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**From:** Orfano, Joseph E. - Treasurer <orfaje@jea.com>  
**Sent:** Wednesday, May 23, 2018 2:17 PM  
**To:** 'Rapaport, Mitch'  
**Cc:** Columbo, Elizabeth; Rothchild, Barry (NYC); Wannemacher, Ryan F. - Dir  
Financial Planning & Analysis  
**Subject:** RE: Tax Certificate Privatization Language/Electric\_Water & Sewer System Advance Refundings

I will discuss w/Ryan, but that is our expectation at this point, Mitch.

Thanks,

**Joe Orfano**

Treasurer

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**From:** Rapaport, Mitch <MRapaport@nixonpeabody.com>  
**Sent:** Wednesday, May 23, 2018 2:02 PM  
**To:** Orfano, Joseph E. - Treasurer <orfaje@jea.com>  
**Cc:** Columbo, Elizabeth <EColumbo@nixonpeabody.com>; Rothchild, Barry (NYC) <brothchild@nixonpeabody.com>; Wannemacher, Ryan F. - Dir Financial Planning & Analysis <wannrf@jea.com>  
**Subject:** RE: Tax Certificate Privatization Language/Electric\_Water & Sewer System Advance Refundings

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If you can make that rep that you don't expect to sell, etc during the term of the debt, then that would be all we need.

**Mitch Rapaport**

Partner

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**From:** Orfano, Joseph E. - Treasurer [<mailto:orfaje@jea.com>]**Sent:** Wednesday, May 23, 2018 1:39 PM**To:** Rapaport, Mitch <[MRapaport@nixonpeabody.com](mailto:MRapaport@nixonpeabody.com)>**Cc:** Columbo, Elizabeth <[EColumbo@nixonpeabody.com](mailto:EColumbo@nixonpeabody.com)>; Rothchild, Barry (NYC) <[brothchild@nixonpeabody.com](mailto:brothchild@nixonpeabody.com)>;Wannemacher, Ryan F. - Dir Financial Planning & Analysis <[wannrf@jea.com](mailto:wannrf@jea.com)>**Subject:** RE: Tax Certificate Privatization Language/Electric\_Water & Sewer System Advance Refundings

Mitch:

Discussed this again w/Ryan at lunch. If our position is that JEA privatization is effectively dead, shouldn't we be in a position to make the reps contained in Section 8 of the Electric System Series Three 2017A Tax Certificate?

Thanks,

**Joe Orfano**

Treasurer

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**From:** Rapaport, Mitch <[MRapaport@nixonpeabody.com](mailto:MRapaport@nixonpeabody.com)>**Sent:** Tuesday, May 22, 2018 6:08 PM**To:** Orfano, Joseph E. - Treasurer <[orfaje@jea.com](mailto:orfaje@jea.com)>**Cc:** Columbo, Elizabeth <[EColumbo@nixonpeabody.com](mailto:EColumbo@nixonpeabody.com)>; Rothchild, Barry (NYC) <[brothchild@nixonpeabody.com](mailto:brothchild@nixonpeabody.com)>;Wannemacher, Ryan F. - Dir Financial Planning & Analysis <[wannrf@jea.com](mailto:wannrf@jea.com)>**Subject:** RE: Tax Certificate Privatization Language/Electric\_Water & Sewer System Advance Refundings

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The reason that we included that language in the December transaction is that the customary representation is that the issuer, JEA, does not reasonably expect any private use of the proceeds or the financed facilities during the term of the tax-exempt debt being issued. In December, that representation couldn't be made so we had to go with the fallback which is a representation that private use is not expected for a "substantial period" (generally 10% of the term of the debt) coupled with an ability to redeem the debt if the impermissible private use actually occurs.

Since the amendment to include the Direct Purchase mode under the SBPA will result in a "reissuance" (that is, a new issue) for tax purposes, we are again in the position where one of those representations needs to be made. sorry



**Mitch Rapaport**

Partner

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**From:** Orfano, Joseph E. - Treasurer [<mailto:orfaje@jea.com>]

**Sent:** Tuesday, May 22, 2018 5:46 PM

**To:** Rapaport, Mitch <[MRapaport@nixonpeabody.com](mailto:MRapaport@nixonpeabody.com)>

**Cc:** Columbo, Elizabeth <[EColumbo@nixonpeabody.com](mailto:EColumbo@nixonpeabody.com)>; Rothchild, Barry (NYC) <[brothchild@nixonpeabody.com](mailto:brothchild@nixonpeabody.com)>;

Wannemacher, Ryan F. - Dir Financial Planning & Analysis <[wannrf@jea.com](mailto:wannrf@jea.com)>

**Subject:** Tax Certificate Privatization Language/Electric\_Water & Sewer System Advance Refundings

Mitch:

As you are probably aware, we are proceeding with a short-term extension of the RBC SBPAs [*allowing us to have amended resolutions for the proposed Direct Purchase Agreements approved by the Finance & Audit Committee/JEA Board in August*]. In reviewing the Electric/Water & Sewer System advance refunding tax certificates from December, Ryan has questioned whether the language I have included below even needs to be in the prospective RBC tax certificates that will be required for the DP agreements, as:

- (1) the Mayor has stated that he would not advance legislation for a JEA privatization;
- (2) the JEA Board has indicated that any future activities tied to a privatization effort by Staff would be required to be initiated and directed by the Board.

**Private Business Test.**

**General.** The private business test will be satisfied (and the Bonds will be private activity bonds) if both the "private business use test" and the "private security or payment test" are satisfied. In response to the request of a member of its Board, the Chair of the JEA Board authorized JEA staff to cause the necessary work to be done for the Board to be able to consider the financial benefits that would result from a privatization of JEA's Electric System and Water and Sewer System and whether the customers of JEA and the

people of the City of Jacksonville would be better served by the private marketplace. JEA currently expects the analysis to be completed and the findings provided to the JEA Board for consideration and further action during the first quarter or second quarter of 2018. Although JEA cannot predict the ultimate outcome of this request, based on prior studies, JEA has no expectation that the Electric System or the Water and Sewer System would be privatized. In addition, based on its own analysis and consultations with its advisor and underwriters, including PFM, Goldman Sachs, Citigroup, and Wells Fargo, JEA reasonably expects that if there was a decision to privatize either the Electric System or the Water and Sewer System, it would take in excess of 2 years to complete such a transaction. The terms of the Bonds provide JEA with the ability to redeem the Bonds if necessary to preserve the tax-exempt status of the Bonds and JEA will consult with Bond Counsel regarding the necessity of redeeming the Bonds if it is determined that the ownership or management of the Electric System or the Water and Sewer System is to change in a manner giving rise to impermissible private business use.

Thoughts?

**Joe Orfano**

Treasurer

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