

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA**

GAINESVILLE CITIZENS CARE, INC.,

Plaintiff,

vs.

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

Defendant.

CASE NO.: 2012-CA-001346

DIVISION:

2012 MAY 17 PM 4:47
FILED
CK 12
CLERK OF CIRCUIT COURT
8th JUDICIAL CIRCUIT
ALACHUA COUNTY, FL

**CITY OF GAINESVILLE'S ANSWER, DEFENSES AND
AFFIRMATIVE DEFENSES TO FIRST AMENDED COMPLAINT**

Defendant, the City of Gainesville ("City"), files this Answer, Defenses and Affirmative Defenses to the First Amended Complaint filed by Plaintiff, Gainesville Citizens Care, Inc.

As to the portion of Plaintiff's First Amended Complaint entitled "Introduction", the City generally denies the allegations made therein. In its Introduction, Plaintiff has not complied with Rule 1.110(f) Fla.R.Civ.P., which requires all averments of claim to be made in separately numbered paragraphs and requires the contents of each paragraph to be limited to a statement of a single set of circumstances. Consequently, the City is unable to admit or deny the allegations contained in the unnumbered paragraphs and general narrative presented in Plaintiff's Introduction.

As to the correspondingly numbered paragraphs of the First Amended Complaint, the City answers as follows:

1. This Court has jurisdiction, otherwise deny.
2. Admit.
3. Without knowledge, therefore deny.

Case: 2012 CA 001346
00043247832
Dkt: AN19-R

4. Admit.

5. Admit that on May 12, 2008, the City Commission, among other actions, authorized the General Manager, or his designee, to negotiate and execute a contract between the City of Gainesville and Nacogdoches Power, LLC for a long term Power Purchase Agreement. Otherwise, deny.

6. Admit that on May 12, 2008, the City Commission authorized the General Manager, or his designee, to include a "back door out" clause in the negotiations, among other things. Otherwise, deny.

7. Deny.

8. Deny.

9. Deny as phrased.

10. Deny.

11. Deny.

12. Deny as phrased.

13. Deny.

14. Admit that the Power Purchase Agreement negotiated by the General Manager contained changes in the project in the contract structure from the initial proposal. Admit that the Power Purchase Agreement negotiated by the General Manager was presented to the City Commission for its review and final approval on May 7, 2009 at a publicly noticed and publicly convened meeting of the City Commission. Admit that the changes included an extension of the the term of the contract. Admit that a "back door out" clause was discussed during the negotiations, but was ultimately not included in the final Power Purchase Agreement. Admit that the General Manager and/or his designee met with some, if not all, members of the City

Commission in individual meetings to discuss the terms of the agreement and answer any questions that the Commissioners might have. Admit that the Commission, by its independent and final action, ratified and approved the Power Purchase Agreement during and in a publicly noticed and public meeting of the City Commission on May 7, 2009. Otherwise, deny.

15. The City realleges its responses to paragraphs 1 through 14 as if fully set forth herein.

16. Deny.

17. Deny.

18. Admit that the Power Purchase Agreement for the Supply of Dependable Capacity, Energy, and Environmental Attributes from a Biomass-Fired Power Production Facility ("Power Purchase Agreement") was brought before the Gainesville City Commission for approval on May 7, 2009. Otherwise, deny.

19. Deny.

20. Without knowledge, therefore deny.

21. Deny.

Any allegations in the First Amended Complaint that are not specifically admitted are hereby denied.

DEFENSES AND AFFIRMATIVE DEFENSES

22. Meetings held to negotiate the terms of the Power Purchase Agreement were not "meetings" subject to the requirements of the Sunshine Law.

23. The meetings held to negotiate the terms of the Power Purchase Agreement were not subject to the Sunshine Law. However, and alternatively, if any Sunshine Law violation did occur, it was remedied and cured by the May 7, 2009 publicly noticed City Commission meeting


held subsequent to the negotiations, where the City Commission took independent final action regarding the agreement in a full open hearing where the public was able, and did in fact, express their views and participate in the process.

24. If any Sunshine Law violation did occur, Plaintiff is barred by the doctrine of laches from asserting its claim because Plaintiff, who had awareness of all operative information, unreasonably delayed, without excuse, in asserting said claim, and that said delay caused the City undue prejudice.

WHEREFORE, the City requests judgment in its favor, and against the Plaintiff, dismissing the First Amended Complaint with prejudice, awarding the City its reasonable attorney's fees pursuant to Section 286.011(4) Fla. Stat., costs, and for such other and further relief as this Court may deem legally or equitably appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to Marcy I. Lahart, PA, 4804 SW 45th Street, Gainesville, FL 32608, on this 17th day of May 2012.



Elizabeth A. Waratuke, Litigation Attorney
Florida Bar No. 458007
City of Gainesville – Office of the City Attorney
P.O. Box 490, Station 46
Gainesville, FL 32627
Tel: 352-334-5011/Fax: 352-334-2229
Attorney for Defendant