Meeting Agenda

4:00 – 5:30 PM, Wednesday, Feb 3, 2016

Lyons Town Hall

I. Roll Call, Agenda, Minutes

- Amendments to Agenda
- Approve Minutes from Jan 20th

II. Audience Business

III. Liaison Updates

- Board of Trustees Update
- Staff, Engineering Update

IV. Continued Business

- Evans St Design Memo - Staff Response
- Electric - MEAN annual meeting, MEAN contract Legal, Rate and CIP proposals, CSU Energy Assessment Kickoff
- Lyons Recovery Action Plan update to BoT
- 2015 Review 2016 Goals

V. New Business

- 5 PM - Solar Plus Storage Presentation - Diane Dandeneau

VI. Parking Lot

- Construction Design Manual editing, Municipal Code Corrections
- Electric Fund Questions
- Wastewater Pretreatment Needs
- Affordable Housing Tap Fee Policy
- Town Utility Account Tracking
- Pipe Water Rates

UEB Meeting Minutes, 20 Jan 2016

Meeting Time and Location: Began at 4:05 at Lyons Town Hall

Attendance:, Aaron Caplan, Lee Hall, John Cowdry, Coco Gordon

Staff: Jim Blankenship, Kyle Miller **Liaisons:** **Guests:**

Previous Minutes: Approved Jan 6th minutes. **Audience Business:**

Staff Update: Kyle has been discussing the ability to get reimbursed with grant funds to see if we could move forward now and still get the grant funds. He did submit to round 2 of CDBG grants for the full meter project, estimated at $320,000, SPECIFICALLY as a backup if the funds requested for the Waste Water Treatment Plant overrun, $700,000, are not granted in round 2. If they are then this request would be moved to round 3 of CDBG grants.
The concern is then how this project has to go out for bid. Kyle and Victoria have been discussing that and they may be able to update you. Since we do have $100,000 in the budget we are moving forward one way or the other.
The UEB voted to recommend "When the town begins installing the new RF electric meters, there should be no cost for the meter itself for existing services deciding to install solar because the new meters are all net metering capable." We wanted to make sure it was known that new service connections would still have to pay for a meter as they do now.
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Jim B advised that RG Consulting Engineers is collecting data for the water and wastewater study and the plan is to then sit down and have a meeting with them, probably in a few weeks. For the stormwater master plan Jim had a discussion with ICON pointing out what the Town thought of as the scope of the project compared to what ICON wrote for the scope and where they might meet. ICON is reevaluating their proposal.

There was a kickoff for the Main St. project and work should begin on Jan 25th. The traffic signals at McConnell/Stone Canyon should be going in in 5 to 6 weeks.
The St. Vrain Creek work is looking very beneficial for land use and making good progress.
Confluence work is also going well and on schedule.

Electric Utility: Aaron went over the meeting with Andrew Ross of MEAN. Details are in the agenda packet. The 2 proposals for the Electric Rate and Capital Improvement Study both came in over $450,000 and we have $80,000 in grant funds for the study. No one really saw any way to scale back the scope of these proposals with that great a difference in cost.
When asked about what Lyons thought the cost of a study would be it was mentioned that MEAN has done their rate study for under $20,000 and if we planned on doubling that for an outside firm to come in we were

at $40. The town did ask for $100,000 initially so with a $60,000 expectation for the Capital Improvement portion of the study. We were granted $80,000
We did discuss the options of MEAN being able to do the Rate portion of the Study and N Line Electric being able to handle the Capital portion of the Study. We need to find out more about what DOLA will require with regards to procurement of the contract. Jim B was working to discus this with a DOLA representative. One concern was what the actual contract was with N Line Electric. If we do have a valid contract with them we can use pre-contracted labor. Kyle was going to talk to N Line to see if they were interested. We can review MEAN's previous rate studies and see what we think is missing and should be added for a new rate study by MEAN.
Coco asked about looking into a study by NREL, National Renewable Energy Laboratory, as they did do some form of study for Aspen.
Lyons is moving forward with the CSU Energy Assessments and Toby Russell, Lyons Sustainability Coordinator, will be the lead town staff and is setting up a meeting.
We discussed a proposal for a solar plus storage demonstration project that is being presented to Lyons residents. **UEB members should review the proposal included in the packet and see if there are any questions with regards to the electric utility.** One possible concern was types of batteries. The proposal did also mention that one of its strategies that worked with net metering would have utility cooperation.

Construction Design Manual: John was able to convert the PDF files of the manual into Microsoft Word for editing and is willing to do this if needed. Jim B found Word versions of the various sections and forwarded those on to John and Aaron. We will need to take a look and verify these are the latest versions and can then distribute for each member to edit their section.
Aaron talked to Deb Anthony, Lyons Town Clerk, about getting the Construction Design Manual onto the muni code website. We would need to see the cost. Even if Lyons did not do this **the UEB felt it was worth doing the editing to have a well presented document.** We had previously decided Aaron would take Sections 1, 7 & 8. Coco would take section 2, Chuck section 3, Steve section 4, John section 5, and Lee section 6.

Municipal Code Corrections: Deb Anthony is looking to send in updates on the town code to the muni code website in March.

2015 Review, 2016 Priorities: UEB members were asked to review the 2014 Review & 2015 Priorities document included in the packet. Under the 2015 Priorities we did provide the annual budget for the utilities and will again for 2016. In 2016 the Board of Trustees requested that any utility that did not have 3 months of reserve operating capital be reviewed on a quarterly basis. Currently that is the electric utility.
The UEB reviewed the SFC's LESAP,Lyons Environmental Sustainability Action Plan.

Meeting ended: 6:03 pm. **Minutes Submitted by**: Aaron Caplan

Evans St. Staff Response to UEB Memo

1.) The shift will be limited by geometric requirements of the road standards including horizontal curvature and transitions from parking areas to no-parking areas at the ends;

2.) The shift may be limited by vertical limitations and flood plain/flood way to not fill in the flood way;

3.) The shift will be limited by the creek and the existing creek bank and features;

4.) The road layout will be based on the standard section and include dimensional spacing for walks on each side as per the standard section, the location of the walk on the north meeting safe setback standards from the creek bank;

5.) Unsafe and unhealthy trees will be removed as noted on the plans, however healthy trees will remain, also as noted;

6.) There are not issues with the back slopes per the concern below. All back slopes meet not only the Town code, but reasonable and customary standards for grading on this type of soil and as supported by the project geotechnical report.

We’re not sure how this decision will set precedence for other areas of Town, but certainly will. At some point, there will be similar situations to address at 5th Ave, 4th Ave, Longs Peak Drive, 2nd Ave, 1st Ave and others, but time will tell and that will play out when there is actually time to evaluate.

MEAN Annual Meeting Report

The main take away is that Lyons cost of electricity is fortunately not going up much this year so our previous 2016 budget numbers are not changing significantly. Lyons primary MEAN cost increase starting in April is the Fixed Cost of Recovery Charge. This monthly rate is increasing from $29,366 to $30,395 for an increase of 3.5 percent. Secondly the Base Energy rate charge per Mwh is increasing from $37.75 to $37.97 for an increase of 0.58 percent. These increases are partially offset by a decrease in the Support Energy cost which is dropping per Mwh from $62.55 to $54.05 for a decrease of 13.6 percent. The goal over the next several years is to lower the Support Energy rate to be equivalent to the Base Energy rate. Other rates such as wind generation at $51 per Mwh stayed the same. Overall these new rates decrease my previously (emailed 12/11/15) projected 2016 budget surplus this year from $42,548 to $40,418. Note though that the our estimated 2016 budget surplus when passed 7 December was $34,547 so the increases are less than originally expected.

Various MEAN speakers mentioned the EPA Clean Power Plan. Highlights mentioned are that 24 States (including Colorado) and 1 coal plant filed lawsuit in DC circuit court to try and block it. The concern is that it does not take into account economics and retroactively is requiring changes rather than only applying to new energy sources. As an example it could end up requiring coal plants to only run parts of the year, such as peak demand seasons of winter and summer, in order to limit emissions. MEAN encouraged participation at the upcoming public hearings.

MEAN is tentatively looking at the feasibility of building a Solid Waste Power Plant. The first potential site is near Fort Morgan, Colorado with a 15MW capacity providing electricity at about $45 per Mwh. This compares favorably to the $62+ per Mwh Black Hills coal. Currently MEAN has no electric generation in Colorado.

There was a briefing on the differences between public and private power. On average it was asserted that private utilities have roughly 13 percent higher residential rates than public utilities.

As I mentioned in my previous email concerning the recent PURPA ruling, it does not get Rockford, IA out of its basic schedule M financial commitments to MEAN if the school district builds a solar array. It only allows the school district to build the solar array and get reimbursed for the extra power generated at the Rockford electric utility “avoided cost”. One of the issues with solar energy is that it really does not affect the monthly peak demand used to calculate the 36 month average MEAN uses to allocate each utilities portion of the Fixed Cost of Recovery charge. The Fixed Cost of Recovery charges make up 39 percent of MEAN revenues and has helped isolate them from low energy usage years such as this past year which was lower than budgeted.

There was a stop gap Distributed Generation policy proposed but the Ad Hoc committee tabled the issue as it was coming from MEAN staff and the committee members had not had time to digest the issues. The expectation is that it will get addressed at either the May or August meetings. You can see details of the proposed policy in the attached briefing slides.

MEAN staff encouraged its member utilities to upgrade their rate structures to guard against proposals such as Rockford experienced with the school district solar array. If the school district got the net metering they were expecting rather than "Rockford avoided costs" it would have ended up needing to be subsidized by the other Rockford electric rate payers.

The MEAN board funded the distribution of a Net Metering Booklet to member utilities. Lyons can expect a copy in the future.

There was also a presentation on revenue credits related to certain transmission upgrades. It is unclear how this will affect Lyons transmission costs, but I did request a guesstimate of the effect for Lyons and will forward when I receive it.

One of the generators at the Kimbell wind farm failed. Seven more likely need replacing over the next several years.

Although not on MEAN's financial statement, WAPA cash flows require MEAN to maintain sufficient cash reserves to cover.

I got a chance to talk with one of the Aspen, Colorado representatives about their recent move to 100 percent renewables. They were already at around 70 percent renewables so did not have that far to go. Andrew Ross helped them achieve their 100 percent goal. What really allowed them to transition is that about 50 percent of their electricity comes from hydroelectric facilities that are essentially paid off so they have some of the cheapest electric rates in the US.

I have mentioned previously that Aspen was affected adversely by the new utility based costing methodology (Fixed Cost of Recovery Charge) adopted last year by MEAN and by removing the differences between winter and summer rates. Although their winter usage is greater the bigger impact to them was the new Fixed Cost of Recovery Charge based on the last 36 months average of peak demand. Apparently 2012 and 2013 were very dry years which caused them to draw heavily on MEAN electricity with very large peak demands. Once these dry years are more than three years out their Fixed Cost of Recovery charges will drop. Note that during wet springs, such as this last year, Aspen is generating over 100 percent of their electric from hydroelectric and selling the surplus back to MEAN.

One change adopted at the meeting was to limit the projected increase to a utilities transitioning to the new rate structure to a 10 percent cap. This benefited Aspen, although Lyons along with most other utilities ended up with a 1.7 percent increase to our Fixed Cost of Recovery monthly charges to offset it.

Chapman and Cutler LLP

MEMORANDUM

TO: Chris Dibbern

FROM: James Burr

DATE: December 15, 2015

RE: Early Termination of SSM Agreement

You have advised us that one of the power purchasers (the *"Participant"*) under Service Schedule M (Total Power Requirements Power Purchase Agreement) to the Electrical Resources Pooling Agreement (the *"SSM Agreement"*) has requested information from MEAN regarding whether it is possible to terminate the SSM Agreement prior to the expiration of its current term and, if so, the terms upon which MEAN would agree to an early termination. As discussed in our memorandum to you of July 27, 2015, we are of the view that the term of the SSM Agreement currently extends to at least January 1, 2041, which is the final payment date of all "Related Bonds" (as such term is defined in the SSM Agreement).

You have requested our advice as bond counsel to MEAN with respect to the information requested by the Participant. Capitalized terms used and not defined in this memorandum have the meanings assigned to them in the SSM Agreement and the Resolution (defined below).

ANALYSIS

The following paragraphs summarize our legal analysis:

1. Section 7.12(a) of MEAN's Power Supply System Revenue Bond Resolution (the *"Resolution"*) provides in pertinent part that:

> MEAN will not consent or agree to or permit any rescission of or amendment to or otherwise take any action under or in connection with any [SSM Agreement] which will reduce or which will in any manner impair or adversely affect the rights of MEAN thereunder or materially impair or adversely affect the rights or security of the Bondholders under Resolution.
>
> *** *** ***
>
> Any action taken by MEAN in violation of the covenants contained in this Section 7.12(a) shall be null and void as to MEAN and any other party to a Power Supply Contract or a Pooling Agreement.

2. The SSM Agreements and the amounts receivable by MEAN under the SSM Agreements are pledged to secure the payment of all of the Bonds issued under Section 5.01 of the Resolution.

3. The SSM Agreements do not include an early termination provision, but instead enable a Participant to elect to not participate in the next power supply to be added to MEAN's total requirements power supply system, thereby fixing the extent and term of its power purchase obligations to MEAN. See Article II of the SSM Agreements. It should also be noted that Section 17.01 of the SSM Agreements provides that, while a Participant may assign its rights under its SSM Agreement, no assignment shall "relieve" the Participant of its obligations under its SSM Agreement while the Bonds are outstanding.

4. A termination of an SSM Agreement prior to the expiration of its current term would constitute a "rescission" of the SSM Agreement, and any consent or agreement of MEAN to such a rescission would constitute a breach of its covenant in Section 7.12(a) of the Resolution. In addition, any such consent or agreement of MEAN is null and void as to both MEAN and the Participant under the terms of Section 7.12(a).

5. A breach by MEAN of its covenant in Section 7.12(a) would, upon notice and the passage of a 60-day cure period, constitute an Event of Default under Section 8.01(c) of the Resolution. Upon the occurrence of an Event of Default, either the Trustee or the owners of 25% or more of the Bonds may take various remedial actions under the Resolution, which include (among other things) causing all of the Bonds to become immediately due and payable (*i.e.*, acceleration).

DISCUSSION

Under the provisions of the Resolution described above, it is not possible for MEAN to consent or agree to any early termination of an SSM Agreement. In order to enable an early termination of an SSM Agreement it would be necessary to amend the Resolution. Under the terms of Articles X and XI of the Resolution, an amendment to permit such an early termination would require the approval of a majority in principal amount of the Bonds outstanding under the Resolution. Any such amendment would need to specify the terms and conditions upon which MEAN could agree to an early termination of an SSM Agreement, and consideration would need to be given to whether the amendment would enable other early terminations of other SSM Agreements.

Bondowner consents to amendments to bond documents can be obtained through a consent solicitation process. We have participated in consent solicitation processes for other public power joint action agencies and have found them to be lengthy and expensive. There can also be no assurance that a consent solicitation will be successful. The current distribution of the Bonds will also affect a solicitation process. If a handful of institutional investors own a majority of the Bonds, it may be possible to achieve the necessary consents with only a handful of consents. However, you can also expect that these sophisticated investors will negotiate the terms upon which an SSM Agreement may be terminated, and it is possible that these terms may

not be acceptable to either or both of MEAN and the Participant. In contrast, if institutional investors hold less than a majority of the Bonds, consents from individual investors will be required. In our experience, retail investors are likely to be unresponsive to a consent solicitation and often have no motivation to consent to amendments. In order to induce institutional and individual investors to provide necessary consents, it is often necessary to pay them a consent fee. Consent fees are typically paid as a percentage of the principal amount of the bonds held by an investor. In a best case scenario, you should expect that a consent solicitation process would take at least 12 months and, if consent fees are required, would cost well in excess of $1 million.

In addition to the considerations discussed above, you should also be aware of other possible consequences to an early termination of an SSM Agreement. An early termination of an SSM Agreement would require approval by your Board of Directors and would have economic and other effects on the other Participants. In addition, any early termination of an SSM Agreement would require extensive discussions with the rating agencies that maintain ratings on MEAN's bonds, and could negatively impact MEAN's bond ratings. Any negative rating impact would increase MEAN's future borrowing costs and could also implicate any rating requirements or triggers in MEAN's wholesale trading agreements.

In sum, the steps necessary to enable an early termination of an SSM Agreement will present a range of challenges for MEAN, including the need to coordinate the negotiation of the terms of an early termination with the Participant, the Board, the investors in MEAN's Bonds and the rating agencies. From our experience with similar situations, we believe that there can be other avenues for resolving the issues that concern the Participant that are far less expensive, time-consuming and, frankly, divisive and contentious, than pursuing the steps necessary to provide for the early termination of an SSM Agreement.

ASSIGNMENT OF AN SSM AGREEMENT

One alternative to an early termination of an SSM Agreement may be an assignment transaction. As noted above, the SSM Agreements provide that, while a Participant may assign its rights under its SSM Agreement, no assignment shall "relieve" the Participant of its obligations under its SSM Agreement while the Bonds are outstanding. Under this provision, it may be possible to structure a transaction under which (i) a new purchaser or purchasers would accept an assignment of an existing Participant's rights to receive total requirements power supply service from MEAN, and (ii) the existing Participant would remain obligated to make certain payments to MEAN under specified circumstances for the remaining term of the outstanding Bonds. Any such assignment transaction would require careful negotiation by the parties.

MEAN's consent to any assignment is required under the terms of the SSM Agreements, and any consent is also subject to the requirements of Section 7.12(a) of the Resolution (discussed above). In the case of a consent to an assignment of an SSM Agreement, this Section would require a determination by MEAN that the assignment would not "in any manner impair or adversely affect the rights of MEAN [under the SSM Agreement] or materially impair or adversely affect the rights or security of the Bondholders under Resolution."

CHAPMAN AND CUTLER LLP

MEMORANDUM

June 2, 2015

VIA E-MAIL

TO: Chris Dibbern
Michelle J. Lepin

FROM: James C. Burr

RE: Exhibit D to Service Schedule M
Total Power Requirements Power Purchase Agreements

INTRODUCTION

You have advised us that MEAN's Board of Directors recently authorized the execution of a contract (the *"Contract Extension"*) with the Western Area Power Administration (*"Western"*) that will extend MEAN's purchase of approximately 6 MW of power and energy from Western's Loveland Area Projects for a term of thirty years after the expiration of the current contract (the *"LAP Contract"*) on September 30, 2024. We understand that the LAP Contract is listed as one of the Projects on Exhibit D to Service Schedule M, the Total Power Requirements Power Purchase Agreements (the *"Power Purchase Agreements"*) under the Electrical Resources Pooling Agreements (the *"Pooling Agreements"*) between MEAN and its Participants.[1] You have also advised us that the Board directed MEAN's staff not to send notice of the Contract Extension pursuant to Section 3.01(c) of the Power Purchase Agreements to the Participants at this time.

You have requested our advice on whether a failure by MEAN to send current notice to the Participants of the Contract Extension would violate the provisions of, or create any issues under, the Power Purchase Agreements or MEAN's Power Supply System Revenue Bond Resolution (the *"Bond Resolution"*). Based on the terms, intent and purposes of the applicable provisions of the Power Purchase Agreements and the Bond Resolution as detailed below, we do not believe that a failure by MEAN to send current notice of the Contract Extension would violate such provisions. While notice of the Contract Extension is not expressly required under the terms of the Power Purchase Agreements, we believe that the intent and purposes of the applicable provisions of the Power Purchase Agreements indicate that MEAN should provide the notice prior to the October 1, 2024 effective date of the Contract Extension.

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1 Capitalized terms used and not defined in this memorandum have the meanings assigned to them in the Power Purchase Agreements and Pooling Agreements. This memorandum uses the term "Participant" to refer to those Participants that are Requirements Purchasers under the Power Purchase Agreements (the *"PPAs"*).

THE POWER PURCHASE AGREEMENTS

Pertinent Provisions. Under the Power Purchase Agreements, MEAN agrees to sell and deliver, and each Participant agrees to take and pay for, all of the Participant's net electric power and energy requirements.[2] In addition to the initial Projects listed on Exhibit D to the Power Purchase Agreements at the time of their execution in 1982 (which included MEAN's contractual interest in the Laramie River Station through Lincoln Electric System), MEAN may commit to additional Projects from time to time to meet the anticipated power and energy requirements of the Participants, and may issue Bonds to finance Projects.[3] The Participants agree to pay rates and charges for the power and energy supplied by MEAN that are sufficient to pay all Project Costs.[4] [5]

Section 3.01(c) of the Power Purchase Agreement provides as follows:

> If at any time MEAN determines it necessary to commit to an additional Project, it will advise the City in writing of its intention to so commit, the nature of such Project, the estimated time such Project is scheduled for commercial operation and the aggregate principal amount of Bonds, if any, estimated to be issued in connection therewith. Exhibit D hereto shall be amended to include such Project unless the City elects to become a Contract Purchaser as hereinafter provided.

Section 3.01(c) then address how a Participant may "opt out" of an additional Project and become a Contract Purchaser that is obligated to take and pay for only its Contract Demand from the Projects previously listed on Exhibit D to its Power Purchase Agreement. Each Project that is listed on Exhibit D to a Participant's Power Purchase Agreement is a "Related Project" of that Participant.

The term of each Power Purchase Agreement extends for the "term of the Related Bonds," which is equal to the later of (i) the term of all Bonds issued by MEAN to finance the Related Projects of the Participant or (ii) the term of a specific contractual arrangement entered into by MEAN for a specific Project.[6] Based on our review of the current form of Exhibit D and

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2 PPA, Section 3.01(a).

3 PPA, Sections 3.01(b) and (c).

4 PPA, Sections 3.02 and 6.01.

5 "Project Costs" is broadly defined in Article I of the PPA, and includes debt service on Bonds and other amounts required to be deposited under the Bond Resolution, the O&M and R&R costs of Projects, purchased power costs and other items.

6 PPA, Article II. The definition of "Bonds" in Article I of the PPA includes both bonded debt and "unconditional payment obligations" under a specific contractual arrangement for a specific Project. MEAN's contractual arrangements for the Laramie River Station and Whelan Energy Center 2 include

the maturity schedules for MEAN's outstanding Bonds, the current term of the Power Purchase Agreements would not expire earlier than January 1, 2041, which is the final maturity date of the bonds issued by Public Power Generation Agency to finance Whelan Energy Center 2. We note, however, that the Participation Agreement between MEAN and PPGA (which is a "specific contractual arrangement for a specific Project" within the meaning of the Power Purchase Agreements) extends for the life of WEC2 and until all decommissioning and other costs are paid, so there is some likelihood that the term of the Participation Agreement would extend beyond January 1, 2041, which would correspondingly extend the term of the Power Purchase Agreements.[7]

Discussion and Analysis. The provisions summarized above are an important part of the Power Purchase Agreements as they enable MEAN to acquire, construct, finance and contract for long-term power supply resources by committing the Participants to take and pay for these resources for their term or the term of any Bonds issued to finance them. Section 3.01(c) of the Power Purchase Agreement requires that notice be given to the Participants "at any time that MEAN determines it necessary to commit to an additional Project," and it is clear that the notice must given whenever MEAN determines to add a new resource to its long-term power supply portfolio. The clear intent and purposes of this provision are (i) to enable the Participants to retain a measure of self-determination regarding their long-term power supply resources by being able to "opt out" of an additional Project and become a Contract Purchaser, and (ii) to provide MEAN with a binding commitment from the Participants that do not exercise this option that they will take and pay for the output or services of the additional Project for its term on a full cost recovery basis, thereby enabling MEAN acquire, construct, finance and contract for long-term power supply resources.

It is not clear, however, that the Contract Extension is an "additional Project" within the meaning of Section 3.01(c) such that notice would need to be given to the Participants at this time. In this regard, we note that the Contract Extension covers an existing power supply resource that is already listed on Exhibit D, and the Power Purchase Agreement does not specifically provide that the extension of an existing contract is considered to be an "additional Project" for purposes of Section 3.01(c). Given the absence of controlling language in the Power Purchase Agreement, we believe it is appropriate to consider the intent and purposes of Section 3.01(c) in determining whether notice of the Contract Extension needs to be given at this time.

We believe that the intent and purpose of Section 3.01(c) — the ability of Participants to "opt out" while providing binding commitments to MEAN by those Participants that do not exercise this option — indicate that notice of the Contract Extension should be provided. Regardless of whether the Contract Extension constitutes an "additional Project" within the meaning of Section 3.01(c) of the Power Purchase Agreements, it is a 30-year power purchase

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payments required to be made on a "take-or-pay" basis and constitute "unconditional payment obligations" for purposes of the definition of "Bonds" in the PPA.

7 Similarly, MEAN's contractual arrangements for its undivided ownership interest in Wygen I extend for the life of that facility and include payment obligations that are unconditional in nature, and these arrangements could also operate to extend the term of the PPAs.

agreement that is a part of MEAN's power supply portfolio that is used to serve the Participants' requirements. On the one hand, some Participants could have an interest in limiting the duration of their full requirements purchase commitment to MEAN, while on the other hand MEAN has an interest in having long-term commitments from the Participants to support its payment obligations to Western. Accordingly, though the question in not free from doubt, we believe that the better view of Section 3.01(c) indicates that notice of the Contract Extension should be given to the Participants.

However, since service under the Contract Extension does not begin until October 1, 2024, we do not believe that current notice of the Contract Extension is required, so long as notice is provided to the Participants prior to the effective date of the Contract Extension. A later notice of the Contract Extension would still satisfy the purpose and intent of the applicable provisions of the Power Purchase Agreement, and we are unable to discern any issues with giving notice at a later date. In this regard, we note that if a Participant elects to opt out of the Contract Extension, its share of 6 MW available under the Contract Extension would presumably be made available by MEAN to serve the power supply requirements of other Participants. Given the historically attractive pricing under the LAP Contract, it is fair to assume that this would not be disadvantageous to the other Participants. We note that Western's rates and charges under its power sales contracts are subject to revision from time to time, and that these contracts often include a provision that allows the purchaser to terminate the contract upon receipt of notice of a pricing change from Western. This termination option would enable MEAN to manage any price risk under the Contract Extension.

Accordingly, we believe that MEAN should give notice of the Contract Extension pursuant to Section 3.01(c) of the Power Purchase Agreement in advance of the October 1, 2024 effective date for service under the Contact Extension. Since Section 3.01(c) provides the Participants with 60 days to exercise the "opt out" provision, and in order to provide sufficient time to address any issues that may arise, we recommend that notice of the Contract Extension be given not later than April 1, 2024. Alternatively, MEAN could provide notice of the Contract Extension anytime before 2024 in conjunction with other revisions or additions to Exhibit D.

THE BOND RESOLUTION

Pertinent Provisions. Section 7.12(a) of the Bond Resolution provides as follows:

> MEAN will not consent or agree to or permit any rescission of or amendment to or otherwise take any action under or in connection with any Power Supply Contracts or Pooling Agreements which will reduce or which will in any manner impair or adversely affect the rights of MEAN thereunder or materially impair or adversely affect the rights or security of the Bondholders under [the Bond] Resolution . . . Any action taken by MEAN in violation of the covenants contained in this Section 7.12(a) shall be null and void as to MEAN and any other party to a Power Supply Contract or a Pooling Agreement.

Each Power Purchase Agreement falls within the definition of "Power Supply Contract" and "Pooling Agreement" under the Bond Resolution, and actions taken or not taken by MEAN under the Power Purchase Agreements are subject to the restrictions imposed by Section 7.12(a) of the Bond Resolution.

Discussion and Analysis. These restrictions of Section 7.12(a) of the Bond Resolution reflect the significance of the Power Purchase Agreements within the financing structure for MEAN's Bonds— they are the principal source of the revenues pledged to secure the payment of the Bonds. Consequently, no amendment of or action under the Power Purchase Agreements may be made or taken if it reduces, impairs or adversely affects the rights of MEAN under the Power Purchase Agreements or materially impairs or adversely affects the rights or security of the Bondholders under the Bond Resolution. Examples of amendments or actions that would be prohibited under these standards include (i) reductions in or limits on the amounts payable by the Participants, (ii) permitting the Participants to acquire new wholesale power supplies from suppliers other than MEAN, and (iii) shortening the duration of the Power Purchase Agreements to less than the term of the Bonds.

We do not believe that the decision to defer the giving of notice of the Contract Extension constitutes an action that is subject to the restrictions imposed by Section 7.12(a) of the Bond Resolution. In this regard, we note that (i) substantially all of the amounts that will be collected from the Participants in respect of the Contract Extension would be used to make payments due to Western under the Contract Extension and would not be used to pay debt service on Bonds and (ii) so long as MEAN gives notice of the Contract Extension as described above, there is no material risk that amounts that would otherwise be available for the payment of debt service on the Bonds would need to be diverted to meet MEAN's payment obligations under the Contract Extension.

CONCLUSION

Based upon the foregoing, we do not believe that a failure by MEAN to send current notice to the Participants of the Contract Extension would violate the provisions of the Power Purchase Agreements or the Bond Resolution. As discussed above, notice of the Contract Extension must be given to the Participants at least 60 days prior to October 1, 2024, and we recommend that this notice be given not later than 180 days prior to October 1, 2024.

We trust this memorandum is responsive to your inquiry. Please do not hesitate to contact us if you have any further questions.