From: Shalley, Nicolle M.
To: Bielarski, Edward J
Subject: RE: Response TO Revised MOU
Date: Thursday, March 16, 2017 1:18:23 PM

I have some thoughts on this, perhaps we can discuss during the break in the meeting.

Nicolle M. Shalley
City Attorney
City of Gainesville
352-393-8747 (phone)

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From: Bielarski, Edward J
Sent: Thursday, March 16, 2017 1:16 PM
To: Shalley, Nicolle M.
Subject: Fwd: Response TO Revised MOU

Nicole,

Could you work on language which would offer GREC assurance that GRU wouldn't have a blank check in regard to the withholdings. I think the concern is withholding of the close to $ 10 million of availability payments.

Is there language that we could craft which would limit the withholding to billing "mistakes"? In exchange for that GRU would accept the retention of the $ 7.1 million at closing and a payment of $ 10 million.

Ed B

Sent from my iPad

Begin forwarded message:

> **From:** "Bielarski, Edward J" <BielarskiEJ@gru.com>
> **Date:** March 16, 2017 at 1:01:09 PM EDT
> **To:** Jim Gordon <jgordon@emienergy.com>
> **Cc:** "Brown, Thomas R" <BrownTR@gru.com>, "Locke, Justin M" <LockeJM@gru.com>, "Shalley, Nicolle M." <shalleynm@cityofgainesville.org>, "Waratuke, Elizabeth A."

<waratukeea@cityofgainesville.org>, Dennis Duffy <dduffy@emienergy.com>, Al Morales <AMorales@emienergy.com>
Subject: Re: Response TO Revised MOU

Jim,

Thanks for the quick reply. I understand your Board's position. However, as much as you suggest that my counter would give GRU a "blank check", GREC's counter offer removing GRU's ability to withhold payments (only in regard to current disputes) gives GREC "carte blanche" to bill for amounts not allowed under the PPA and leave GRU no recourse under its current PPA. If we could tighten up the language (per the lawyers) in a manner more appealing to both of us, let's do that.

Certainly, GRU is not looking for the withholding provisions as a method to extent our current disputes. We only want the ability to continue to withhold those current items under dispute and in case of billing errors correct them.

As to the issue of the $ 10 million, I was reluctant bringing up details in the current venue. However, it appeared that you didn't understand the significance of the item as it related to the arbitration. I feel that it is connected and I don't see it as a sales allowance as much as I see it as a final settlement on the arbitration.

In summary, I'd like to speak with my attorneys on options surrounding the $ 7 mm and the withholding issues.

If GREC will not acquiesce on the $ 10 million final settlement, GRU will be forced to keep the arbitration going and not place a pause on the proceedings.

Ed B

Sent from my iPad

On Mar 16, 2017, at 12:04 PM, Jim Gordon <jgordon@emienergy.com> wrote:

> Ed,
> We have reviewed your latest response and although we simply disagree with your claims on Available Energy payments, I do not believe it would be fruitful or constructive to debate that point here…if we are unable to conclude a deal, GRU will have retained all of its rights and your claims would be ultimately decided by a legal process that is underway.
> Let me explain to you how our Board looks at this – they are willing to transact at the price/terms we sent to you in our last MOU draft, and your ask of an additional $10 mm payment, which is effectively an ask for a purchase price reduction doesn't work for my Board.
> Your ask that you keep the ability to continue to withhold payments

from us under the PPA basically gives you a blank check. In your construct, you could withhold millions of dollars more between now and Closing and try and have us eat that additional cost…we don't think that is reasonable or workable.

My Board is beginning to wonder if you feel conflicted, in that, you are not sure if you want to transact a fair and durable deal or if you just want to maintain and exercise undue leverage that is destined to ultimately unravel your acquisition of the GREC facility. It is imperative that, if both of us are going to commit the significant time and resources required for this transaction that it be in a constructive climate. Again, if the the transaction does not close, neither of us will have given up any of our rights under the PPA and we will then return to litigation. Those are the conditions that will ultimately ensure the significant benefits you have identified through a GREC acquisition will accrue to the Citizens of Gainesville and the region.

Let me know if you want to move forward under the MOU that we provided to you yesterday.

Sincerely,

Jim