From: Andrew Caplan
To: Bielarski, Edward J
Subject: Re: Revision to first MOU
Date: Saturday, March 04, 2017 9:42:23 AM

Thanks Ed. I appreciate it.

On Sat, Mar 4, 2017 at 9:41 AM Bielarski, Edward J <BielarskiEJ@gru.com> wrote:

> Andrew;
>
> I sent out a revised MOU to GREC on Friday. I have attached the email chain.
>
> Ed B
>
> Sent from my iPad
>
> Begin forwarded message:
>
> From: "Bielarski, Edward J" <BielarskiEJ@gru.com<mailto:BielarskiEJ@gru.com>>
> Date: March 3, 2017 at 4:56:51 PM EST
> To: citycomm <citycomm@ci.gainesville.fl.us<mailto:citycomm@ci.gainesville.fl.us>>
> Cc: DL_Utility Advisory Board <UAB@gru.com<mailto:UAB@gru.com>>, DL_GRU_ExecutiveTeam <ExecutiveTeam@gru.com<mailto:ExecutiveTeam@gru.com>>, DL_GRU_LeadershipTeam <LeadershipTeam@gru.com<mailto:LeadershipTeam@gru.com>>
> Subject: FW: Revision to first MOU
>
> Mayor, Commissioners and UAB members;
>
> I have attached my latest correspondence with Mr. Gordon, in which I've revised our MOU. I've offered some context to our position as well. The MOU remains a non-binding, unexecuted offer, unless Mr. Gordon signs it, I sign it after which time the UAB must either recommend it or not and than the City Commissioner may approve it or not. Even if the City Commission were to approve it the MOU will still be legally non-binding. The purpose is to set the framework for the final negotiation of a binding, executed contract for the purchase and sale of the GREC Facility, along with the PPA termination.
>
> Edward Bielarski Jr
> General Manager
> Gainesville Regional Utilities
>
> From: Bielarski, Edward J
> Sent: Friday, March 03, 2017 4:49 PM
> To: Jim Gordon (jgordon@emienergy.com<mailto:jgordon@emienergy.com>)
> Cc: Al Morales (AMorales@emienergy.com<mailto:AMorales@emienergy.com>); Dennis Duffy (dduffy@emienergy.com<mailto:dduffy@emienergy.com>); Brown, Thomas R; Locke, Justin M; Shalley, Nicolle M.; Waratuke, Elizabeth A.
> Subject: Revision to first MOU

Jim,

As you are probably aware the MOU is public and on Wednesday and Thursday of this week I spoke to the Utility Advisory Board and the City Commission, respectively about the contents of the MOU. I thought the discussions were productive and supportive. There is a lot for the general public to absorb. I do believe that many are looking forward to moving the process further. Toward that end, my team and I have reviewed the MOU and made some changes, which are contained in the attached revised MOU.

I'd like you to understand a little more about the motivations and concepts behind our development of the 9 sections of the MOU and why they are so important to GRU and its customers:

1. We have crafted a MOU in the context of an asset purchase and sale for several reasons. First, the due diligence required on our part to gain adequate and reasonable comfort in an alternate scenario such as an entity purchase would be quite extensive (We had originally thought that an entity purchase might be an option to consider). Secondly, the various operating permits, such as the Title V Air Permit can be easily and expeditiously transferred under either option. Finally, the concept of the City of Gainesville, doing business as GRU buying a taxable entity, such as GREC would impose more risk than we'd be willing to accept. As a result, we feel strongly about conducting this transaction as an asset purchase.

2. We have offered $ 750 million under the MOU, based on our analysis of current market conditions. It is customary in transactions of this type to monetize the risk of future market swings in the manner contained in the MOU. GRU is an established AA rated municipal utility, with a long-established history of financial performance. As a result, we believe that overall market conditions will impact future interest rates not GRU or GREC. Therefore, whether GRU or any other entity would buy the GREC facility the potential buyer would be asking for the same type of protection (such as monetizing the risk in the form of purchase price adjustment). That said, we have modified the proportionate concept to a direct dollar impact for a direct interest rate increase. We have also given either party an ability to terminate based on that impact.

3. Given the fact that GRU has taken the lead in developing the MOU, we thought it would be appropriate to have GREC take the lead in the proposed asset purchase agreement. In that regard, commercially reasonable efforts better reflect GRU's expectations of the required efforts to complete negotiations towards a definitive agreement.

4. The concept of diligence in this transaction has remained unchanged and is a core construct of the MOU.

5. Upon reflection, 10 months of exclusivity is rather long and my team has decided on a more modest 7 month period.

6. Obviously, the whole concept of Public Records and Confidentiality is important to this MOU. However, after review we recognized that parties to the Transaction may not be the parties to the MOU and that we need to remove that

sentence, which quite frankly doesn't make sense in the context.

7. We believe the MOU, if executed shall not impact any pending motions or pending claims or counterclaims under the current arbitration.

8. We have made a minor wordsmithing change to the parties Reservation of Rights, which again is a core construct of the MOU.

9. We have written the MOU to be governed by the laws of the State of Florida.

Let me say that I am looking forward to your execution of this MOU. I believe that both GRU and GREC will be favorably impacted by the execution of this MOU, the resulting contract and a purchase and sale of the biomass facility.

Edward Bielarski Jr
General Manager
Gainesville Regional Utilities

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