From: Bielarski, Edward J
To: Shalley, Nicolle M.
Subject: Fwd: Response to revised MOU from GREC
Date: Tuesday, March 14, 2017 12:16:19 AM

Nicole,

Is Jim getting dangerously close to discussing elements of conversations protected under our NDA? Not a deal-killer certainly, but it seems to be a little over the edge. Any thoughts?

Ed B

Sent from my iPad

Begin forwarded message:

From: Jim Gordon <jgordon@emienergy.com>
Date: March 13, 2017 at 4:21:33 PM EDT
To: "Bielarski, Edward J" <BielarskiEJ@gru.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

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:

<!--[if !supportLists]-->· <!--[endif]-->**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.

<!--[if !supportLists]-->· <!--[endif]-->**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."

<!--[if !supportLists]-->· <!--[endif]-->**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.

<!--[if !supportLists]-->· <!--[endif]-->**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.

<!--[if !supportLists]-->· <!--[endif]-->**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.

<!--[if !supportLists]-->· <!--[endif]-->**Current suspension of withholdings under PPA** – GRU will not give up its rights under the PPA.

<!--[if !supportLists]-->· <!--[endif]-->**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!

<!--[if !supportLists]-->· <!--[endif]-->**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

<GREC MOU rev 3.13.pdf>