

JOINT MEETING SUMMARY

for the April 2, 2014, meeting

between

FMPA and the City of Vero Beach

Attendees:

FMPA

Fred Bryant

Jody Finklea

Nick Guarriello

Arthur McMahon, Nixon Peabody LLP (FMPA bond counsel)

City of Vero Beach

Wayne Coment

Jim O'Connor

Mayor Dick Winger

Meeting location: FMPA offices, Orlando, Florida

Time: approximately 12:00-4:30

The meeting began with sandwiches and informal discussion. The substantive portion of the meeting started with Mayor Winger and Jim O'Connor giving the FMPA representatives a briefing of where things stand in Vero Beach now:

- The effort to sell the electric utility system to FPL will likely not be completed by the end of the year.
- The Vero Beach electric director is currently developing a process to potentially shut down the City's generating units, which would take about 18 months to accomplish and must be coordinated with any needed transmission changes and discussed with OUC and FPL.
 - Jim and Mayor Winger stated this could save the City about 7% on its current costs and will enable the City to further reduce its retail rates.

- Jim said that FPL's offer for FMPA to purchase the capacity and energy associated with Vero Beach's interests in the Stanton and Stanton II Projects for up to three years, but ending no later than January 1, 2018, is off the table.
 - Jim stated the issue of the three-year power purchase will be resolved by other parties.
 - FMPA responded that it is no longer interested in the three-year purchase for \$52 million because of the additional terms that FPL added to its offer.
 - FMPA only responded to FPL's offer in an effort to help Vero Beach with the sale of its electric system.
 - FMPA does not need this power and taking the power for three years would expose FMPA to additional costs and risks.
 - FMPA stated its discussions with FPL on the three-year power purchase have ended.
 - Jim said that OUC wants to discuss FMPA's comments on the OUC-Vero Beach transfer and assignment documents with FMPA. Jim asked, is FMPA willing to do that? FMPA said yes and reiterated briefly the previous comments and concerns, given to the Vero Beach transactional attorneys, with the transfer and assignment documents. These were approved by Vero Beach and OUC without FMPA's input or approval.
 - FMPA stated that the current transfer and assignment documents are not effective and will not get FMPA's approval due to the noted problems with the documents (discussed with the Vero Beach transactional attorneys several times).
 - FMPA gave the Vero Beach transactional attorneys in May 2012 the document templates and checklists previously used by FMPA for project participant assignments.
 - The Vero Beach transactional attorneys agreed to provide drafts to FMPA before submitting documents to Vero Beach and OUC for final approval. This did not happen.
 - Vero Beach also acknowledged that most all of the sale documents and contracts concerning FMPA would have to be amended in some fashion.

- Mayor Winger said that he wanted to clear as much off the table as possible to simplify the objective and focus on achieving all the necessary approvals from FMPA and other parties to achieve the sale of the electric utility to FPL.
 - Mayor Winger also said that the end-of-the-year deadline for the transaction to close is not an imperative.
- Jim stated that he wants to focus on lining up all of the hurdles in the transaction and working through what has to be done to clear each one. Jim was particularly focused on quantifying as many of the issues (in dollar figures) as possible.

There was then a discussion of how to quantify expected costs and risks associated with the St. Lucie, Stanton, and Stanton II Projects, which could constitute contingent liabilities for the City. Vero Beach said it wants to try to reduce this to a dollar figure. If the contingent liabilities for these projects can be quantified, Vero Beach said it may be able to move forward with the offer of some type of contract insurance and revenue pledges such as what the transactional attorneys discussed with FMPA last June. Nick Guarriello made the point that the best source of some of this information on the potential dollar impact of the contingent liabilities could be FPL and OUC, who are the majority owners and operators of St. Lucie Unit No. 2 and the Stanton coal units, respectively. FMPA stated that it is impossible to quantify with certainty the contingent liabilities. However, the potential types of contingent liabilities and a range of expected costs for some of these contingent liabilities could be developed for the near term. The contingent liabilities remain for the life of the FMPA bonds or the retirement and decommissioning of the power plant, whichever is later. An example given of a St. Lucie Project contingent liability was decommissioning costs, which may not occur for decades.

For calendar year 2013, Vero Beach paid a total of:

- \$7,206,958 for its St. Lucie Project power,
- \$8,158,747 for its Stanton Project power, and
- \$7,733,793 for its Stanton II Project power.

Vero Beach and FMPA next discussed the possibility of a series of possible guaranties covering the contingent liabilities. Vero Beach would have to sign an unconditional guaranty to satisfy all of the potential contingent liabilities with FMPA for each of the three projects. Vero Beach could also sign a series of unconditional guaranties with FPL, and FPL for each of the three projects would guaranty to satisfy all of the contingent liabilities of Vero Beach for each of the three projects, if Vero Beach has to satisfy those contingent liabilities with FMPA. FMPA would not be a party to the

FPL guaranties. Vero Beach would be obligated to satisfy the contingent liabilities with FMPA regardless of whether or not FPL performs its guaranty obligations.

- FMPA pointed out that there is no assurance that the bond trustee, rating agencies, *etc.*, would accept this sort of guaranty arrangement because Vero Beach would no longer have the electric utility revenues to cover its guaranty obligations.
- However, FPL is a highly rated company and an unconditional guaranty to Vero Beach may provide value in the eyes of parties whose consent or other action is required. And, it addresses the contingent liabilities in total (whereas, the contract insurance and revenue pledges are limited to the dollar limits of the policy and the revenue collected).
- FMPA stressed that the contingent liabilities cannot be quantified to an amount certain because most of these contingent liabilities are, by their nature, financial consequences from unknown future events and circumstances.
- Jim asked, are the guarantees the only way to cover contingent liabilities? FMPA said the guarantees could be layered over the contract insurance and revenue pledges previously discussed with the transactional attorneys, but the guarantees are the only thing that FMPA has been able to suggest at this time that matches the potential scope of the contingent liabilities—if, after assignment of Vero Beach’s interests in the St. Lucie, Stanton, and Stanton II Projects, OUC defaults for one month, one year, or totally, Vero Beach has to pay FMPA in full, and FPL has to pay Vero Beach in full.

Next, the discussion addressed All-Requirements Project (ARP) stranded costs, including potential termination costs for the swap contracts associated with development of the former Taylor Energy Center Unit 1 project (the Taylor Swaps). Here, FMPA said it can offer some quantification of Vero Beach’s obligations. The Taylor swap contracts were authorized by FMPA in June 2006, the same month that FMPA made a presentation to the Vero Beach city council on the effects of its contract rate of delivery (CROD) notice and the potential liability of Vero Beach. At the time, FMPA was expecting to serve a Vero Beach CROD of about 36 MW and reflected that in the sizing of the project. All ARP participants will have to pay their share of the Taylor Swaps termination payments, if those termination payments have to be made, regardless of the actual CROD determination. In the past the Taylor Swaps potential termination payments (which fluctuate as interest rates fluctuate in comparison to the fixed rates stated in the Taylor Swaps contracts) have ranged between \$0 and \$140 million. Using that range, Vero Beach’s share of the possible Taylor Swaps termination payments could be \$0 to \$3.8 million, but the actual termination costs could also be higher. The current deadline to address the Taylor Swaps is October 1, 2015, and FMPA said it is working to reduce the cost impact on all ARP participants.

Another ARP stranded cost that has to be handled is the potential cost associated with fuel oil spillage at the Vero Beach plant site. FMPA owned all the fuel oil at the site from 1997 through January 1, 2010, but Vero Beach was in charge of fuel storage and handling. Based on an initial environmental study done by FPL, it appears the estimated cost associated with fuel oil contamination is approximately \$3.5 million. However, until decommissioning and dismantlement of the plant site, the actual costs cannot be known, as well as whether FMPA has any liability for fuel oil contamination.

Nick explained there are other stranded costs considerations as well, because FMPA was planning and building generation resources and committing to long-term contracts in anticipation of serving all of Vero Beach's electric load or, at least, Vero Beach's CROD. These other stranded costs could be from:

- Cane Island Unit 3,
- Stanton Unit A,
- the Oleander CT5 power purchase agreement,
- the KUA TARP contracts,
- Treasure Coast Energy Center Unit 1, and
- Cane Island Unit 4,

all of which were built or contracted for in anticipation of serving Vero Beach and the other ARP cities.

FMPA said the ARP contract requires FMPA to determine these stranded costs, in its sole discretion, which must be reasonably exercised. Vero Beach's current ARP withdrawal date is October 1, 2016. Fred Bryant pointed out that the required three-year withdrawal notice could have been given by Vero Beach much earlier (2009 or before). FMPA is obligated to provide a final stranded cost dollar amount to Vero Beach by October 1, 2016. As a condition of withdrawal, Vero Beach must pay its stranded costs calculated by FMPA in cash on the withdrawal date. Fred said a bond or guaranty or letter of credit will not work; the contract requires the payment to be made in cash.

Nick stated that FMPA's goal is to determine as accurate as possible a stranded cost figure, based on a reasonable methodology. FMPA may ask an outside consultant to review and verify its methodology. Nick said he wants this process to be transparent and open between FMPA and Vero Beach and with all of the ARP participants.

Nick stated that FMPA staff will begin working on the additional stranded costs analysis, but he emphasized the contract requirements. FMPA can only collect stranded costs from Vero Beach once. If FMPA collects too little, Vero Beach is not

obligated to make up the difference in the future. If FMPA collects too much for stranded costs (in other words, if FMPA receives a benefit from Vero Beach's withdrawal), FMPA repays an equal amount of FMPA's benefit back to Vero Beach, up to 90% of Vero Beach's stranded costs payment.

Mayor Winger stated that the City would continue to look at other options for lowering its costs to ratepayers, which is the primary goal of Vero Beach. Mayor Winger said that any ideas that FMPA can contribute to lowering costs would be appreciated. He reiterated that Vero Beach is looking at "anything to lower rates."

Nick offered FMPA's finance and power resources staff to help Vero Beach evaluate and work on cost savings opportunities.

Mayor Winger asked, "Can this [electric system sale] get done?" Fred said, "No," based on the FPL \$52 million offer. The City, FPL, and OUC or another acceptable party need to agree on the three-year purchase. Then, the answer may still be no, but it will ultimately depend on what Vero Beach and FPL are willing to do to meet Vero Beach's contract obligations and what the bond trustee, ratings agencies, *etc.*, are ultimately willing to accept and if the transaction can finally gain the unanimous approval of the 20 cities that participate in FMPA projects with Vero Beach, as well as approval of the FMPA Executive Committee and the FMPA Board of Directors. These approvals are still a long way off. FMPA also cautioned Vero Beach that it is trying to accomplish something (the sale of its electric system to FPL) that the FMPA project contracts expressly prohibit; any ultimate sale of the Vero Beach electric system to a party that is not an FMPA-eligible municipal electric utility will require waivers of a number of the provisions of all the project contracts by all 20 project participants.

Jim asked, is FMPA still willing to work with FPL on the sale of the Vero Beach electric system? FMPA said that it will not discuss the three-year purchase with FPL any further, but it will work with Vero Beach along with FPL on the transaction where FPL is a necessary party to the discussions. However, the contracts between Vero Beach and FMPA are matters for discussion just between Vero Beach and FMPA. Nick said that FMPA is, and has always been, ready and willing to talk with Vero Beach and to work with Vero Beach, as long as all the terms of Vero Beach's contracts with FMPA can be met.

Everyone agreed to the preparation of a joint meeting summary and that no public discussions would be engaged in about the meeting, except for one-on-one briefings with governing body members, until the meeting summary is issued.