From: Baxley, Robin L.
To: Bielarski, Edward J
Subject: FW: Upcoming GREC "Indicia of Fraud White Papers"
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FYI

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From: Ray Washington [mailto:raywashingtonlaw@gmail.com]
Sent: Monday, January 23, 2017 10:22 PM
To: DL_Utility Advisory Board; citycomm; citycomm
Subject: Upcoming GREC "Indicia of Fraud White Papers"

UtilityAdvisory Board Members and City Commissioners:
This memorandum is written in the context of GRU's General Manager Ed Bielarski Jr.'s negotiations with GREC President James Gordon regarding the City of Gainesville's purchase of the GREC biomass plant. Mr. Bielarski last week informed GRU employees of his expectation that in the not very distant future there will be a firm decision about purchasing the plant. Mr. Bielarsk also has suggested he does not consider relevant to the purchase decision what the GREC plant itself is worth or what the recent sale price of other biomass plants "unbeneficiated" by a Power Purchase Agreement may be.
I offer my comments below for consideration based on the assumption that Mr. Bielarski's recommendations to members of the Utility Advisory Board and the City Commissions will flow from a determination of the net of the of the present value of GRU's remaining fixed-cost payment obligations under the GREC Power Purchase Agreement minus the dollar value of the ownership and operational risks that would be transferred from GREC to GRU in PPA buy down/plant acquisition transaction.
When I spoke at the City Commission meeting last week (January 19) my purpose – as it had been when I spoke at the joint City Commission - Utility Advisory Board meeting the week before (January 11) – was to communicate that *it is not possible to make a reasonable recommendation on*

acceptable price and terms for buying down/acquiring the GREC plant, without there first having been due diligence in (1) assessing already known indicia of fraud related the original GREC PPA, its amendments, its interpretations and its implementation (which would affect starting point price negotiations) and (2) obtaining and assessing accurate information about plant construction, maintenance, operations and the existence or lack of existence of guarantees and warrantees on plant components such as the boiler, turbine and wood handling mechanisms (which would affect the bottom line price negotiations).

The latter, (2), is beyond the scope of this memo. As to the former, (1), due diligence does not appear to have been performed and does not appear to have been contemplated to be performed -- not by Mr. Bielarski, as part of his GREC PPA/plant buydown negotiations, and not by GRU's outside counsel Winston & Strawn, as part of its arbitration representation of GRU.

As I have communicated to Mr. Bielarski, at this point I don't necessarily believe that responsibility for not considering the impact of fraud on a reasonable buy down/purchase offer lies on his shoulders or those of his executive team. Whatever some individual City Commissioners may believe is warranted, the City Commission as a body has not seen fit to go forward with Commissioner Charles Goston's motion last spring for the City Commission to move forward with a forensic audit, and has not since that time suggested to Mr. Bielarski that he would have the support of the Commission if he chose to explore currently known indicia of fraud as a prelude to making a recommendation about whether to move forward with a forensic audit for the purpose of obtaining forensic evidence of fraud. This also is not a direction the City Attorney has expressed a willingness to pursue, or an interest in exploring, and Winston & Strawn presumably has received no direction from her suggesting that it do so. After an initial communication with the lead attorneys for Winston & Strawn last spring I was requested by the City Attorney's office not to further communicate the firm, in the interest of saving GRU the cost of having Winston & Strawn lawyers spending time reviewing and assessing such communications. This is a request I have honored.

As far as I am aware Mr. Bielarski has not been requested by the City Commission to perform due diligence related to the indicia of fraud in the

inducement involving the GREC PPA or its amendments, nor, as far as I am aware, has the City Attorney – who has asserted a supervisory role in relation to Winston & Strawn led arbitration and mediation – suggested that that Winston & Strawn should assist with such due diligence. This is consistent with the City Attorney's history of discouraging exploration of indicia of fraud related to the GREC PPA.

While due diligence in reviewing and assessing indicia of fraud at this point does not necessarily require a forensic audit, at this point, in my view, it does require something more than reliance on the restricted review and assessment undertaken by Navigant Consulting LLC in 2014 and 2015.

As some of you may know, the RFP on whose basis Navigant was retained – drafted by the City Attorney's office after then City Commissioner Lauren Poe's proposed $25,000 cost cap was rejected -- was sent out without including language I had requested that the contract include the requirement of investigation and review of irregularities in the biomass Power Purchase agreement procurement, negotiation, interpretation and implementation process.

As some of you may know, the RFP objectives as drafted and sent out directed proposers to focus not on GREC "irregularities" but on "institutional controls" that could be "implemented that would help avoid the management discrepancies of the past and help strengthen the working relationship between GRU management and the City Commission."

As some of you may know, prior to the Navigant review and assessment contract being brought to the City Commission for final approval, the City Commission, as a result of having been presented with information that Navigant had represented GREC in the Spring of 2013 before the Federal Energy Regulatory Commission, directed the City Attorney to ask GREC to provide a waiver freeing Navigant from conflict of interest restrictions that could limit its ability to provide GRU with an independent assessment.

As some of you may know, the City Attorney's office decided not to ask GREC for the waiver, but determined without City Commission approval instead to work with Navigant on language that would have merely after

the fact allowed potential deprivation of Navigant of full payment under its contract to the extent that it could be immediately established that, among other things, a conflict of interest had prevented Navigant from materially fulfilling its duties to GRU under the contract.

As some of you may know, I have explained to the City Commission and some individual commissioners that it has been established that Navigant was aware -- in the Spring 2013 when it was advising GREC regarding its FERC reporting requirements -- of the names of each person or entity who had ownership interests in GREC. With that knowledge, Navigant made a FREC filing on behalf of GREC containing that ownership information at the same time that GRU was in arbitration with GREC on the issue of GREC ownership, which arbitration, because of GREC's stonewalling and refusal to provide GRU with complete information about who actually owned GREC, was forced to filing pleadings styled to include "JOHN DOES NOS. 1-25."

As some of you may know, during the Summer of 2008, while GRU was negotiating a PPA with Nacogdoches Power LLC (a separate entity that soon would transfer its GRU contract negotiating rights to GREC LLC, a new entity that would be formed on August 19, 2008).

As some of you may know, Albert Morales, GREC's Chief Financial Officer, in the Summer of 2008 was engaged under a consulting contract with Navigant Consulting Inc. -- licensed by but separate from Navigant International, Inc. -- to provide consultation services for an August 6, 2008 report on biomass/renewable energy potential.

As some of you may know, the Navigant's 2014 "independent assessment" proposal submitted to GRU, unlike competing proposals, did not include the use of attorney consultants to make legal determinations as to whether evidence of impropriety or potential wrongdoing was sufficient to call into question the validity of the GREC PPA and subsequent Equitable Adjustment. Navigant did include in its RFP response the promise of significant review involvement by a retired Florida FBI investigator and manager, and the utilization of proprietary Navigant software designed to determine whether GRU electronic records had been altered or deleted, and by whom. But after Navigant was awarded the assessment contract, members of the Navigant team met

privately with individual City Commissioners for “guidance” and “oversight,” and proceeded to conduct the review without participation of the former FBI investigator and manager who had been submitted in the Navigant RFP response as a key part of the Navigant "investigative review" team. Navigant proceeded to conduct its review without using the proprietary software it had explained in its RFP response was key to evaluating the completeness and validity of electronic records. Navigant in the event simply asked GRU to provide specified categories of electronic records it deemed relevant.

As some of you may know, prior to the start of the Navigant review GRU management declined my repeated requests that GRU personnel and those subject to GRU direction be directed to make a written report of when and under what circumstances GREC-related records had been destroyed. GRU management also declined my repeated requests to add to its directive a requirement that laptops, hard drives and other electronic storage devices controlled by GRU personnel remain on the GRU premises until the completion of the review. GRU management on July 17, 2014, at the direction of the City Commission, following my request, did issue a directive to GRU employees not to destroy GRU or City records until further notice, but not the expanded directive I requested. As it later turned out, a high level City employee provided me with evidence that the employee -- after the records preservation memorandum was issued -- witnessed former GRU Assistant General Manager John Stanton at GRU using a personal laptop computer that Stanton routinely brought to and took home from GRU. As it later turned out a mid-level GRU employee provided evidence that -- after the records preservation memorandum was issued – the GRU employee was told by the City Attorney’s office that when the employee’s allocated electronic storage capacity had been reached that the employee should simply delete electronic records as needed.

Whatever the significance or lack of significance of the above, as I stated at the Commission meeting last week and at the joint Commission-UAB meeting the week before, there is a significant amount of information suggesting possible fraud that already has been provided to the City Commission, some of it by me, some of it by others, and a significant

amount of information that has not yet been shared in the absence of a demonstration of interest. Now, as earlier, I don't have confidence that my summarizing information already provided to the City Commission -- or presenting new information that hasn't been presented before – would result in it being considered prior to a proposal for buying down/purchasing the PPA/plant would be presented to City Commission for a vote. But given the possibility that a recommendation may soon be made regarding buying down/purchasing the GREC contract/plant my providing in writing a record of unassessed indicia of fraud at least creates a record of the City Commission's awareness of it and may even result in followed up by the UAB, some of whose members appear to want to play a greater advisory role than they have been allowed so far, particularly regard to GREC.

My hope at this point is also that by drafting the "white papers" memorializing numerous and specific and numerous indicia of fraud, and circulating them, I will be able to provide counter force to so-called "white papers" that have been prepared and circulated put by Mr. Stanton both prior to and after his firing from GRU for insubordination alleged to have been evidenced by Mr. Stanton providing approval to one of GREC's asset managers for a cancellation of maintenance outage that could cost GRU more than $4 million. Mr. Stanton's white papers provide arguments that provide support GRU paying GREC energy speculators more for the GREC PPA/plant. (As I have previously written, last month Alachua County Circuit Judge Robert Roundtree rejected Mr. Stanton's appeal of his firing, finding that Mr. Stanton had been provided due process and that there was competent substantial evidence that his firing for insubordination was justified. As I add here, the deadline for Mr. Stanton to appeal Judge Roundtree's Ruling to the First DCA has passed. I can therefore share information about indicia of fraud relating to GREC and Mr. Stanton without concern that GRU's position in the Stanton litigation might prevent acknowledgment and response by GRU or the City Commission to the information provided.) The white papers I hope to complete in the days ahead I hope will provide a basis for counter arguments to the suggestions of Mr. Stanton's white papers that GRU has not paid GREC enough for the right to a claimed amount of available

energy, and that a fair price for buying down/purchasing the GREC PPA/plant would be more than $1 billion. As time permits, and as efforts by the City Attorney to limit access to public records related to the GREC buy down/purchase negotiations are resolved, I hope to start circulating the first of these white papers on indicia of fraud.

In closing this memo, I repeat that I am not suggesting at this point that the City Commission must or should debate authorization of the sort of forensic audit that was proposed in 2013 and blocked in 2014 by the decision of the City Commission to proceed with the limited Navigant review. I trust that most members of UAB and City Commission understand the falsity of claims made by Mr. Stanton, GREC speculators and some members or former members of the City Commission that the Navigant report constituted a "forensic audit" and that it disproved impropriety or wrongdoing by GREC. It is not possible to write a white paper about what information Navigant might have discovered if it had performed an actual forensic audit, or to write a white paper on what Navigant might reported under circumstances in which GREC had been willing to waive its right to limit Navigant's work based on prior representation confidentiality. But it is possible to write a white paper documenting the indicia of GREC fraud Navigant was made aware of and chose not to further investigate or include in its April 8, 2015 "investigative review." I will do that as time and circumstance allows.

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