Peabody confirmed that this "Contract Debt" treatment is JEA's customary practice for this type of transaction and that they have entered into other such transactions before.

MEAG could conceivably argue that this provision somehow bootstraps the covenants in favor of JEA bondholders set forth below in more detail. We think such an argument would fail because the PPA does not grant MEAG the status of a bondholder under JEA's resolution. Also, Section 3 of the JEA bond resolution states that the resolution is a contract with the JEA bondholders for the equal benefit, protection and security of the holders of JEA's bonds – it does not mention the holders of Contract Debt as being beneficiaries. If MEAG were somehow able to "bootstrap" its way into being a beneficiary of the JEA resolution, it would benefit from the following JEA covenants:

- Section 13.D – Rate Covenant: JEA covenanted to collect rates and charges sufficient to pay 100% of O&M costs (including Contract Debts) and 120% of JEA bond debt service requirements.

- Section 13.G – Prohibition on Asset Sales: JEA covenanted not to sell all or substantially all of the physical assets of the electric system. "Substantially all" means assets having an aggregate depreciated cost of not less than 90% of the total depreciated cost of all the electric system assets.

- Section 13.I – Corporate Reorganizations: JEA reserved the right to effect a reorganization of its corporate structure in any manner whatsoever permitted by Florida law, so long as such reorganization does not adversely affect the security for the JEA bonds.

It is important to note that if JEA pays off or defeases all of its electric system bonds, the JEA electric system bond resolution goes away and the covenants above would be moot. We assume that any privatization of the JEA would include such a pay-off or defeasance.

Nixon is generally willing to assist and serve as a resource to JEA in this endeavor. They are currently working on JEA's annual continuing disclosure report which is due to be filed with bondholders in April, and thought it would be appropriate for us to review the disclosure language for accuracy relating to the current status of the MEAG transaction and privatization efforts. It is very important that we and you review this disclosure in light of what is being considered regarding the privatization of the JEA or any repudiation efforts of the PPA.

Nixon also noted that they think Orrick represented both MEAG and JEA at the time the PPA was entered into, which may be a helpful fact if JEA is seeking to challenge the PPA. We should find out from the JEA what law firms were involved in the PPA and what the roles were for each firm.

Other provisions to note:

Section 7.18 of the DOE Loan Guarantee Agreement between the DOE and SPVJ (MEAG's subsidiary special purpose vehicle that owns Project J), prohibits SPVJ from abandoning or permanently ceasing to pursue the construction or operation of Project J**, or voting in favor of such a proposal**. This may have been a factor in MEAG deciding not to terminate the Vogtle project.

Also, there are several Events of Default in Section 8.1 of the DOE Loan Guarantee Agreement that may be triggered depending on how JEA tries to relieve itself of its PPA liabilities:

- 8.1(f)(i) – JEA fails to pay amounts due for 90 days and MEAG fails to provide a cure plan within 120 days. Such a payment default can also be cured if MEAG makes the payments from other sources.

- 8.1(f)(iii) – the PPA is or becomes invalid, illegal, void or unenforceable against JEA, or is terminated prematurely.

- 8.1(f)(v) – JEA shall have repudiated or disavowed or taken any action to challenge the validity or enforceability of the PPA, and MEAG fails to contest such action in good faith by appropriate legal proceedings within 45 days.

- 8.1(g) – SPVJ agrees to release any material portion of the collateral securing the DOE loan (e.g., the payments under JEA's PPA).

- 8.1(n) – the bankruptcy, insolvency or dissolution of JEA.

Thanks,

Dave

David J. Stevens | **Holland & Knight**
Senior Counsel
Holland & Knight LLP
1180 West Peachtree Street |Suite 1800 | Atlanta, GA 30309
Phone 404.817.8546 | Fax 404.881.0470
david.stevens@hklaw.com | www.hklaw.com