

AMERICAN ARBITRATION ASSOCIATION

Gainesville Renewable Energy Center, LLC,

Claimant,

v.

The City of Gainesville, Florida, d/b/a
Gainesville Regional Utilities

Respondent.

AAA Case No. 01-16-0000-8157

PROPOSED ORDER

Before the Tribunal is Respondent/Counterclaimant the City of Gainesville, Florida, d/b/a Gainesville Regional Utilities’ (“GRU”) Omnibus Motions for Summary Judgment. Upon considering GRU’s Omnibus Motions for Summary Judgment, the motions contained therein are meritorious and GRANTED as indicated below.

IT IS THEREFORE ORDERED as follows:

1. As to GRU’s Motion A, “Motion for Partial Summary Judgment Regarding Section 10.4.1 and Annual Planned Maintenance,” the Motion is GRANTED and the Tribunal orders as follows:
 - The Tribunal declares that, as a matter of law, Section 10.4.1 of the PPA requires GREC to perform Planned Maintenance on an annual basis.
 - The Tribunal, accordingly, declares that, as a matter of law, GRU did not breach section 10.4.1 of the PPA.
 - The Tribunal finds that GREC has not performed annual Planned Maintenance in 2016. Accordingly, the Tribunal finds that GREC has breached Section 10.4.1 of the PPA.
 - The Tribunal declares that, as a matter of law, the performance of an annual Planned Maintenance outage pursuant to Section 10.4.1 of the PPA is a material obligation. Accordingly, the Tribunal finds that GREC is in default as to a material obligation of the PPA, that GREC has not cured such default following written notice, and that such default constitutes a Seller Event of Default under Section 25.1.1 of the PPA. Therefore, the Tribunal finds that, as a matter of law, GRU is entitled, at its election, to terminate the PPA pursuant to Section 25.2 of the PPA.
 - The Tribunal, therefore, DISMISSES WITH PREJUDICE GREC’s Count 1 and GREC’s Counts 5 and 9 as they pertain to annual Planned Maintenance.

2. As to GRU's Motion B, "Motion for Partial Summary Judgment Regarding Available Energy During Ramp Periods," the Motion is GRANTED and the Tribunal orders as follows:
 - The Tribunal holds that, as a matter of law, GRU did not breach the PPA by withholding payment of invoiced Available Energy Charges relating to the Dependable Capacity tests of September 2015, March 2015, or May 2016.
 - The Tribunal holds that, as a matter of law, GRU did not breach the PPA by withholding payment of invoiced Available Energy Charges relating to the August 2015 Maintenance Outage.
 - The Tribunal holds that, as a matter of law, GRU did not breach the PPA by withholding payment of invoiced Available Energy Charges relating to the November 2015 start-up and ramp-up.
 - Accordingly, the Tribunal DISMISSES WITH PREJUDICE GREC's Count 7 and GREC's Count 9 as it pertains to Count 7.
3. As to GRU's Motion C, "Motion for Partial Summary Judgment Regarding Section 12.4.1 and Payment Decrease in March 2016," the Motion is GRANTED and the Tribunal orders as follows:
 - The Tribunal holds that, as a matter of law, GRU did not breach the PPA by imposing a Payment Decrease for the March 2016 Billing Period pursuant to Section 12.4.1.
 - Accordingly, the Tribunal DISMISSES WITH PREJUDICE GREC's Count 8 and GREC's Count 9 as it pertains to Count 8.
4. As to GRU's Motion D, "Motion for Partial Summary Judgment Regarding Section 8.5 and Retroactive Withholding," the Motion is GRANTED and the Tribunal orders as follows:
 - The Tribunal holds that, as a matter of law, GRU did not breach Section 8.5 of the PPA by retroactively withholding disputed Shutdown Charges invoiced with respect to the September 2015 Dependable Capacity test.
 - Accordingly, the Tribunal, in conjunction with its ruling upon GRU's Motion B, DISMISSES WITH PREJUDICE GREC's Count 7 and GREC's Count 9 as it pertains to Count 7.
5. As to GRU's Motion E, "Motion for Partial Summary Judgment Regarding Section 10.7 and Shutdown Charges Following Dependable Capacity Tests," the Motion is GRANTED and the Tribunal orders as follows:
 - The Tribunal holds that, as a matter of law, Shutdown Charges are not owed in conjunction with Dependable Capacity tests, and as a result, GRU did not breach Section 10.7 of the PPA with respect to withholding payment of invoiced Shutdown Charges for the Dependable Capacity tests performed in September 2015, March 2016, or May 2016.
 - Accordingly, the Tribunal DISMISSES WITH PREJUDICE GREC's Count 6 and GREC's Count 9 as it pertains to Count 6.
6. As to GRU's Motion F, "Motion for Partial Summary Judgment Dismissing GREC's Intentional Interference Claim Because GRU Lacked Knowledge of Any Refinancing

Relationships and GRU's Actions Were Justified," the Motion is GRANTED and the Tribunal orders as follows:

- The Tribunal holds that there is no genuine issue of material fact that GRU did not know of GREC's refinancing efforts or refinancing relationships.
 - The Tribunal holds that there is no genuine issue of material fact that GRU was contractually mandated and economically justified to take the accused actions, including the sending of the Seller Event of Default Notice in March 2016.
 - Accordingly, the Tribunal holds that GRU is entitled to summary judgment that it did not interfere with GREC's business relations and DISMISSES WITH PREJUDICE GREC's Count 4 and GREC's Counts 5 and 9 as they pertain to Count 4.
7. As to GRU's Motion G, "Motion for Partial Summary Judgment Regarding Section 20 and GREC's Failure to Seek Cooperation on Refinancing," the Motion is GRANTED and the Tribunal orders as follows:
- The Tribunal holds that there is no genuine issue of material fact that the cooperation requirement in Section 20 of the PPA requires GREC to seek cooperation.
 - The Tribunal holds that there is no genuine issue of material fact that GREC never sought GRU's cooperation in refinancing the Facility.
 - Accordingly, the Tribunal holds that GRU is entitled to summary judgment that it did not breach Section 20 of the PPA and DISMISSES WITH PREJUDICE GREC's Count 2, and Counts 3, 5 and 9 as they pertain to Count 2.
8. As to GRU's Motion H, "Motion for Partial Summary Judgment of No Liability Regarding Section 26.1's Limitations on Liability," the Motion is GRANTED and the Tribunal orders as follows:
- The Tribunal holds that, as a matter of law, Section 26.1 of the PPA expressly precludes liability for incidental, consequential, punitive, exemplary, or indirect damages, or lost profits or other business interruption damages, whether filed in contract or tort.
 - The Tribunal holds that, as a matter of law, GREC has sought consequential damages in its Counts 2 and 4.
 - Accordingly, the Tribunal holds, as a matter of law, that GREC impermissibly seeks consequential damages in violation of section 26.1 of the PPA and therefore DISMISSES WITH PREJUDICE GREC's Counts 2 and 4, as well as GREC's Counts 3, 5, and 9 as they pertain to Counts 2 and 4.
9. As to GRU's Motion I, "Motion for Partial Summary Judgment of No Liability Regarding Section 26.1 and Florida Law Prohibiting Assertion of a Contractual Claim as a Tort," the Motion is GRANTED and the Tribunal orders as follows:
- The Tribunal holds that, as a matter of law, GREC's Count 4 impermissibly asserts a contractual claim under the PPA as a tort, in violation of Section 26.1 of the PPA and in violation of Florida law.

- Accordingly, the Tribunal holds, as a matter of law, that GREC’s Count 4 is **DISMISSED WITH PREJUDICE** and that GREC’s Counts 5 and 9 are **DISMISSED WITH PREJUDICE** as they pertain to Count 4.

10. As to GRU’s Motion J, “Motion for Partial Summary Judgment Regarding Statutory Cap on Damages Under Florida’s Limited Statutory Waiver of Sovereign Immunity,” the Motion is **GRANTED** and the Tribunal orders as follows:

- The Tribunal holds, as a matter of law, that GREC’s Count 4 seeks damages well in excess of the statutory cap on tort damages under Florida Statute Section 768.28(5), and if GREC had prevailed on Count 4, its recovery in arbitration would have been limited to \$200,000, the statutory cap. However, in light of the Tribunal’s dismissal of Count 4, this motion for partial summary judgment is rendered moot.

Signed on this _____ day of _____, 2017.

THOMAS J. BREWER