

Proposed Asset Purchase and Sale Agreement by and between City of Vero Beach, Florida, as Seller and Florida Power & Light Company, as Buyer

Executive Summary
(all subject to the detailed terms of the Agreement)

1. Purchase Price: \$111,500,000

A. City's goal: limit post-closing exposure

B. FP&L agreed most reps and warranties terminate at closing, but wanted to reduce the Purchase Price as consideration for waiving any claims for breach of most reps or warranties (if aggregate claims as part of MAE is less than \$10 million, FPL obligated to close)

C. Negotiations led to a \$3.5 million reduction in the purchase price to \$111,500,000; however,

D. This was partially offset by a negotiated increase in rent payable to the City under the Power Plant Lease by \$500,000 per year to \$1,500,000 per year (at least 3 years), for total of \$1,500,000 additional rent; and

E. FPL also committed to contribute \$500,000 to any environmental remediation required relating to decommissioning of the Power Plant

F. \$3.5 million less \$2.0 million = net decrease of \$1.5 million overall as consideration for termination of most representations and warranties at closing.

2. Adjustments to Purchase Price:

A. Customary pro rata adjustments, such as prepaid expenses. Section 3.6

B. Capital leases, if utilized, rent paid in advance to City, dollar for dollar adjustment

C. Any assumption of damage or repair costs by FPL under Section 6.11 (b) and (c)

D. Any failure of City to properly maintain the system under Section 6.16(a).

E. Increase in purchase price if FPL asks City to retain Cayenta to convert customer data under Section 6.17.

F. Potential increase in purchase price, with assignment of casualty recovery proceeds dollar for dollar, under Section 9.1 (i).

3. Target Closing Date: No earlier than January 1, 2014 and no later than December 31, 2016. The deal could close in 2014 if FMPA agrees to waive the ARP withdrawal notice period to coincide with the closing.

4. All Reps and Warranties expire at Closing, except for “Fundamental Representations” and representations relating to environmental liabilities and taxes (See Indemnification section below). See Article IV for City representations and warranties.

5. Non-Fundamental representations and warranties are relevant with respect to Material Adverse Effect.

A. If there is less than \$10 million of a Material Adverse Effect, including losses from breach of representations and warranties, FP&L is required to close.

B. If there is more than \$10 million of Material Adverse Effect, FP&L is not required to close.

6. Article II outlines Acquired Assets, Excluded Assets, Assumed Liabilities, and Excluded Liabilities

7. Key Covenants of the City in Article VI:

A. City to conduct business and to maintain the system in the ordinary course in accordance with the Vero Beach Power Plant Expectations, meaning City can take into account the expected dismantling of the power plant in making maintenance and capital equipment expenditure decisions before Closing. Section 6.1

B. City and FPL will cooperate in obtaining approvals required: Section 6.6

C. City to update Disclosure Schedules: Section 6.9

D. Employees Section 6.10

(i) FPL will offer employment to all City employees whose primary work responsibilities are with respect to the Acquired Assets and who are actively employed as of the Closing Date, except for any previously terminated for cause by FPL.

(ii) Unrepresented City employees will get a two year offer, except as FPL and such employees may otherwise agree

(iii) Represented City employees will get a two year offer, except as otherwise negotiated by FPL and the FPL Union Representative, and subject to FPL collective bargaining agreement

(iv) Transferred City employees commence participation in FPL benefit plans

- (v) FPL to provide credits for co-payments and deductibles for transition
- (vi) Transferred City employees to receive credit for service years with the City under the FPL benefit plans
- (vii) FPL to assume obligation and liability for the Accrued Frozen Pension Benefit for all of the Transferred City employees. See Section 6.11 (f)(i).
- (viii) Except as otherwise bargained with FPL union, FPL will assume liability for all floating holidays, sick days, vacation days and personal days of each Transferred employee accrued and remaining unused or unpaid as of the Closing Date, up to accrual limits under FPL policies

8. Risk of Loss; Insurance Section 6.11

- A. City bears risk of loss relating to Acquired Assets prior to closing
- B. If assets are destroyed or damaged by fire or other casualty (hurricane), City must repair and restore before Closing, or purchase Price reduced by the cost FPL will incur to complete the repairs.
 - (i) If damage is less than \$10 million, City is required to close
 - (ii) If damage is more than \$10 million, City may elect to terminate the Agreement (as it will need electric system revenues to pay for repairs not covered by insurance or FEMA).

9. Termination Article IX

Section 9.1

- A. By mutual consent
- B. By either party if federal or state court order blocks sale
- C. By FPL if regulatory approvals not obtained or granted with conditions not acceptable to FPL
- D. By FPL if one or more breaches of any representation or warranty constitutes a MAE (\$10 million) and is not cured before the Closing Date or 90 days after receipt of notice from FPL of violations and amount of such losses
- E. City may elect to extend Closing Date 90 days beyond Termination Date to cure any such violations
- F. Either party has a right to terminate if the other party's breaches of covenants are not cured prior to Closing Date
- G. The Agreement may be terminated by City or FPL if the Referendum Question election is held and it is not approved by majority of votes cast.

H. FPL may terminate if the Board of Directors of NextEra Energy (FPL parent) does not approve the Agreement by February 28, 2013; provided notice is given to City before March 4, 2013.

I. If after a fire or other casualty (like a Hurricane), City's losses (cost to repair) are more than \$10 million in excess of its estimated insurance proceeds and government aid.

- (i) City can give notice of termination
- (ii) City and FPL to agree on estimated Cure Amount (total cost to repair)
- (iii) FPL then decides either:
 - (a) Accept notice of termination;
 - (b) Elect to close immediately and increase purchase price by Excess

Uncovered Loss Amount (Cure Amount less \$10 million); or

(c) Elect to extend closing date to give City time to recover its total Cure Amount, including the \$10 million through increased rates (18 months).

(d) FPL can elect to close earlier than 18 months by agreeing to increase purchase price to cover all of the Uncovered Loss Amount (including the \$10 million) not recovered by City up to the new Closing Date.

K. Any termination under Section 9.1(g), (h), (i) does not trigger any termination payments.

Section 9.2

A. If Agreement is terminated by Buyer under Sections 9.1 (d) (\$10 million or more of potential losses from breach of reps or warranties by Seller) or Section 9.1 (f) (breach of covenants by Seller), Seller is liable for \$5 million termination fee.

B. If Agreement is terminated by Seller under Sections 9.1(e) (\$10 million or more of potential losses from breach of reps or warranties by Buyer) or Section 9.1(f) (breach of covenants by Buyer), Buyer is liable for \$5 million termination fee.

C. Each of Seller and Buyer retain rights to enforce specific performance of the Agreement.

10. Indemnification

A. FPL indemnifies the City for any losses arising out of FPL's breach of its Fundamental Representations, breach of covenants, failure to pay Assumed Liabilities, failure to perform Assumed Contracts, or third party claims relating to FPL's use of the Acquired Assets.

B. City indemnifies FPL for any losses arising out of City's breach of its Fundamental Representations, breach of its tax and environmental representations, breach of covenants, failure to pay Excluded Liabilities, claims relating to Excluded Assets, third party claims arising out of City's operation of the electric system prior to Closing Date, or environmental liabilities relating to the power plant (other than known above ground releases caused by FPL), and subject to FPL's \$500,000 remediation contribution commitment.

C. City's representations and warranties in general do not survive after the closing

D. City's Fundamental Representations which do survive the Closing Date include:

Section 4.1 City has authority to own the Assets and to operate the electric system

Section 4.2 City has authority to sign Agreement

Section 4.3(i) No conflict with City charter or resolutions

Section 4.7(c) Good title to Acquired Land in Fee, and to Seller's knowledge Easements
without Encumbrances, and good title to Assets

Section 6.7 (covenant) No broker

Section 4.10 Taxes

Section 4.18 Environmental representations

E. Offset Option. If FPL has a claim against the City for money, FPL has the right to offset the claim dollar for dollar against franchise fees to be payable by FPL to the City under the Franchise Ordinance to be granted to FPL (approximately 6% of FPL's electric revenues from the City customers)
