From: Shalley, Nicolle M.
To: Bielarski, Edward J
Subject: RE: Response to revised MOU from GREC
Date: Wednesday, March 15, 2017 2:01:50 PM
Attachments: grec - gru mou rev 6.docx

Hello Ed – In follow up to our conversation, attached please find a revised draft (rev 6) that incorporates Mr. Gordon's offer below and the revisions you requested. If you have any questions or do not believe the draft accurately reflects your intent, please give me a call. You will also see that I made a couple of clarifying revisions and moved the deadline for execution/delivery from April 15 to April 21, as that would provide time for the UAB and CCOM to discuss on March 23 (joint meeting), April 6 (CCOM Meeting), April 19 (UAB Meeting) and April 20 (CCOM Meeting). Again, just trying to avoid the perception of a "rushed transaction" from overshadowing the substance of the conversation.

Nicolle M. Shalley
City Attorney
City of Gainesville
352-393-8747 (phone)

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From: Bielarski, Edward J
Sent: Wednesday, March 15, 2017 12:10 PM
To: 'Jim Gordon'
Cc: Al Morales; Dennis Duffy; Brown, Thomas R; Locke, Justin M; Shalley, Nicolle M.; Waratuke, Elizabeth A.
Subject: RE: Response to revised MOU from GREC

Dear Jim,

I am in receipt of your message concerning our continuing negotiations. Thank you for reducing GRU's exposure to potential market risks going forward. I, again will talk with my folks about the value you are offering and hop to get back to you as soon as possible. I hope you stay safe in the winter wonderland you are experiencing in Boston!

Edward Bielarski Jr
General Manager
Gainesville Regional Utilities

From: Jim Gordon [mailto:jgordon@emienergy.com]
Sent: Wednesday, March 15, 2017 10:54 AM
To: Bielarski, Edward J
Cc: Al Morales; Dennis Duffy; Brown, Thomas R; Locke, Justin M; Shalley, Nicolle M.; Waratuke, Elizabeth A.
Subject: Re: Response to revised MOU from GREC

Dear Ed,

In our discussions before and after receiving your MOU of February 21, 2017, I reported to you a set of terms from my Board and a price range for selling the GREC facility between the high seven hundred million dollars to a minimum of seven hundred and fifty million dollars. While we've accommodated GRU on your requested term changes, the Board remains firm on the minimum seven hundred and fifty million dollar price. We can, however, agree to your prior proposal of a contingency out at a 50 bps. increase to the 30 year US Treasury rate, which would substantially limit GRU's exposure to potential interest rate increases.

As I stated in my last letter, we are willing to sell you the facility and allow you to capitalize on the hundreds of millions of dollars in customer savings you have identified through your cost of capital and operational synergy advantages. But we are also content to continue owning and operating our facility. I look forward to hearing from you.

Sincerely,

Jim

From: "Bielarski, Edward J" <BielarskiEJ@gru.com>
Date: Tuesday, March 14, 2017 at 9:15 AM
To: Jim Gordon <jgordon@emienergy.com>
Cc: Al Morales <AMorales@emienergy.com>, Dennis Duffy <dduffy@emienergy.com>, "Brown, Thomas R" <BrownTR@gru.com>, "Locke, Justin M" <LockeJM@gru.com>, "Shalley, Nicolle M." <shalleynm@cityofgainesville.org>, "Waratuke, Elizabeth A." <waratukeea@cityofgainesville.org>
Subject: RE: Response to revised MOU from GREC

Jim,

Although I have a unique flare for expression and can be disarmingly playful at times, it cannot be denied that I am serious in my pursuit of a mutually beneficial transaction between GREC and GRU. Rest assured that my team and I are committed to our current negotiation process.

That said I want to thank you and the GREC Board of Directors for the thoughtful consideration of the terms and conditions of the MOU. In your latest communication, I appreciate the Board's compromise on seven (7) of the eight (8) issues surrounding the MOU. This is important as well as constructive and shows a real willingness to enter into and close a sale for the GREC facility.

At this point, I believe we are down to two items; the purchase price and the "spread" on the interest rate contingency. Actually, I view these two items as one. During this process I have

considered the spread as a contingent additional purchase price. So, when GRU placed the first written offer on the table at $ 750 million with a 25 basis point ("bp") spread, I considered that to equate to a $ 787.5 million worst case offer ($ 750 million plus 25 bps @ $ 1.5 million a bp).

On the other hand, the nature of your counter offers have led me to extrapolate that too low a spread places a higher risk of GRU being able to terminate the transaction during market disturbances. It helps me understand why GREC's latest offer rests at a 75 bp spread. Unfortunately, based on my rationale, that still equates to a worst case offer of $ 862.5 million. That's $ 75 million more under a worst case scenario for GRU than our opening offer.

If you understand this viewpoint, I think you will understand that we will need to make one last compromise in order to close this MOU. Therefore, I propose that GRU accept the MOU, as written in your Marked v. GRU Rev 4, except for the following:

- GRU accepts a 65 bp spread as an interest rate contingency. Based on the latest history of 30 US Treasuries that spread is at a level which will afford GREC reasonable assurance that the interest rate market will not "crater the deal".

- In consideration of accepting an additional 15 bps of interest rate risk, GRU accepts a purchase price of $ 715 million. From a worst case perspective that values the transaction at $ 812.5 million ($ 715 million plus 65 bps @ $ 1.5 million a bp).

I strongly believe that these revisions will be acceptable to both the City Commission and the UAB, although I'd like to extend the approval date until April 15th to insure adequate public discussion. I also think this transaction will fulfill the original intention of both parties when you, Jim entered onto the Gainesville stage. Speaking of stages, in closing I'll leave you with some lyrics from one of the best to perform on stage, Kenny Rogers:

You've got to know when to hold 'em
Know when to fold 'em
Know when to walk away
And know when to run
You never count your money
When you're sittin' at the table
There'll be time enough for countin'
When the dealin's done

Edward Bielarski Jr
General Manager
Gainesville Regional Utilities

From: Jim Gordon [mailto:jgordon@emienergy.com]
Sent: Monday, March 13, 2017 4:22 PM
To: Bielarski, Edward J
Cc: Al Morales; Dennis Duffy; Brown, Thomas R; Locke, Justin M; Shalley, Nicolle M.; Waratuke,

Elizabeth A.
Subject: Re: Response to revised MOU from GREC

Ed,

Your last two emails to me and the ultimatums contained in those emails have caused the GREC Board of Directors to question whether there is serious interest for GRU to enter into and close a sale for the GREC facility.

You approached me with GRU's interest in purchasing the facility. You requested I approach my Board for the required parameters of a deal. I fulfilled your request and communicated back to you an acceptable price range and outline of terms. We had several discussions leading up to your first MOU you sent us on February 21. You inserted a number of terms in that MOU and further revisions of the MOU that did not mesh with our initial discussions and deal parameters. Yet, we feel we have been responsive and flexible in trying to understand your positions and negotiating a deal that is fair to both parties.

Here is our response to your March 10 email and an attached revised MOU.

1. We left the draft as an asset sale but think an entity sale warrants a discussion with your attorneys. Conceptually we are open to an asset deal, but would like to discuss this further.

2. We are not going to reduce our $750mm purchase price.

3. We are willing to compromise and tie your interest rate contingency to a rate increase of 75 bps (midway between 100 and 50 bps).

4. We would also accommodate you on your 4 month request on Exclusivity.

5. Regarding the Public Records issue, we can accept your language regarding indemnity for damages, other than GRU's own legal fees.

6. GREC and GRU would reserve all rights under the PPA.

7. We would accommodate you on utilizing Florida law rather than New York law.

8. We would agree to extend the expiration of the agreement to March 31, 2017.

You have communicated to your stakeholders that because of your inherent cost of capital advantages and operational synergies, the purchase of the GREC facility by GRU could produce hundreds of millions of dollars in savings for your customers. We are prepared to sell you the facility and allow you to capitalize on this recognized opportunity or we are happy to continue owning and operating our facility. The one thing we don't want to do is waste yours and our time and resources. If you are unable to transact at our purchase price and at mutually acceptable terms then we will have needlessly expended legal and professional fees and created false expectations with our

respective stakeholders.
We look forward to your response.

Sincerely,
Jim

From: "Bielarski, Edward J" <BielarskiEJ@gru.com>
Date: Friday, March 10, 2017 at 4:01 PM
To: Jim Gordon <jgordon@emienergy.com>
Cc: Al Morales <AMorales@emienergy.com>, Dennis Duffy <dduffy@emienergy.com>, "Brown, Thomas R" <BrownTR@gru.com>, "Locke, Justin M" <LockeJM@gru.com>, "Shalley, Nicolle M." <shalleynm@cityofgainesville.org>, "Waratuke, Elizabeth A." <waratukeea@cityofgainesville.org>
Subject: Response to revised MOU from GREC

Jim,

I was pleased to receive last night's e-mail of a signed MOU (albeit revised) from you, on behalf of GREC. In spite of the numerous modifications I believe it signifies a heightened level of engagement between you and the other GREC partners. If we are to execute a mutually beneficial transaction between GRU and GREC that continued engagement will be necessary.

On the downside the revisions made to the MOU change the economics for GRU and its customers. I sense that you are projecting your inner Jim Croce when he sang his popular song from the 70's called, "You don't mess around with Jim":

"You don't tug on Superman's cape. You don't spit into the wind. You don't pull the mask off the old Lone Ranger. And you don't mess around with Jim."

In all seriousness, I think both organizations have a lot at stake here and I hope you understand from my viewpoint the concerns I've outlined below:

- **Conversion from asset sale to entity or ownership sale** – A purchase of anything other than the Facility is challenging for GRU. First, it places us in jeopardy of having the value of the Facility subject to state and local property taxes. It also may impact the issuance of tax-exempt bonds. It will also subject GREC to the highest degree of due diligence, and indemnification against liabilities of the GREC entity. Finally, it makes the issue of the 1603 Grant part of the purchased liability, which GRU will not accept.

  Furthermore, the current PPA envisioned an asset purchase by incorporating a Purchaser's Option to Purchase Facility in Section 27. There are no references related to a purchase of GREC vs. the Facility.

- **Price movement** – I appreciate that you now understand the value of the price you had ($ 750 million) before it was gone. GRU moved the price to $ 725 million though the end of business today, and it falls to $ 700 million tomorrow. It's that Croce's song again:

"Last week he took all my money and it may sound funny, but I've come to get my money back."

- **Interest rate protection** – While I appreciate GREC bargaining for zero interest rate exposure, its simply not reasonable to expect GRU to absorb 100 basis points of risk (amounting to $ 150 million). Therefore, GRU would simply cap its risk at 50 basis points over current 30 year Treasuries with an ability to terminate the contract.

- **Exclusivity** – Revising the exclusivity from 7 months to 3 months means that within our 4 month window of executing a definitive contract there will be a month in which GRU and GREC may not have a final contract, but GREC will be allowed to "shop another buyer". That's not acceptable. However, GRU would accept 4 months given that fact that once under contract those additional 3 months are covered by that contract.

- **Public Records** - Modifying the provision in which GRU requires GREC to indemnify it against claims and actions by others against GRU, when GRU has simply carried out GREC's designation of information as exempt from public records is simply not fair and equitable.

- **Current suspension of withholdings under PPA** – GRU will not give up its rights under the PPA.

- **Law of New York** – GREC's Facility is in Florida. GRU is in Florida. Laws governing public records, real estate, and state environmental laws are in Florida. Florida it is!

- **MOU binding date** – With the aforementioned issues, there is very little likelihood that GRU could gain approval by March 25, 2017 even if we were to execute the MOU as is.

In summary, although I appreciate the efforts taken in order to deliver the signed MOU to me, I view it as largely unresponsive to GRU's offer and imposing more risk on GRU. Therefore, I am attaching a newly revised MOU, which includes revisions GRU can accept.

The bottom line is that at $ 700 million with i)no interest rate risk, other than allowing GRU the ability to terminate with a 50 basis point swing in the market and ii) to structure an asset sale as was envisioned in the PPA and iii) a seven (7) window to close the transaction this is a great deal for GREC and will allow GRU to recognize substantial savings as compared to the costs of the PPA.

"Yeah, Big Jim got his hat. Find out where its at, and its not hustlin' people strange to you."

Edward Bielarski Jr
General Manager
Gainesville Regional Utilities