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Subject: JEA action items, possible strategies, and work assignments; Privileged and confidential

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Jody, JUST TO YOU BECAUSE OF THE STRATEGY DISCUSSION HEREIN. Here are some miscellaneous thoughts about some of the action items we discussed on Thursday. I am sending these just to you because they concern options and possibilities that are yet to be deliberated, and therefore I leave it to you to share orally with Melissa or others however you deem appropriate. I am sending a separate memo to you and Melissa because I wanted everyone to know that we have top-notch energy and lobbying connections that can help here especially if we can control the deal documents.

1. Enlisting DOE's support. My colleagues Scott Mason and Tom Reynolds can help here. Scott was in the Trump Transition Team and he has contacts with Secretary Perry. Possible the new mayor in Jax could be a significant asset in that effort. DOE has various emergency powers and unorthodox ways of making things happen or not happen in the utilities world.
2. Enlisting the Trump Administration's support, or at least ensuring that the administration does not come out in favor of completing Plant Vogtle. We have numerous people that we hired from the administration and former regulators and politicians. HK was just and perennially is recognized as "Government Relations Law Firm of the Year. Happy to send you info and bios.
3. Lobbying FERC. Once a complaint is filed the *ex parte* rules kick in and any outreach on the merits of the complaint is not appropriate. Thus, we would have to go in prior to submitting the actual complaint. We have contacts with the new chairman at FERC as well some of the other staff.
4. I realize that one underlying assumption to privatization is that prospective purchasers will not be interested unless JEA sheds itself of the PPA, but we should continue to mull this over because it may not be possible to shed the MEAG and PPA exposure quickly, and this is a creative way to nevertheless privatize without giving away the farm. We have seen sales where the buyer and the seller strike a deal and agree to pursue or defend claims, with an agreement about how to divide the spoils under various outcomes. Generally the buyer has everything to gain and little to lose. So, an alternative approach may be to privatize the utility with the MEAG exposure still in the deal, with a mechanism for the City sharing the upside and downside final outcome risks with the buyer. Possibly the buyer will be a sophisticated and well capitalized entity that will be able to implement a more successful strategy to exit the MEAG entanglement after the sale than JEA can in a short fuse negotiation beforehand. A sale with the pre-MEAG exit valuation plus a two way earn-out contingent in the post-sale exit may allow JEA to mitigate its risk more effectively. You and a core group of JEA people might be needed to remain in order to chaperone the litigation or FERC proceedings. Alternatively, we also have seen situations where a claim is sold or backed by a third party such as a litigation finance investment fund, but success here would necessarily require JEA old and new to remain very involved.
5. Here is a running list of action items and assignments that can serve as an agenda for our next call later in the week.

1. Background: Jacksonville's new young Republican mayor is out to shrink government, and wants to privatize JEA—quickly, while the market is "right." He says within 3-5 months. Obviously, Plant Vogtle and the PPA greatly affect valuation. JEA wants to accelerate efforts to convince MEAG to take back JEA's position and if necessary JEA is willing to pay MEAG to take back the PPA and assume its obligations concerning continued cost over runs, leaving MEAG in theory with cash up front and the ability to "re-sell" 20 years of power to someone else.
2. JEA will meet with MEAG in two weeks to again communicate to MEAG that it wants out of the PPA, but this time informing MEAG that JEA will be privatized.
3. It is doubtful that MEAG will think JEA is serious, and so options for the next step being considered by JEA include:
 - A. Sending MEAG, its board, and its member organizations a letter outlining the actions JEA intends to take (and the bases therefor) if an agreement is not reached by MEAG within 30(?) days.
 - B. Sending MEAG a preservation of evidence letter, outlining JEA's possible claims, so that all interested parties can see how this is going to "look, sound, and feel."
 - C. Sending MEAG a draft petition to FERC meticulously outlining the reasons why the PPA is "unjust and unreasonable" in light of JEA's alternative sources of power. My inclination is to avoid providing MEAG a copy of the actual draft FERC compliant (just gives them more time to prepare an answer), but we can prepare a summary of the claims and basis that should suffice.
 - D. Enlisting the DOE's support to influence MEAG.
4. Holland & Knight Work Assignments:
 - A. We are asked to thoroughly research and build the argument that FERC has jurisdiction over the PPA and possibly related agreements such that JEA can ask FERC to void the PPA. Paul expressed some concern that the PPA is for generation and not transmission, and that FERC may not have jurisdiction. However, Georgia Transmission (the entity that transmits power under the PPA) is 1/3 owned by MEAG, in case that fact is relevant. I would not get caught up on the distinction between the transmission vs. commodity aspect of the analysis – bottom line, FERC has jurisdiction over both products if done via interstate transactions. If possible, it may be helpful to get a full list of all transaction documents to make sure we have everything on hand for the review, and we should look at the transmission agreement. Jody: can you send these please?
 - B. If we conclude that FERC has jurisdiction, JEA has asked H&K to verify that there is no Mobile-Sierra waiver or agreement to a lesser FERC standard, anywhere in the documents.
 1. If FERC has jurisdiction and there is no waiver, JEA would like a strategy memorandum how best to expedite the FERC proceeding among other reasons by confining the inquiry just to the cost of power under the PPA versus JEA's cost of power from other sources. Speed and time are of the essence to Jacksonville's mayor. Explain how the process is started, and outline the HK contacts and resources that can ensure FERC accelerates the proceeding.
 - C. Thoroughly analyze whether JEA has acted ultra vires, thereby invalidating the PPA.
 - D. Analyze and outline the arguments and supporting authorities that might excuse JEA's future performance, or support its claims that MEAG has breached the PPA. Theories discussed include:
 1. Evaluating MEAG's reps and warranties (e.g., that it would consider JEA's interests the same as its own constituents interests.
 2. Despite contractual language that the parties waive "frustration," analyze whether JEA can build a "frustration of essential purpose" argument that would serve as a defense to a suit for breach of contract if it stopped paying.
 3. Building the argument that MEAG failed to follow Prudent Utility Practices (e.g., seeking lowest energy costs for rate payer's), and outlining how JEA can gain maximum benefit therefrom.
 - E. HK lobbying DOE to support JEA's efforts with MEAG.
 - F. Equitable estoppel.
 - G. Fraud in the inducement (unlikely).
 - H. Breach of the implied covenant of Good Faith and Fair Dealing.

- I. Developing other ideas about how to pressure/convince MEAG to reach an agreement with JEA.
 - J. HK is to develop a 2-3 page memo/letter that can be given to MEAG summarizing JEA's case.
 - K. Draft FERC petition, if viable.
 - L. Draft spoliation letter to be sent to MEAG.
 - M. Evaluate the procedure and approvals that would have to be obtained if MEAG and JEA reach an agreement (e.g., DOE, bond trustee).
 - N. Draft the proposed MEAG term sheet.
5. Holland & Knight "Next Steps" subject to JEA authorization :
- A. JEA expects to auction itself, and believes that at least 5-6 strategic buyers might be interested in the electric assets (there also are water assets and a de-commissioned coal facility). The deal documents will have to be drafted prior to the auction and posted in a virtual deal room. Subsequently, they will have to be negotiated.
 - B. Drafting the MEAG final agreement.
 - C. Government Relations: lobbying DOE, FERC, and the trump administration so that it does not come out in favor of continuing with Plant Vogtle.
 - D. Any thoughts about how the buyer and JEA could pursue the claim against MEAG or petition FERC, and split the recovery? Or could the claims be "sold" to a litigation finance group?

Best,

Allen

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