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Sent: Thursday, October 10, 2019 8:48 PM
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Cc: Weissman, Andrew D.; Lima, Augusto C.
Subject: Privileged and Confidential - Structuring Playbook

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All,

Attached please find our current working draft of the Structuring Playbook. Additional edits will be forthcoming, but we wanted to share our current status in the interests of time.

Please let us know if you have any questions or comments or would like to discuss.

Best regards,

Steve

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PPA Transaction Structuring Playbook

	Option 1	Option 2
Option Overview	<ul style="list-style-type: none"> i. PPA remains at “Legacy JEA”. Legacy JEA continues to sell power to end-use customers. JEA has option to bill customers directly or add a separate line-item on Newco’s bill, with Newco acting as a billing and collection agent. ii. JEA retains the authority to set its own rates and passes through to customers 100% of its costs under the PPA. 	<ul style="list-style-type: none"> i. PPA remains at “Legacy JEA”. In connection with the transaction, a portion of proceeds sufficient to pay all anticipated fees and charges under the PPA are deposited into an escrow account. ii. Upon the plant coming online, power is sold to municipal power purchasers or private buyers that satisfy IRS carve-out requirements at the then-market price, either through TEA (acting as broker) or another suitable alternative. iii. Legacy JEA retains the right to sell power to end-use customers, but would not do so for at least [●] years following the Closing. iv. JEA retains the authority to set its own rates and the ability to, upon exhaustion of the escrow, charge through to customers 100% of its costs under the PPA.

	Option 1	Option 2
Key Considerations	<ul style="list-style-type: none"> i. By maintaining a direct cost pass-through structure, Option 1 ensures that JEA has sufficient revenues to pay charges under the PPA. ii. PPA counterparty may nevertheless seek to block structure based upon tax-exempt considerations; accordingly, obtaining a PLR may be a useful defense against such claims. iii. Bidders may reduce amount bid to purchase JEA’s electric system due to perceived rate charge overhang. iv. Customers will bear cost of PPA on an ongoing basis (as would have been the case if JEA’s current structure were to be maintained); costs may be substantial in coming years. v. Buyers may also be reluctant to step into Option 1 given ongoing litigation with PPA counterparty and perceived litigation risk. 	<ul style="list-style-type: none"> i. By funding a portion of proceeds into escrow sufficient to cover [●] years of Legacy JEA liabilities, JEA provides the counterparty under the PPA with greater protection than it has currently for this period. A mechanism also remains available to provide additional funding in future years, if needed. ii. Same as item (ii) under Option 1. iii. Same as item (iii) under Option 1. iv. Customers would not bear cost of PPA unless and until costs exceeded escrowed funds. v. Potential perceived reduction of legal risk for Buyers.

	Option 1	Option 2
Structuring Breakdown	<ul style="list-style-type: none"> i. Legacy JEA’s obligation to serve customers is limited to the sale of power purchased under the PPA on an as-available basis; ii. The City of Jacksonville (“COJ” or “City”) grants a franchise to Newco, obligating Newco to meet all the remaining electricity requirements of customers in JEA’s service territory and requiring Newco to deliver the power provided by JEA to customers using the transmission and distribution system Newco purchases from JEA;¹ iii. JEA enters into an asset purchase agreement with Newco to sell all or nearly all of its existing assets, except for the PPA, to Newco; iv. JEA and Newco enter into a Territorial Agreement [final decision regarding whether to create a Territorial Agreement not yet made]; 	<ul style="list-style-type: none"> i. At the closing, an amount equal to \$[●]³ is deposited into an escrow account (the “Closing Escrow”) for purposes of covering all outstanding liabilities of Legacy JEA, including the PPA; ii. Legacy JEA no longer maintains exclusive obligation to serve customers of the community, however, Legacy JEA maintains the ability to charge rates to customers directly for potential cost overruns⁴; iii. The City of Jacksonville (“COJ” or “City”) grants a franchise to Newco, obligating Newco to meet all the remaining electricity requirements of customers in JEA’s service territory and requiring Newco to deliver the power provided by JEA to customers using the transmission and distribution system Newco purchases from JEA; iv. JEA sells all or nearly all of its existing assets, except for the PPA, to Newco;

¹ Newco’s rates for providing transmission and distribution service to its customers will be subject to cost of service ratemaking, with rates for use of the distribution system set by the PSC and transmission rates set by FERC.

³ Actual amount under discussion; to be full amount of outstanding obligations under PPA as calculated under a conservative model and treating NPV of power sales obtained through the PPA at \$0.

⁴ Potential for backstop insurance to be set at specified levels currently being explored to mitigate overrun risk to city and/or customers.

	Option 1	Option 2
	<p>v. JEA enters into a delivery services agreement with Newco setting forth the terms and conditions of Newco's obligation to deliver power to JEA's customers using the Transmission and Distribution assets Newco acquires from JEA;</p> <p>vi. Legacy JEA enters into a power balancing agreement and other related agreements spelling out further the division of responsibilities between Legacy JEA and Newco.</p> <p>vii. Immediately after the APA is executed, Newco files a Section 203 application with FERC seeking approval to acquire JEA's FERC jurisdictional assets and makes required filings under Hart-Scott-Rodino and (if applicable) CIFIUS with the Florida Public Service Commission (the "<u>PSC</u>");</p> <p>viii. Newco also files a distribution tariff with the PSC;</p> <p>ix. Newco files an Open Access Transmission Tariff with FERC and Section 205 rate applications for use of Newco's transmission and authority to sell power in the wholesale market at market-based rates;</p>	<p>v. Same as items (iv - xii) under Option 1;</p> <p>vi. When the underlying plant comes online, Legacy JEA sells power to applicable municipal utilities through TEA (acting as broker). Proceeds to be retained by Legacy JEA until termination or expiration of PPA and may be utilized to pay applicable expenses of Legacy JEA;</p> <p>vii. Legacy JEA and Newco enter into a billing and collection agreement, under which, in the event the Closing Escrow is insufficient to cover all expenses of Legacy JEA, a line item charge adequate to cover Legacy JEA's costs under the PPA (the "<u>Legacy PPA Charge</u>") will be added to the bills Newco sends to electricity customers;</p> <p>viii. Newco collects the Legacy PPA Charge and remits the amounts collected to Legacy JEA.</p>

	Option 1	Option 2
	<p>x. After the PSC allows Newco’s rates to go into effect, Newco takes over all of JEA’s responsibilities for serving customers except for power provided under the PPA;</p> <p>xi. Legacy JEA and Newco enter into a billing and collection agreement, under which a line item charge adequate to cover the full amount of Legacy JEA’s costs under the PPA (the “<u>Legacy PPA Charge</u>”) will be added to the bills Newco sends to electricity customers;²</p> <p>xii. Newco collects the Legacy PPA Charge and remits the amounts collected to Legacy JEA;</p>	

² This charge would be identified on customer bills as a charge by JEA that Newco collects on JEA’s behalf. Newco’s function, with respect to this charge, is strictly to act as a billing and collection agent. It is not a “rate” being charged directly by Newco and, therefore, in our view should not be subject to the PSC’s ratemaking authority. However, the PSC approval may be required in order to authorize Newco to perform this function. In determining whether to grant this approval, the PSC is likely to review: (i) whether the fees Newco charges to provide this service are sufficient to fully reimburse Newco for its costs; and (ii) whether it is in the best interest of Newco’s customers to allow Newco to provide this service.

	Option 1	Option 2
PSC Approval	<ul style="list-style-type: none"> i. PSC Approval required for rates to be charged by Newco. ii. JEA's charges to its customers are not subject to PSC review. iii. However, for JEA to use Newco as a billing and collection agent, PSC may be required to give approval to Newco to perform this function. 	<ul style="list-style-type: none"> i. Same as item (i) under Option 1. ii. Same as item (ii) under Option 1. iii. Anticipated oversight likely lessened for initial rate cases given substantial economic backing from Closing Escrow.
Tax Issues	In order to forestall potential claims by PPA counterparty, PLR may be sought to confirm tax analysis that Option 1 will not be violative of PPA covenants. Appropriate mechanics for determination of PLR feasibility ongoing.	Same as under Option 1.

	Option 1	Option 2
Key Agreements	<ul style="list-style-type: none"> • Franchise Agreement • Territorial Agreement • Delivery Services Agreement • Power Balancing Agreement • Distribution Tariff • FERC/Transmission Tariff • Billing and Collections Agreement • 	<ul style="list-style-type: none"> • Same agreements as Option 1, plus an Escrow Agreement
Timeline	<ul style="list-style-type: none"> • [TBD] 	<ul style="list-style-type: none"> • [TBD]