Florida Municipal Power Agency

Frederick M. Bryant
General Counsel

May 15, 2012
Re: Jim O'Connor's letter of April 19, 2012

BY EMAIL AND U.S. MAIL

John G. Igoe
Richard J. Miller
Edwards Wildman Palmer LLP
525 Okeechobee Boulevard, Suite 1600
West Palm Beach, Florida 33401-6305

Wayne R. Coment
City Attorney
City of Vero Beach
1053 20th Place
Vero Beach, Florida 32960-5359

Dear Messrs. Igoe, Miller, and Coment:

SUBJECT: FOLLOW-UP TO OUR FIRST MEETING OF APRIL 16, 2012

I have reviewed Jim O'Connor's letter of April 19, 2012, addressed to Nick Guarriello, which followed the first meeting between the City of Vero Beach (the City) and Florida Municipal Power Agency (FMPA) of April 16 to discuss the contemplated sale of the City's electric system to Florida Power & Light Company (FPL). Mr. Guarriello replied to Mr. O'Connor's April 19 letter by his letter of May 2, and Mr. Guarriello requested that I, as General Counsel for FMPA, separately respond to the legal matters raised in Mr. O'Connor's letter. I am enclosing copies of that correspondence for ease of reference.

The City is a participant in four of FMPA's power supply projects: the St. Lucie Project, the Stanton Project, the Stanton II Project, and the All-Requirements Power Supply Project (the ARP). Pursuant to the City's election to limit the capacity and energy the City purchases from the ARP to a contract rate of delivery (CROD), as

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permitted by the All-Requirements Power Supply Project Contract between the City and FMPA, dated October 1, 1996, as amended, the City no longer purchases capacity and energy from the ARP; however, the City's ARP contract has not been terminated. In the other projects (St. Lucie, Stanton, and Stanton II), the City must take or pay for its "Power Entitlement Share," as defined in the applicable Project's Power Sales Contracts,[1] which is shown below:

Project	Power Entitlement Share (MW)	Percentage of Project Participants total Power Entitlement Shares
St. Lucie		
Stanton	20.5[2]	32.5% (largest participant)
Stanton II		

[1] Based on a net summer rating of 875 MW for St. Lucie Unit 2, which includes additional capacity placed into service in 2011 through upgrades. Actual output of the unit will vary based upon operating conditions.

[2] Based on the 425 MW normal high dispatch limit of Stanton Unit 1. Actual output of the unit will vary based upon operating conditions.

[3] Based on the 429 MW normal high dispatch limit of Stanton Unit 2. Actual output of the unit will vary based upon operating conditions.

On April 16, 2012, pursuant to the City's request, the City's and FPL's representatives met with FMPA staff to formally discuss the contemplated sale of the City's electric utility system to FPL. At this meeting, Mr. O'Connor, who characterized FPL as the City's partner, requested that FMPA assist the City in its efforts to divest itself of its Power Entitlement Shares. Specifically, the City and FPL asked that FMPA develop projected future costs of the City's interests in the St. Lucie, Stanton, and Stanton II Projects and, on the basis of those projected future costs, solicit the interests of

[1] *E.g.*, Stanton Project Power Sales Contract between Florida Municipal Power Agency and City of Vero Beach, Florida (Jan. 16, 1984), as amended [hereinafter Stanton Power Sales Contract], § 1 ("Power Entitlement Share shall mean, with respect to each Project Participant, that percentage of Project Capability shown opposite the name of such Project Participant in the schedule of Project Participants as the same may be adjusted from time to time in accordance with the provisions hereof.").

FMPA's other members in taking over the City's interests. As set forth in Mr. Guarriello's letter of May 2, FMPA has agreed to assist the City.

Also at the April 16 meeting, City representatives discussed the possibility of FPL purchasing the City's Power Entitlement Shares for a defined period of time, not to exceed three years, as a bridge to another FMPA member taking over the City's obligations in the future. I expressed concern that such a purchase by FPL may run afoul of IRS restrictions on FMPA's Projects, which are financed with municipal tax exempt bonds, and, therefore, may require an IRS private letter ruling to protect FMPA's bondholders. In response, Mr. Miller offered that his firm would give an opinion letter to protect FMPA's bondholders, stating that there would not be any adverse tax consequences from such an FPL purchase. As I requested at the meeting, for FMPA to consider accepting such an opinion letter, I and FMPA's tax counsel will need to review the form of opinion that Mr. Miller's firm would provide and a detailed explanation of the legal analysis that supports the opinion. As I have not yet been provided with those documents, I trust that Mr. Miller's firm is working to prepare them.

Also at the April 16 meeting FMPA staff reported to the City that some of the information needed to produce future cost productions for the St. Lucie Project will have to come from FPL. The City and FPL assured FMPA that all needed information will be supplied to FMPA in a timely manner. To this end, FMPA staff also asked FPL to confirm whether it has received the license extension for St. Lucie Unit 2, and whether FPL plans on operating St. Lucie Unit 2 through the life of the license extension. Sam Forester of FPL, who attended the meeting by phone, said that FPL has received the license extension for St. Lucie Unit 2 and that FPL would confirm in writing its intent to operate that unit through the life of the license extension, which I understand is 2043. We have not yet received this confirmation from FPL, but it would be helpful to FMPA, and advantageous for the City,[2] for FPL to provide it as soon as possible.

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[2] FMPA is currently exploring refinancing opportunities for the St. Lucie Project to achieve projected savings for all Project Participants, including the City. Receiving the written confirmation from FPL of its intent to operate St. Lucie Unit 2 through 2043 will not only impact FMPA's future costs projections

Following the April 16 meeting, FMPA received Jim O'Connor's April 19 letter which provided FMPA with direction in its efforts to assist the City. Mr. O'Connor's letter was the first formal request for assistance by the City concerning its desire to divest itself of the City's Power Entitlement Shares.

Although the April 16 meeting between the City and FMPA was the first formal conversation between the parties following the City's August 22, 2011, electric request for qualifications (RFQ), FMPA had earlier been involved in extensive conversation with the City representatives. Prior to issuance of the RFQ, FMPA staff and counsel met with the City' consultants, GAI Consultants, Inc., and outside counsel, GrayRobinson, P.A. I and others at FMPA had a series of discussions with those representatives of the City as they conducted due diligence for the contemplated transaction with FPL and developed a valuation of the City's electric system. Over the course of those discussions, I provided copies of all contracts between the City and FMPA and discussed with the City's representatives the meaning and impact of those contracts. While I have not been furnished a copy of the GAI Consultants' valuation report, I believe the report references those discussions. It would be helpful if you would provide me with a copy of the report.

Enclosed with this letter is a letter from FMPA's bond counsel, Arthur F. McMahon, Jr., which addresses FMPA's and the City's contractual obligations and the legal requirements applicable to sale of the City's electric system to FPL. Enclosed with Mr. McMahon's letter is a 2007 memorandum from him, which was provided to the City in May 2007, addressing those same contractual and other legal requirements in more detail.

I concur with Mr. McMahon's opinion that the City's April 19 letter constitutes the notice required by sections 28(c) and 13(c) of the Power Sales Contracts and Project Support Contracts, respectively, as described by Mr. McMahon's enclosed letter. I also concur with Mr. McMahon's conclusion that any sale of the City's electric utility system must be accomplished in accordance with the terms of these sections.

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for the St. Lucie Project, but may also assist FMPA in achieving larger savings in the contemplated refinancing efforts.

On April 27, I received a call from Mr. Miller, which was followed by his letter of the same date, asking that the City's current consultant, PA Consulting, be involved in FMPA staff's development of future cost projections for the City's Power Entitlement Shares. Having discussed this with Mr. Guarriello, FMPA is agreeable to sharing those future cost projections with PA Consulting after they are complete.

I also would request that you provide to FMPA any report that PA Consulting prepares for the City as such reports could facilitate our efforts.

As previously referenced, Mr. McMahon's enclosed letter and 2007 memorandum address the particular contractual and other legal requirements that would apply to the sale of the City's electric system to FPL. Mr. McMahon examined these issues in 2007 in association with the City's request for proposals (RFP), issued at that time to arrange for a power supply after the effectiveness of CROD. At that time there were many unknowns as to what form or shape the City's eventual power supply arrangement would take because all that FMPA had to evaluate was the RFP. However, the City apparently took instruction from Mr. McMahon's memorandum as it structured a supplemental power supply arrangement with OUC, avoiding all of the legal problem areas laid out in Mr. McMahon's memorandum.

As we did in 2007, when we first provided a copy of Mr. McMahon's memorandum to the City, FMPA always stands ready to assist its members. However, all contractual and legal requirements must be met for the protection of FMPA's other members who have signed the same contracts and for the protection of FMPA's bondholders. Among these requirements is the obligation to obtain FPL's and OUC's written consent as to any ultimate disposition of the City's Power Sales and Project Support Contracts.[3] As the City is partnering with FPL, and in discussions with OUC as well, I trust that you are working in advance to obtain the necessary written consents.

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[3] *E.g.*, Stanton Power Sales Contract, § 24(d); Stanton Project Support Contract between Florida Municipal Power Agency and City of Vero Beach, Florida (Jan. 16, 1984), as amended, § 17(d).

In addition to the 2007 memorandum, enclosed with Mr. McMahon's letter are copies of the documents from an earlier assignment transaction between the City of Homestead and Kissimmee Utility Authority (KUA), whereby Homestead assigned one-half of its Stanton Project and one-half of its Stanton II Project Power Entitlement Shares to KUA for the life of those Projects. This previous assignment followed all the terms of the contracts and met all legal requirements. Homestead and KUA arrived at terms of the assignment and then brought the assignment transaction to FMPA. FMPA then facilitated the consummation of the assignment. The parties entered into a transfer agreement, which required Homestead and KUA to bear all of FMPA's costs associated with necessary consents, notifications, and approvals. The transfer agreement was approved by resolution of both cities. Then, the parties entered into an assignment which was approved by resolution and ultimately approved by FMPA after it received all necessary consents and approvals and made the required notifications. As I noted to Mr. Miller during our April 27 telephone call, these Homestead to KUA assignment documents could be used as the template of sorts[4] for an assignment by the City of its Power Entitlement Shares to another FMPA member, but all applicable provisions of the Power Sales and Project Support Contracts must be complied with, both as to the assignment and the sale of the City's electric system to FPL.

FMPA takes seriously the City's request for assistance. If the City would facilitate FPL providing the requested information on the cost projections for St. Lucie Unit 2 and its intent to operate the unit through its license extension to 2043, that would enable FMPA to be of better assistance to the City. Additionally, if Mr. Miller would provide the form of his firm's opinion and the detail of the underlying analysis, we can begin the legal review of that structure as well.

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[4] Of course, the Homestead to KUA transaction did not involve the sale of the City of Homestead's electric utility system. Homestead remains contingently liable, and the enclosed documents expressly provide, that Homestead remains financially liable in the event of any default by KUA of its assigned obligations.

As I said in our meeting of April 16, I affirm my commitment to you to assist you in addressing the issues that must be resolved to pursue the City's objectives.

Sincerely,

Frederick M. Bryant
General Counsel

FMB:JLF:jlf
Enclosures (3) (including appendices)

cc: Jody Lamar Finklea
Nicholas P. Guarriello
Arthur F. McMahon, Jr.
James R. O'Connor
Thomas E. Reedy, P.E.