA. At that May 7th meeting, and before the vote was taken, members of the public were also permitted to speak to the issue, including Mr. Hunzinger's discussion regarding contract negotiations. At that meeting, and after discussion and due consideration, the Commission voted to ratify and approve the PPA, and all of its terms, by a vote of 7-0. The Plaintiff, whose initial officers and/or directors (Mr. Lee J. Price, Ms. Jo Lee R. Beaty, and Mr. Michael S. Canney) were all citizens of Gainesville, or the Gainesville area, and were on actual or constructive notice and knowledge of the foregoing, as was Plaintiff's Registered Agent, Mr. Ray Washington. Yet, Plaintiff who was aware of all operative information, unreasonably delayed in its conduct and did not file this action until April 4, 2012, almost three years after the May 7, 2009 date. This delay is despite the fact that Plaintiff has stated that Mr. Hunzinger's comments thanking his "negotiating team", made on the record at the May 7th meeting, revealed the Plaintiff's claimed Sunshine Law violation. In the meantime, however, and with Plaintiff's awareness, the City and G.R.E.C. proceeded in good faith with actions in furtherance of the contract, in growing and deepening reliance on the validity of the actions of Mr. Hunzinger, as well as the actions of the City Commission of May 7th approving and ratifying said PPA. As of June 2011, GREC closed on a nearly \$500 million debt and equity transaction to provide the financing for the construction of the biomass plant. As of the date of these answers the plant is 67% complete. There are 650 craft laborers working on the site and the man-hours expended to date on the plant are in excess of 1.1 million. The plant is planned to be operational in the fall of 2013. When the plant starts producing electricity the City, under its contractual obligation, must buy the output of the plant that is produced.

The documents reflecting the foregoing will be produced by the City in its responses to the Request to Produce and Interrogatories. The City would also point to the tape of the public meeting on May 7, 2009 and a disk that contains responses to Plaintiff and its privies since 2010.

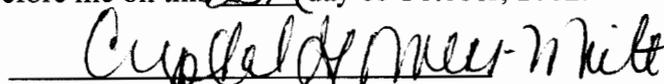
VERIFICATION OF ANSWERS TO INTERROGATORIES

STATE OF FLORIDA
COUNTY OF ALACHUA

Before me, the undersigned authority, personally appeared General Manager for Utilities, Robert Hunzinger, who produced _____, or is personally known to me, who being first duly sworn deposes and says that the answers written after each of the foregoing Interrogatories are true and correct to the best of his knowledge, information and belief, and subscribes his name hereto in certification thereof.


City of Gainesville
By: Robert Hunzinger
General Manager for Utilities

SWORN TO AND SUBSCRIBED before me on this 25th day of October, 2012.


Notary Public, State of Florida
My Commission Expires



CRYSTAL G. OWENS-WHITE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE158373
Expires 2/1/2016

By Elizabeth A. Waratuke as to any objections listed therein.


Elizabeth A. Waratuke, Litigation Attorney



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 choosy 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.