
From: Allen.Maines@hklaw.com
Sent: Friday, July 26, 2019 5:19 PM
To: Stephen.Amdur@pillsburylaw.com
Cc: Vinyard, Herschel T. - Chief Administrative Officer; Zahn, Aaron F. - Managing Director/CEO; David.Stevens@hklaw.com
Subject: FW: CONFIDENTIAL - Matrix re Potential Roadblocks to JEA Privatization

[External Email - Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.]

Making sure you have the matrix that Mike and Dave created last weekend regarding potential roadblocks to privatization of JEA based on the PPA. Dave notes that JEA's own outstanding bonds relating to other projects are also tax exempt and would need to be defeased before it could privatize. See PPA §§ 305, 306 (page 2 of chart).

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

Potential Roadblocks to JEA Privatization

Source	Description	Potential MEAG Action	JEA Response
PPA §203	Buyer owes additional payment obligations of \$0.50 - \$3.50 per delivered MWh (Note – if JEA defaults and MEAG stops delivering energy, and honors MEAG’s mitigation obligation by selling products to a third party, this may drop away.)	MEAG could sue to enforce this covenant and enjoin a JEA breach	JEA can argue that a court cannot grant specific performance remedy against a municipal entity and can only sue for money damages.
PPA §204(a) through (d)	Buyer owes additional payment obligations of Buyer’s Obligation Share of annual Units 3 & 4 costs.	MEAG could sue to enforce this covenant and enjoin a JEA breach	JEA can argue that a court cannot grant specific performance remedy against municipal entity and can only sue for money damages.
PPA §204	Buyer owes 50% of any payment obligation on which MEAG defaults on BANs or Take-Out bonds.	MEAG could sue to enforce this covenant and enjoin a JEA breach	JEA can argue that a court cannot grant specific performance remedy against municipal entity and can only sue for money damages.
PPA §204(g)	Statement of Buyer’s Hell or High Water payment obligation.	MEAG could sue to enforce this covenant and enjoin a JEA breach	JEA can argue that a court cannot grant specific performance remedy against municipal entity and can only sue for money damages.
PPA §205	Buyer obligation to pay Units 3 & 4 annual costs.	MEAG could sue to enforce this covenant and enjoin a JEA breach	JEA can argue that a court cannot grant specific performance remedy against municipal entity and can only sue for money damages.

Source	Description	Potential MEAG Action	JEA Response
PPA §206(b), (c) and (d)	MEAG will bill Buyer for Obligation Share of accrued reserve fund replenishment, fuel costs, and interest costs.	MEAG could sue to enforce this covenant and enjoin a JEA breach	JEA can argue that a court cannot grant specific performance remedy against municipal entity and can only sue for money damages.
PPA §211	Buyer must pay share of delay costs to Project.	MEAG could sue to enforce this covenant and enjoin a JEA breach	JEA can argue that a court cannot grant specific performance remedy against municipal entity and can only sue for money damages.
PPA §305	<u>JEA Resale Covenant</u> : JEA covenanted that it would not, without MEAG consent, enter into a contract with a “non-exempt” person to sell the output from Project J. “Non-exempt” person means any entity that is not a state, territory or possession of the U.S., the District of Columbia or any political subdivision thereof.	MEAG could sue to enforce this covenant and enjoin a JEA breach.	To avoid breaching this covenant, either (1) the MEAG bonds would need to be refunded with taxable bonds, or (2) the PPA would need to remain with or be transferred to a municipal entity. A transfer would require MEAG, bondholder and DOE consent.
PPA §306	<u>JEA Tax Covenant</u> : Similar to Resale Covenant above, JEA covenanted that it would take no action, nor consent to or approve the taking of any action affecting any right, obligation, or interest under the PPA, including any action relating to the sale of Project J output that would, in the opinion of bond counsel, adversely affect the tax-exemption on the Project J Bonds or the eligibility of the BABs to receive the interest subsidy.	MEAG could sue to enforce this covenant and enjoin a JEA breach.	Same as above.

Source	Description	Potential MEAG Action	JEA Response
PPA §307	<u>JEA Rate Covenant</u> : JEA covenanted that it will establish, collect and maintain rates and charges for electric service of its Electric System so as to provide sufficient revenues, together with its Electric System reserves, to pay all amounts due under the PPA and all other amounts payable from revenues of its Electric System.	MEAG could sue to enforce this covenant and enjoin a JEA breach.	The entity that is obligated under the PPA would need to retain the electric system or have sufficient reserves to pay all amounts due.
PPA §401(e)	MEAG may issue additional bonds and take additional draws on DOE loan, and Buyer will be obligated for its pro-rata share.	MEAG may sue to enforce this covenant and enjoin JEA breach.	JEA may argue court cannot grant specific performance remedy and only available remedy is money damages.
PPA §702(c), (d), (f), (g), (h)	JEA representations and warranties that: (c) Buyer has due authorization under corporate governance documents to execute and perform PPA, (d) Buyer has all government authorization needed to execute and perform PPA, (e) PPA is enforceable, (g) Buyer has sufficient financial resources to perform PPA, (h) PPA constitutes contract debt.	MEAG may interpose these representations & warranties with respect to any JEA defenses against enforcement or money damages with respect to default under PPA.	JEA may argue these points are immaterial due to lack of actual City Council vote needed for authorization.

Source	Description	Potential MEAG Action	JEA Response
PPA §1001	<u>Prohibition on Assignment:</u> JEA cannot assign or transfer all or any part of any right, obligation or interest under the PPA without the prior written consent of MEAG. Any such attempted assignment or transfer is null and void. This covenant does not prevent JEA’s resale of output so long as it complies with the tax covenants in PPA §§305 and 306.	MEAG could sue to enforce this covenant and enjoin a JEA breach.	JEA’s recapitalization would need to avoid assigning or transferring the PPA.
JEA Electric System Senior Bond Resolution, §13.D	<u>JEA Rate Covenant:</u> JEA covenanted that it will always establish and collect fees, rates and charges sufficient to pay 100% of all Costs of Operation and Maintenance, including Contracts Debts, of the Electric System. The PPA is a Contract Debt.	MEAG could sue to enforce this covenant and enjoin a JEA breach.	Resolution is a contract for the benefit of JEA bondholders. Unclear if MEAG would have standing to enforce this covenant since it is not a JEA bondholder.
JEA Electric System Senior Bond Resolution, §13.G	<u>JEA Covenant Against Sale or Mortgage of Electric System:</u> JEA covenanted that it will not sell all or substantially all of the physical properties of the Electric System (nor create a mortgage or other lien thereon). “Substantially all of the physical properties of the Electric System” means physical properties of the Electric System having an aggregate depreciated cost of not less than 90% of the total depreciated cost of all of the physical properties of the Electric System at the time.	MEAG could sue to enforce this covenant and enjoin a JEA breach.	Same as above.

Source	Description	Potential MEAG Action	JEA Response
JEA Electric System Senior Bond Resolution, §13.I	<u>JEA Covenant Regarding Corporate Reorganizations:</u> JEA reserved the right to effect a reorganization of its corporate structure in any manner permitted by Florida law, so long as the reorganization does not adversely affect the security for JEA’s bonds.	MEAG could sue to enforce this covenant and enjoin a JEA breach.	Same as above. Also, “Contract Debts” (such as the PPA) are not protected by this covenant.
JEA Charter §21.04(n)	<u>City Council Approval Required:</u> The Charter allows JEA to enter into joint project agreements as provided by part II of chapter 361, Florida Statutes, but any joint project agreement that involves a transfer of any function or operation that comprises more than ten percent of the total of the utilities system by sale, lease or otherwise to any other utility, public or private, requires prior approval of the City council.	MEAG could lobby the City Council not to approve a recapitalization of JEA.	