

ANDY GARDINER
President of the Senate



STEVE CRISAFULLI
Speaker of the House



Joint Legislative Auditing Committee

Senator Joseph Abruzzo, Chair
Representative Daniel Raulerson, Vice Chair

Meeting Packet
Monday, October 5, 2015
12:30 P.M. to 3:30 P.M.
301 Senate Office Building

AGENDA JOINT LEGISLATIVE AUDITING COMMITTEE

DATE: Monday, October 5, 2015

TIME: 12:30 p.m. to 3:30 p.m.

PLACE: Room 301, Senate Office Building

MEMBERS:

Senator Joseph Abruzzo, Chair

Representative Daniel D. Raulerson, Vice Chair

Senator Lizbeth Benacquisto

Senator Rob Bradley

Senator Audrey Gibson

Senator Wilton Simpson

Representative Debbie Mayfield

Representative Amanda Murphy

Representative Ray Rodrigues

Representative Cynthia Stafford

Consideration of a request for an audit of issues relating to Citrus County received from Senator Dean

Consideration of a request for an audit of issues relating to Walton County received from Senator Gaetz

Consideration of request for an audit of the Transportation Department of the Palm Beach County School District received from Representative Slosberg

Follow-up discussion of the Auditor General's audit of the Florida Municipal Power Agency (FMPA)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environmental Preservation and
Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.

5th District

August 26, 2015

The Honorable Joseph Abruzzo
12300 West Forest Hill Blvd
Suite 200
Wellington, FL 33414-5785

The Honorable Daniel Raulerson
110 West Reynolds Street
Suite 204
Plant City, FL 33563-3379

Dear Chairman Abruzzo and Chairman Raulerson:

I wanted to bring to your attention an issue which I believe the Joint Legislative Auditing Committee should look into. While researching some issues in Citrus County, I came across the contract between the Corrections Corporation of America (CCA) and Citrus County. In doing so,

I found some of the certificates, including the Certificate of Occupancy, stated the Citrus County Parks and Recreation Department was the owner of the property, and others, including the permit referenced in the Certificate of Occupancy, stated CCA owned the property.

This raised a red flag for me because recently, an employee in the Citrus County Parks and Recreation Department was arrested for fraudulently taking money from the County. I also found an agreement between Citrus County and the CCA, where the CCA would do the billing directly but found Citrus County was still doing some of the billing. However, I do not know if the U.S. Virgin Islands were being double billed for the inmates at the Citrus County Detention Center. I also found times where multiple invoices were used to go around the contract's maximum billing allowance. CCA has had multiple complaints resulting in their facilities being closed throughout Florida.

The contract, to my knowledge, between the CCA and Citrus County has never been audited since it was first agreed to in 1996, and despite the known fraudulent activities of the Citrus County Parks and Recreation Department, the Parks and Recreation Department was only audited back one year.

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

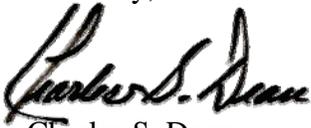
Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

In researching these matters, I have found many accounting discrepancies and potential legal issues. I believe your committee should direct the Auditor General to conduct an audit of the original contract between the CCA and Citrus County, as well as the Parks and Recreation Department for the past ten years. I believe this will give us a full picture into how the CCA and Citrus County are financially partaking into this endeavor.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles S. Dean". The signature is written in a cursive, flowing style.

Charles S. Dean
State Senator District 5

Cc: Melinda Miguel, Chief Inspector General
Rick Swearingen, Florida Department of Law Enforcement
Kathy DuBose, Staff Director Florida Joint Legislative Auditing Committee

STAFF ANALYSIS

Date: October 1, 2015

Subject: Request for an Audit of certain issues in Citrus County

Analyst

Coordinator

White ^{DW}

DuBose ^{KD}

I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from Senator Charles Dean to have the Committee direct the Auditor General to conduct an audit of the original contract between the Corrections Corporation of America and Citrus County, as well as the Parks and Recreation department, for the past ten years.

II. Present Situation:

Current Law

Joint Rule 4.5(2) provides that the Legislative Auditing Committee may receive requests for audits and reviews from legislators and any audit request, petition for audit, or other matter for investigation directed or referred to it pursuant to general law. The Committee may make any appropriate disposition of such requests or referrals and shall, within a reasonable time, report to the requesting party the disposition of any audit request.

Joint Rule 4.5(1) provides that the Legislative Auditing Committee may direct the Auditor General or the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an audit, review, or examination of any entity or record described in Section 11.45(2) or (3), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, provides that the Auditor General may, pursuant to his or her own authority, or at the discretion of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of the accounts and records of any governmental entity created or established by law.

Section 11.45(2)(j), *Florida Statutes*, provides, in part, that the Auditor General shall conduct a follow-up to his or her audit report on a local governmental entity no later than 18 months after the release of the audit report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the previous audit report.

Request for an Audit of Citrus County, Florida

Senator Dean has requested the Committee to direct an audit of the original contract between the Corrections Corporation of America (CCA) and Citrus County, as well as the Parks and Recreation

Department, for the past ten years. During his research of issues in the County, he stated that he has found many accounting discrepancies and potential legal issues, including:

- 1) Original contract with CCA (Contract):
 - Some certificates, including the Certificate of Occupancy, stated that the Department was the owner of the property, while other documents, including the permit referenced in the Certificate of Occupancy, stated that CCA owned the property.
 - An agreement between the County and CCA provided that CCA would perform the billing for the inmates from the U.S. Virgin Islands; however, the County was still performing some of the billing. Has there been any double-billing to the U.S. Virgin Islands for these inmates?
 - Multiple invoices were used to circumvent the maximum billing allowance in the Contract.
 - CCA has had multiple complaints, resulting in their facilities being closed throughout Florida
 - The Contract, to his knowledge, has never been audited since its inception in 1996.
- 2) Parks and Recreation department (department):
 - An employee of this department was recently arrested for fraudulently taking money from the County.
 - The department has only been audited back one year.

Background - County

Citrus County (County) is a political subdivision of the state established in 1887 pursuant to Article VIII of the *Constitution of the State of Florida*,¹ with geographical boundaries established in Section 7.09, *Florida Statutes*. The County, located on the central west coast of the state, has an estimated population of 140,798.²

The County is governed by an elected Board of County Commissioners (Board), consisting of five members. The Board establishes policies and appoints a county administrator to implement the policies and manage the operations of the County. The Board also adopts the millage rate annually and approves the budget, which determines the expenditures and revenue necessary to operate all County departments. The powers and duties of the Board are established by Chapter 125, *Florida Statutes*.

The County provides a full range of services for its citizens, including public safety, transportation, physical environment, economic environment, human resource, culture/recreation, and general government services.³ The County's Department of Community Services manages and guides divisions whose mission is to provide access to quality information, resources, and services to enrich the lives of the community, including making available parks, beaches, and other facilities and programs which provide recreational benefit to the citizens of the County. The Parks and Recreation department, a division of the Department of Community Services, is responsible for the day-to-day operations of the County's public parks, playgrounds, athletic fields, swimming pools, beaches, and all other recreational facilities, and for oversight of the various programs, instructional classes, and special events held at these locations. Administrative Regulation 12.03-5, *Rules and Regulations on*

¹ As revised in 1968 and subsequently amended.

² University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research, *Florida Estimates of Population 2014*, 10.

³ *Letter of Transmittal - Citrus County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014*, Page ii.

Use of County Recreational Facilities, establishes rules and regulations relating to the use of County recreation facilities, playgrounds, and athletic fields that fall under the jurisdiction of the Department of Community Services and provides certain powers to the Director of Parks and Recreation.

Background - CCA and its Contract with the County

CCA is a Tennessee-based company, founded in 1983 with a stated vision to create public-private partnerships in corrections in which “facilities would be guided by the tight accountability, stringent guidelines, strong oversight and high standards of government partners. But...bring cost savings, design and technology innovations and business agility to government.”⁴ According to the CCA website, it currently operates 61 facilities in 19 states and the District of Columbia.⁵ The two facilities located in Florida are the Citrus County Detention Facility and the Lake City Correctional Facility.⁶

In October 1995, the County entered into a contract with the CCA to assume management of the Citrus County Detention Facility (Jail) in Lecanto, Florida.⁷ The County’s most recent contract with CCA was for the period October 1, 2005, through September 30, 2015, and stated that the contract may be renewed for “successive five (5) years upon mutual agreement of the parties.”⁸ As discussed below under the subheading *Recent Events - Jail Contract*, the Board approved a contract extension at its June 9, 2015, meeting.⁹ Prior to this extension, the terms of the contract included:

1. The County is required to compensate CCA for operation of the Jail as follows:¹⁰
 - Base compensation rate: \$54.74 per inmate per day for the first year of the contract and then automatically adjusted each October 1 “in accordance with the percentage of any increase in the U.S. Department of Labor Consumer Price Index, but in no event shall the rate be increased less than 2.5% or more than 4%.”
 - If the County enters into agreements to house non-County inmates pursuant to Contract terms: All funds received by the County pursuant to such agreements, less an administrative fee of \$6 per day per inmate.
2. CCA is required to submit a monthly invoice to the County as to compensation for operations and any costs incurred as allowed in other provisions of the contract:¹¹
3. CCA is required to fund a 360-bed expansion of the Jail to be located on County property at the current Jail site and include a new medical facility, a new courtroom, and the retrofitting of the laundry and kitchen facilities. Specific terms included:¹²
 - Commencement of the Jail expansion by no later than December 31, 2005;

⁴ www.cca.com; *About CCA-Our History* and *Contact Us* tabs

⁵ www.cca.com; *Locations* tab

⁶ *Ibid.*

⁷ www.cca.com; *About CCA-Our History* tab

⁸ *Management Services Contract between Citrus County, Florida, and Corrections Corporation of America*, Page 2.

⁹ Michael Bates, *Adams, board quarrel over jail contract*, THE CITRUS COUNTY CHRONICLE, June 9, 2015.

¹⁰ *Management Services Contract between Citrus County, Florida, and Corrections Corporation of America*, Section 6.1, Page 10.

¹¹ *Management Services Contract between Citrus County, Florida, and Corrections Corporation of America*, Section 6.2, Page 10.

¹² *Management Services Contract between Citrus County, Florida, and Corrections Corporation of America*, Section 6.5, Page 11.

- Substantial completion of the Jail expansion no later than January 1, 2007;
- Upon substantial completion, the County's administrative fee related to the housing of non-County inmates "shall be changed to \$3.50 [per day per inmate]."
- If the County reached an agreement with the U.S. Marshals Service "for an IGA rate¹³ of at least \$49.35, the County's administrative fee shall increase to \$4.00 [per day per inmate]."
- An option for the County to purchase the Jail expansion in accordance with terms of a specified exhibit to the contract; along with a requirement that the County purchase the expansion within 60-90 days of the date of any termination or expiration of the contract.¹⁴

There have been several supplemental agreements to the contract, including one approved in May 2007 relating to a part of the Jail expansion, the construction of the courtroom, which had been delayed by mutual agreement and not included in the expansion project. This supplemental agreement required the construction of the courtroom, with modified compensation and other terms as follows:¹⁵

- From October 1, 2007, through September 30, 2015, a Supplemental Compensation Rate of 60-cents (\$.60) per County inmate per day to be paid by the County to CCA, in addition to the Base Compensation Rate in the contract as described above.
- The Supplemental Compensation Rate shall not increase annually or be included in any annual adjustment to the compensation, and shall automatically terminate on October 1, 2015.
- "The Base Compensation Rate and Supplemental Compensation Rate shall be paid for Citrus County inmates only, and shall not apply to inmates of other jurisdictions."
- An amended exhibit¹⁶ relating to the County's purchase option was provided, which included the costs of the expansion and courtroom construction.
- Substantial completion of the courtroom was no later than nine months from CCA's "receipt of Notice to Proceed with the construction."

The two parts of the Jail expansion, reported as being completed in 2007,¹⁷ totaled \$19.5 million;¹⁸ the courtroom expansion portion totaled \$537,000.¹⁹

Recent Events

Recent Events – Jail Contract

The Jail currently houses County inmates, federal inmates per agreement with the U.S. Marshals Service, and inmates from the U.S. Virgin Islands.²⁰ The current compensation rate is \$70.74 per County inmate per day.²¹ It was reported that "officials said the jail averages 378 County inmates a day. Using that average, the County pays about \$9.7 million to CCA annually" to house these

¹³ Per diem set forth in the Intergovernmental Agreement between the County and the U.S. Marshals Service.

¹⁴ Schedule A (identified as Exhibit 8).

¹⁵ *Management Services Contract Supplemental Agreement No. 2*, Page 1.

¹⁶ Amended Schedule A.

¹⁷ *County faces hard choices on jail contract*, THE CITRUS COUNTY CHRONICLE, April 17, 2015.

¹⁸ *Notes to Financial Statements - Citrus County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014*, Page 61.

¹⁹ Mike Wright, *Adams grills CCA exec over expansion costs*, THE CITRUS COUNTY CHRONICLE, April 29, 2015.

²⁰ Mike Wright, *Adams alone in seeking audit*, THE CITRUS COUNTY CHRONICLE, May 12, 2015.

²¹ Mike Wright, *County looks chained to jail contract*, THE CITRUS COUNTY CHRONICLE, April 9, 2015.

inmates.²² For the non-County inmates, the County is paid by the U.S. Marshals Service or the U.S. Virgin Islands pursuant to contract terms, with all but \$4 per inmate per day then paid to CCA.²³

As noted under the heading ***Background - CCA and its Contract with the County***, the County's contract with CCA was set to expire on September 30, 2015, but allowed for a five-year extension if both parties agreed. Therefore, at its May 12, 2015, meeting, the Board voted 4-1 to have the County Administrator begin negotiations with CCA on a contract extension and bring back a first version of such in 30 days; the Board Chair was the dissenting vote.²⁴ At that meeting, as well as several previous and later Board meeting, the Board Chair raised various concerns related to the contract with CCA and operations of the Jail. Some of these concerns are as follows:²⁵

- Records are not readily available relating to how much the County has paid to CCA for the \$19.5 million Jail expansion and, therefore, how much the County still owes to CCA.
- During a Board meeting in late April 2015, the Board Chair:²⁶
 - Asked CCA executives how much the County still owed on both expansion projects and was told by CCA's director of governmental affairs that the County does not owe anything, that there is a penalty based on a 20-year amortization schedule if the County terminates the contract with CCA and "[i]f you finish the contract, you don't owe us one dime.";
 - Stated that, if the County chooses not to extend the contract, it would owe CCA more than \$13 million almost immediately;
 - Requested daily invoices from CCA showing the number of inmates and amount the County paid as part of the contract; and
 - Stated that it didn't make sense that the County's annual payments to CCA have increased while the jail population has not."
- In an email sent on May 19, 2015, to the Jacksonville FBI Office, the Board Chair expressed concerns of "possible fraudulent practices and billing scheme and other issues" with CCA's housing of federal and Virgin Islands inmates.²⁷
- The County's contract with the U.S. Virgin Islands to house 80 inmates per year required the County to bill the U.S. Virgin Islands and then pay the CCA, after removing a \$4 per inmate daily administrative fee. Per the Board Chair, the contract was amended in 2013 to require CCA to bill the U.S. Virgin Islands. However, that didn't take place and the County did not receive its funding for one year. "The Virgin Islands is now proposing a contract that cuts the county from the process, According to the draft contract, CCA will bill the Virgin Islands directly and then provide the administrative fee - now \$6 an inmate per day - to the county."²⁸

²² Ibid.

²³ Ibid.

²⁴ Mike Wright, *Adams alone in seeking audit*, THE CITRUS COUNTY CHRONICLE, May 12, 2015.

²⁵ In addition, the Board Chair has met with Committee staff to discuss his concerns.

²⁶ Mike Wright, *Adams grills CCA execs over expansion costs*, THE CITRUS COUNTY CHRONICLE, April 29, 2015.

²⁷ Mike Wright, *Adams asks FBI to investigate jail contract*, THE CITRUS COUNTY CHRONICLE, May 20, 2015.

²⁸ Michael Bates, *Scott Adams still aiming at CCA*, THE CITRUS COUNTY CHRONICLE, July 9, 2015.

At its June 9, 2015, meeting, the Board approved a contract extension with CCA by a 4-1 vote, with the Board Chair once again as the dissenting vote. The contract extension “freezes the consumer price index for the next two years. Citrus County pays CCA a flat basic rate that increases annually 2.5 percent to 4 percent in line with the CPI. However, the county anticipates the current-year index to be less than 2.5 percent, and so wants a corresponding adjustment. Board members also increased the U.S. Marshal and Virgin Island inmates administrative fee from \$4 per day to \$6 per day per inmate. The current rate is \$70.14 each day for each county inmate. CCA anticipates an increase in the number of inmates from the U.S. Virgin Islands by 90 per day.”²⁹

Recent Events – Parks and Recreation department

In September 2014, a former Parks and Recreation supervisor was arrested and accused of stealing more than \$100,000 in community facility rental fees from the County since 2009.³⁰ She had been previously arrested in February 2014 on a charge of scheming to defraud for illegally using a County gas credit card to charge more than \$9,000 in gasoline for her personal vehicles.³¹

An internal audit of the County’s Parks and Recreation Division was conducted by the Internal Audit Division of the Clerk of Court’s Office, at the request of the County’s Community Services Director, after the alleged fraud was committed by the former employee, beginning in 2009 under prior management. The internal audit report, in part, noted the following:³²

- Due to the large volume of cash transactions, the greatest risk for Parks and Recreation is misappropriation of funds.
- Once the problem was discovered, the County’s Parks and Recreation director restructured processes to create better controls.
- Overall, the audit found that, under the Parks and Recreation Director’s supervision, internal controls have greatly improved since December 2013. Management oversight, continuous monitoring, staff training, evaluating processes, and implementing robust controls will mitigate the risk of revenue loss, and ensure best practices are applied.
- The report included various recommendations, including several improvements to the receipting process and additional computer software training for employees.

Financial-Related Information of the District

In accordance with Section 218.39(1), *Florida Statutes*, the County has obtained annual financial audits of its accounts and records by an independent certified public accountant (CPA) and has timely submitted the audit reports to the Auditor General’s Office as required. Pursuant to Section 218.39(7), *Florida Statutes*, these audits are required to be conducted in accordance with rules of the Auditor General promulgated pursuant to Section 11.45, Florida Statutes. The Auditor General has issued *Rules of the Auditor General, Chapter 10.550 - Local Governmental Entity Audits* and has adopted the auditing standards set forth in the publication entitled *Government Auditing Standards* (2011 Revision)

²⁹ Mike Wright, *Adams, board quarrel over jail contract*, THE CITRUS COUNTY CHRONICLE, June 9, 2015.

³⁰ Buster Thompson, *Charges mounting for Emmanuel*, THE CITRUS COUNTY CHRONICLE, September 17, 2014.

³¹ Mike Wright, *Investigation points to lone thief*, THE CITRUS COUNTY CHRONICLE, July 21, 2014.

³² Internal Audit Division of the Citrus County Clerk of the Circuit Court and Comptroller, *Citrus County Board of County Commissioners Parks & Recreation Division*; 3, 4, 7, 11, and 21 (Mar. 2015).

as standards for auditing local governmental entities pursuant to Florida law. The most recent audit report that has been submitted to the Auditor General is for the 2013-14 fiscal year and included the following:

Management's Discussion and Analysis and Financial Statements:

- The General Fund is the general operating fund of the County,³³ which accounts for many of the core services that the County performs for its citizens, such as planning and development, parks and recreation, library services, and public safety. General tax revenues and other sources of revenue used to finance the County's fundamental operations are accounted for in this fund.
- General Fund Revenues totaled \$84,963,889, with the largest sources from *Taxes and Special Assessments* [\$59,189,817], *Intergovernmental* [\$12,225,085], and *Charges for Services* [\$11,430,645].³⁴
- General Fund Expenditures totaled \$79,548,701, with some of the largest categories for:³⁵
 - *General Government*³⁶ [\$26,350,987]
 - *Public Safety* [\$41,913,090]
 - *Human Services* [\$4,665,255]
 - *Culture and Recreation* [\$1,032,059]
- The Ending Fund Balance for the General Fund was \$21,352,794, an increase of \$9,272,544 from the prior fiscal year.³⁷

Audit Findings:

- There were no audit findings that related to the areas of concern in this request in the annual financial audit reports for either the 2013-14 or 2012-13 fiscal years.
- The 2013-14 fiscal year financial audit report included no prior year audit findings and three current year audit findings related to *Journal Entry Review and Approval*, *Reviewing Vendors for Suspension and Debarment*, and *Hansen Software - Segregation of Duties*.
- The 2012-13 fiscal year financial audit report included one current year audit finding related to *Financial Condition Assessment*. It was an outstanding prior year audit finding, which was updated and reported as a current year finding. The other prior year audit finding had been corrected.

Other Considerations

The Auditor General, if directed by the Committee, will conduct an operational audit and take steps to avoid duplicating the work efforts of other audits being performed of County operations. The primary

³³ *Notes to Financial Statements - Citrus County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014*, Page 33.

³⁴ *Statement of Revenues, Expenditures and Changes in Fund Balances, Governmental Funds - Citrus County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014*, Page 16.

³⁵ *Ibid.*

³⁶ The County records, in this category, expenditures for services provided by the legislative and administrative branches of the County for the benefit of the public and the governmental body as a whole. Such expenditures include financial and administrative services, such as budgeting, accounting, property appraisal, tax collecting, personnel, purchasing, and property control; legal services; comprehensive planning; and non-court information systems (per the *Uniform Accounting System Manual for Florida Counties, 2011 Edition*, developed by the Department of Financial Services).

³⁷ *Statement of Revenues, Expenditures and Changes in Fund Balances, Governmental Funds - Citrus County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014*, Page 16.

focus of a financial audit is to examine the financial statements in order to provide reasonable assurance about whether they are fairly presented in all material respects. The focus of an operational audit is to evaluate management's performance in establishing and maintaining internal controls and administering assigned responsibilities in accordance with laws, rules, regulations, contracts, grant agreements, and other guidelines. Also, in accordance with Section 11.45 (2)(j), *Florida Statutes*, the Auditor General will be required to conduct an 18-month follow-up audit to determine the County's progress in addressing the findings and recommendations contained within the previous audit.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to those charged with the County's governance and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of the County's board and management, as well as the citizens living within the boundaries of the County. Alternately, any audit findings that are not corrected after three successive audits are required to be reported to the Committee by the Auditor General, and a process is provided in Section 218.39(8), *Florida Statutes*, for the Committee's involvement. First, the County may be required to provide a written statement explaining why corrective action has not been taken and to provide details of any corrective action that is anticipated. If the statement is not determined to be sufficient, the Committee may request the Chair of the Board of County Commissioners to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department of Revenue and the Department of Financial Service to withhold any funds not pledged for bond debt service satisfaction which are payable to the County until the County complies with the law.

III. Effect of Proposed Request and Committee Staff Recommendation

If the Committee directs the Auditor General to perform an audit, the audit should be an operational audit, as defined in Section 11.45(1)(g), *Florida Statutes*, of the:

- 1) County's contract with CCA for the operation of the Jail, including the recent contract extension, and should focus on the internal controls and procedures of the County and its compliance with the contract terms relating to billing and oversight; and
- 2) County's Parks and Recreation Department and should focus on the operations and internal controls of the Department and its compliance with applicable laws, rules, regulations, and ordinances governing its operations.

Pursuant to the authority provided in Section 11.45(3), *Florida Statutes*, the Auditor General shall finalize the scope of the audit during the course of the audit, providing that the audit-related concerns of Senator Dean are considered. In addition, the Auditor General should be allowed to set the timing of the audit as audit resources are available, consistent with her work plan and so as not to jeopardize the timely completion of statutorily mandated assignments.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the Committee directs the audit, the Auditor General will absorb the audit costs within her approved operating budget.

V. Related Issues:

None.

This staff analysis does not reflect the intent or official position of the requestor.
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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Education, *Chair*
Appropriations
Education Pre-K - 12
Ethics and Elections
Health Policy
Higher Education
Rules

SENATOR DON GAETZ

1st District

June 29, 2015

The Honorable Joe Abruzzo
Alternating Chairman
Joint Legislative Audit Committee
12300 West Forest Hill Boulevard, Suite 200
Wellington, FL 33414-5785

Dear Mr. Chairman,

Enclosed is information describing what appears to be \$600,000 in missing funds from the Walton County Planning Department. It is my understanding that this money represents development fees which should have been collected or, if collected, are now unaccounted for.

I enclose, as well, a letter from Walton County Commissioner Cindy Meadows regarding this matter.

Please consider this my request that your Joint Committee add a forensic and fraud audit of Walton County to the work plan of the Auditor General. Considering that Walton County is a small county and that \$600,000 represents a sizable loss, please give this matter whatever urgent attention you deem it deserves.

With best wishes,

Respectfully,

A handwritten signature in blue ink, appearing to read "Don Gaetz".

Senator Don Gaetz

cc: President Gardiner
Representative Brad Drake
Representative Matt Gaetz
Commissioner Cindy Meadows

REPLY TO:

- 4300 Legendary Drive, Suite 230, Destin, FL 32541 (850) 897-5747 FAX: (888) 263-2259
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5001
- 5230 West U.S. Highway 98, Administration Building, 2nd Floor, Panama City, FL 32401 (850) 747-5856

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

State investigating Walton County planning department

By TOM McLAUGHLIN | Daily News

Published: Tuesday, June 23, 2015 at 18:20 PM.

State Attorney Bill Eddins said Tuesday he intends to convene a grand jury to investigate "areas of concern" within the Walton County Planning Department.

His announcement came the same day county residents lined up to urge their elected leaders to have the state's Auditor General investigate the 2005 failure of county planners to collect over \$600,000 in recreation fees.

The State Attorney's Office investigation of Walton County got underway several months ago when a packet of information, including an email detailing a \$600,000 collection error, "as well as other information," arrived at his office, Eddins said.

Since then, County Attorney Mark Davis has been called upon to provide hundreds of documents to Eddins' office.

"We have areas of concern as far back as 2000," Eddins said.

Those areas of concern, he said, "are so significant that I intend, at the end of this investigation, to present this case to a grand jury for their review and consideration."

The email that helped get the investigation started, the same one that has more recently riled Walton County's active citizenry, was allegedly sent May 21, 2008, from planner Melissa Ward to Pat Blackshear, who was then the director of Walton County planning.

In that email, Ward confesses to leaving out some zeros in calculating a 5 percent recreation fee for the Lakeside of Blue Mountain Beach subdivision. She sent the letter out May 26, 2005, she said.

Her mistake left a property with an assessed value of \$12,285,000 with the bill for a property assessed at \$12,285, Ward said.

The person or persons paying the recreation fee would therefore have been billed \$614.25, rather than the correct \$614,250.

"I accept the responsibility for the error," Ward's email said.

Blackshear, who was among those Tuesday calling for the Auditor General to investigate the \$600,000 mistake, contends the Ward memo "looks a bit fixed."

In an email of her own, sent June 12, 2015, Blackshear told Davis, the county attorney, "I have never seen such memo, ever, until just now. ... Someone or several are lying."

Tuesday, Blackshear notified county commissioners that she is cooperating with the State Attorney's Office, and added the Attorney General's Office should be involved in looking at county government too.

"It grieves me that this was just discovered," she said. "In the end, which developers were involved and who benefited."

Residents Suzanne Harris and Bob Hudson told the commissioners they want to know if the uncollected \$600,000 is an isolated case or if local developers benefitted from other Planning Department oversights.

Eddins wouldn't expand on the areas of concern his investigators have uncovered, and also didn't address specifics of who the inquiry might be focused upon.

Eddins did say his office is not presently looking at the unpaid \$600,000 as a criminal act.

"At this point in time we are not aware of \$600,000 in missing money," he said. "The position of the county is that someone made a mistake. There's no indication there is any money missing. There is an indication the wrong amount was charged."

Harris and Hudson, though, said they believe the county has stonewalled their efforts to get information about the Planning Department and the collection of recreation fees and other county fees.

In an email sent in March from Davis to Harris, he estimated the cost to pull records together at \$3,540.

County Commissioner Cindy Meadows helped lead the charge to get the Auditor General involved in investigating the case. She said she feared that "if we don't get our house in order" the entities doling out RESTORE Act funds might shun Walton County.

Commissioners declined to take action on the citizen proposal to call in the Auditor General, though Board Chairman Bill Imfeld said he's interested in insuring that the county is financially sound.

He said he's notified the county's auditing firm, Carr, Riggs and Ingram, of the Ward error.

"Carr, Riggs and Ingram has never identified any issue with cash flow or how things were done," Imfeld said. "So I'm sure at least in the upcoming audit cycle they will be much more attuned."

Imfeld said an Auditor General investigator "would take a different perspective" on county finances and he thought that would be beneficial.

"I'd like to see everything fully accounted for," he said.

Imfeld was Walton County's financial director at the time the \$600,000 mistake was made. Current County Administrator Larry Jones was also serving on the governing board at the time.

Contact Daily News Staff Writer Tom McLaughlin at 850-315-4435 or tmclaughlin@nwfailynews.com. Follow him on Twitter @TomMnwfdn.

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WALTON COUNTY, FLORIDA
Board of County Commissioners

William "Bill" Chapman, District 1
Cecilia Jones, District 2
Bill Imfeld, District 3, Chair
Sara Comander, District 4, *Vice-Chair*
Cindy Meadows, District 5



P.O. Box 1355
DeFuniak Springs, FL 32435
Phone: (850) 892-8155
Fax: (850) 892-8454
www.co.walton.fl.us

June 25, 2015

The Honorable Don Gaetz
4300 Legendary Drive
Suite 230
Destin, Florida 32541

Dear Senator Gaetz:

Based on revelations disclosed of missing funds related to the collection of various buy-out fees collected from developers during my previous 2004 – 2008 term as District 5 Commissioner, I am officially requesting the Auditor General review the department responsible for assessing, collecting and depositing same.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Meadows".

Cindy Meadows
Commissioner, District 5
Walton County, Florida
70 Logan Lane
Santa Rosa Beach, Florida 32459
(850) 231-2978

STAFF ANALYSIS

Date: September 30, 2015

Subject: Request for an Audit of Walton County's Planning Department

Analyst

Coordinator

White DW

DuBose KD

I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from Senator Don Gaetz to have the Committee direct the Auditor General to conduct an audit of Walton County's (County) Planning Department, specifically addressing concerns relating to development fees which should have been collected or, if collected, are now unaccounted for, by staff.

II. Present Situation:

Current Law

Joint Rule 4.5(2) provides that the Legislative Auditing Committee may receive requests for audits and reviews from legislators and any audit request, petition for audit, or other matter for investigation directed or referred to it pursuant to general law. The Committee may make any appropriate disposition of such requests or referrals and shall, within a reasonable time, report to the requesting party the disposition of any audit request.

Joint Rule 4.5(1) provides that the Legislative Auditing Committee may direct the Auditor General or the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an audit, review, or examination of any entity or record described in Section 11.45(2) or (3), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, provides that the Auditor General may, pursuant to his or her own authority, or at the discretion of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of the accounts and records of any governmental entity created or established by law.

Section 11.45(2)(j), *Florida Statutes*, provides, in part, that the Auditor General shall conduct a follow-up to his or her audit report on a local governmental entity no later than 18 months after the release of the audit report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the previous audit report.

Request for an Audit of Walton County, Florida's Planning Department

Senator Gaetz has requested the Committee to direct an audit of Walton County's Planning Department to address concerns relating to the collection, or lack thereof, of certain development fees. Referenced in, and included as attachments to, his request were: (1) an article from nwfdailynews.com,

entitled *State investigating Walton County planning department*, dated June 23, 2015; and (2) a letter from Walton County Commissioner Cindy Meadows to Senator Gaetz regarding the revelation of missing funds related to certain development fees. Specific information relating to the news article is further described below under the heading ***Recent Events and Investigations***.

Background

Walton County (County) is a political subdivision of the state established in 1824 pursuant to Article VIII of the *Constitution of the State of Florida*,¹ with geographical boundaries established in Section 7.66, *Florida Statutes*. The County, located in the western panhandle of the state, has an estimated population of 59,793.²

The County is governed by an elected Board of County Commissioners (Board), consisting of five members. The Board establishes policies and appoints a county administrator to implement the policies and manage the operations of the County. The Board also adopts the millage rate annually and approves the budget, which determines the expenditures and revenue necessary to operate all County departments. The powers and duties of the Board are established by Chapter 125, *Florida Statutes*.

The County's Planning and Development Services Division (Division) consists of three departments: (1) Code Enforcement, (2) Current Planning, and (3) Long Range Planning. The Division is responsible for:³

- Information and resources regarding such areas as building large and small developments in Walton County, submitting applications and supporting documentation for developments; obtaining beach and temporary permits; Flood Plain management; and Post Disaster Redevelopment Planning.
- Administration of the Walton County Comprehensive Plan, EAR (Evaluation and Appraisal Report) and all supporting documentation, the Land Development Code, as well as Development of Regional Impact (DRI) project management functions.
- Coordination of meetings, workshops, and public hearings for the following Boards: (1) Code Enforcement Board, (2) Design Review Board, (3) Planning Commission, (4) Technical Review Committee, and (5) Zoning Board of Adjustment.
- Code Enforcement: Enforcement of specific Walton County adopted rules and regulations as set forth in the Code of Ordinances for the unincorporated areas of the county ranging from land development and land use regulations to codes governing such things as noise, junk, debris, building without permits, beach activities, lighting etc.⁴
- Planning: Pre-application meetings, both major and minor development reviews and project management, permitting, abandonment, appeals, lot splits, neighborhood plans, commercial and residential plats, minor replats, scenic corridor reviews, variances, citizen planning, and coordination with Code Enforcement on code issues.⁵

¹ As revised in 1968 and subsequently amended.

² University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research, *Florida Estimates of Population 2014*, 21.

³ Walton County, Florida website (www.co.walton.fl.us) – Departments tab. Planning and Development Services webpage.

⁴ Walton County, Florida website (www.co.walton.fl.us) – Departments tab. Planning and Development Services, Code Enforcement Department webpage.

⁵ Walton County, Florida website (www.co.walton.fl.us) – Departments tab. Planning and Development Services, Current Planning Department webpage.

Recent Events and Investigations

Recent Events

At its meeting on June 23, 2015, the Walton County Board of County Commissioners (Board) heard from various citizens regarding concerns relating to the issues surrounding the County's planning department and the ongoing investigation by the State Attorney's Office. These concerns included whether there were other known instances of errors relating to assessments of development fees and, if so, how did they occur and what steps are being taken to seek payment of any under-assessment errors; the expiration of letters of credit from developers before projects have been completed and why this was allowed to occur; and review of controls over the operations of the planning department. The County Attorney was requested to contact the Auditor General's Office regarding an audit of that department.

The Committee received a letter dated July 8, 2015, from the County Attorney, regarding the issues at the department and requesting, on the Board's behalf, that the Committee direct the Auditor General to perform an operational audit of the department's operations. He further stated that "The County, the Commissioners and the Staff stand ready to assist the Committee and the Auditor General with any information needed to complete the requested audit."

Investigations

As referenced above, an article from nwfailynews.com, entitled *State investigating Walton County planning department*, was provided as part of the audit request. Per the article:⁶

- An error was made by a county planner in 2005 relating to the calculation of a five-percent recreation fee owed by a developer; the calculation "left a property with an assessed value of \$12,285,000 with the bill for a property assessed at \$12,285." The fee should have been \$614,250, but was billed at \$614.25. The error resulted in the planning department's failure to collect the great majority of the \$600,000 fee.
- The planner sent a memo to the then director of planning in 2008 regarding the error and accepting responsibility for it; however, the director has denied ever seeing the memo until now.
- An investigation of the planning department by the Office of the State Attorney, 1st Judicial Circuit of Florida (State Attorney's Office), was in progress, which had begun several months prior "when a packet of information, including an email detailing a \$600,000 collection error, 'as well as other information,' arrived at his [State Attorney's] office."
- Since then, the County Attorney has provided "hundreds of documents" to the State Attorney's Office and the State Attorney intended "to convene a grand jury to investigate 'areas of concern' within the Department" that go "as far back as 2000."⁷

Auditor General staff were contacted by the State Attorney's Office in mid-July 2015, and the status of the investigation was discussed. The State Attorney indicated that an operational audit of the Walton County planning department would not interfere with the current investigation. In addition, he

⁶ nwfailynews.com article, entitled *State investigating Walton County planning department*, dated June 23, 2015.

⁷ Ibid.

indicated his willingness to share with Auditor General staff certain information acquired during the investigation that may be useful during the audit process.

On July 13, 2015, a grand jury was impaneled to “take a hard look at the Walton County Planning Department and the way it has been managed for the last 15 years,” and evidence from 2000 to the present day was scheduled to be presented by the State Attorney during the week of August 24, 2015.⁸ A local news article on September 4, 2015, indicated that the grand jury had returned a sealed presentment, which would remain sealed for 15 days, and the former director of planning had been indicted on two counts of perjury, one for lying to the State Attorney’s Office during its probe of inconsistencies within the planning department and one for lying to the grand jury to which the State Attorney’s Office presented its findings.⁹ It further stated that in 2005 she “took over as head of the county’s department for planning and development services” and “served in that capacity until her retirement in March 2010, and has since served as a planning consultant for local municipalities and government agencies.”

Committee staff spoke with staff at the State Attorney’s Office in Walton County regarding the investigation and to obtain a copy of the grand jury presentment. A review of the grand jury presentation disclosed the following:

- The grand jury was requested to review the operations and policies of the County’s Planning Department, Human Resources Department, and the Board of County Commissioners, after a seven-month investigation into multiple areas of Walton County government by the Office of the State Attorney, 1st Judicial Circuit of Florida, and the Walton County Sheriff’s Office.
- Based on its review, the grand jury determined that one witness was “untruthful” and returned an indictment charging her with “one count of Perjury in an Official Proceeding and one count of Perjury in an Unofficial Proceeding.”
- Findings and recommendations¹⁰ from the grand jury related to the following areas:
 - Recreation Fees: Two “mistakes” in calculating a recreation fee resulted in the failure to collect almost \$800,000, which the grand jury found to be “egregious and unacceptable.”
 - Letters of Credit (LOC):¹¹ Prior to 2007, letters of credit were tracked by the Planning Department, and evidence indicated that between 20 and 25 LOCs were allowed to expire without the required infrastructure being completed. Upon discovery of this problem in 2007, responsibility for tracking the LOCs was transferred to the Engineering Department, where one employee improved the tracking system and ensured that the projects with the expired LOCs were completed by the developers.
 - Proportionate Fair Share versus Impact Fee: The County is using proportionate fair share, with required data for the calculation being provided by outside engineering firms at considerable cost. The data has not been updated since 2010, despite an annual update requirement in the Land Development Code.

⁸ nwfdailynews.com article, entitled *Grand jury to investigate Walton planning department*, dated July 13, 2015.

⁹ nwfdailynews.com article, entitled *Former Walton planning chief Pat Blackshear arrested*, dated September 4, 2015.

¹⁰ The grand jury presentment has been provided as part of the meeting packet; please see that document for the recommendations.

¹¹ Letters of credit are a line of credit issued by a bank that guarantees that required infrastructure will be completed by a developer (Source: page 2 of the grand jury presentment).

-
- Land Development Code and Comprehensive Plan: Numerous witnesses testified to problems with both the Comprehensive Plan and the Land Development Code, including vague and ambiguous wording and inconsistencies internally and with each other.
 - Beeman's Study: Although a study of the Planning Department was conducted in 2004, very few of the recommendations were put in place. The grand jury believes that, if the recommendations had been enacted, many of the problems addressed in the grand jury presentment could have avoided.
 - Clerk's Audit: An internal audit of the Planning Department was performed in 2010 by the Clerk of Court's Internal Audit Department, which discovered a letter of agreement between county administration and a consultant to provide guidance, leadership, and decision-making services for \$8,000 per month. This consultant, while not a County employee, was acting as the planning director "at the same time that an official Planning Director was also in place," resulting in employees being unaware of the proper chain of command and difficulties for the department to operate. [Note: The grand jury recommended that the Auditor General be requested to perform both forensic and operational audits of the Walton County Planning Department.]
 - Involvement of County Commissioner in Day to Day County Operations: Substantial testimony was heard regarding the role of a certain County Commissioner in the day-to-day operations of the County government. Evidence provided indicated that in certain instances "the ordinary chain of command was not followed and direct supervisors were given little or no input in the decision-making process." These instances involved: (1) the hiring of one Planning Department employee with a connection to the County Commissioner, despite having no experience in the position and at a higher salary than others already working in the identical position; (2) the firing of another Planning Department employee¹² at the request of the County Commissioner without following the County's progressive disciplinary procedures; and (3) the involvement of the County Commissioner in a code enforcement issue that resulted in normal procedures not being followed. The grand jury presentment stated that the County Commissioner and the County Administrator "should be reprimanded for their failure to follow proper procedures in the hiring, firing, and direction of County employees" and the "County Commissioners should not be involved in the day to day operations of the County."
 - Planning Department Reorganization: Witnesses testified that the Planning Department Director has requested the purchase of modern, updated software specifically designed for planning.
 - Developer Influence: Witnesses testified that developers have had greater access to the Planning Department offices than access allowed to the general public and have attempted to influence the decisions of individual employees.
 - In conclusion, the grand jury "strongly urged that great care be taken to avoid even the appearance of retaliation against the employees who have testified before us."

¹² A news article by WZEP AM 1460 indicated that this employee discovered the 2008 memo describing the approximately \$600,000 error which, when provided to the State Attorney's Office, prompted the investigation of the planning department. It further stated that: (1) once he "brought the discrepancy to the attention of superiors, he began to have difficulties at work and [the County Commissioner] insisted that he be fired" and (2) he has filed a lawsuit in federal court under the 'Whistleblower Act' charging the County Commissioner, the County Administrator, and the Commission for violating his First Amendment rights and wrongful termination.

Financial Audit

In accordance with Section 218.39(1), *Florida Statutes*, the County has obtained annual financial audits of its accounts and records by an independent certified public accountant (CPA) and has timely submitted the audit reports to the Auditor General's Office as required. Pursuant to Section 218.39(7), *Florida Statutes*, these audits are required to be conducted in accordance with rules of the Auditor General promulgated pursuant to Section 11.45, *Florida Statutes*. The Auditor General has issued *Rules of the Auditor General, Chapter 10.550 - Local Governmental Entity Audits* and has adopted the auditing standards set forth in the publication entitled *Government Auditing Standards (2011 Revision)* as standards for auditing local governmental entities pursuant to Florida law. The most recent audit report that has been submitted to the Auditor General is for the 2013-14 fiscal year and included the following:

Management's Discussion and Analysis and Financial Statements:

- The General Fund is the chief operating fund of the County, which accounts for many of the core services that the County performs for its citizens, such as planning, recreation, library services, and fire rescue services.¹³ General tax revenues and other sources of revenue used to finance the County's fundamental operations are accounted for in this fund.¹⁴
- General Fund Revenues totaled \$35,734,182, with the largest sources from *Taxes* [\$19,309,774], *Intergovernmental* [\$10,405,422], and *Charges for Services* [\$3,080,931].¹⁵
- General Fund Expenditures totaled \$33,565,521, with the largest categories for:¹⁶
 - *General Government*¹⁷ [\$18,699,246]
(Note: These expenditures included \$1,474,139 for *Growth Management and Comprehensive Planning*.¹⁸)
 - *Public Safety* [\$11,390,641]
 - *Human Services* [\$1,753,764]
- The Ending Fund Balance for the General Fund was \$20,603,498, an increase of \$2,840,718 from the prior fiscal year.¹⁹

¹³ *Management's Discussion and Analysis: Financial Analysis of the County's Funds - Walton County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014, Page 19.*

¹⁴ *Notes to Financial Statements - Walton County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014, Page 47.*

¹⁵ *Statement of Revenues, Expenditures and Changes in Fund Balance, Governmental Funds - Walton County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014, Pages 29 (back) and 30.*

¹⁶ *Ibid.*

¹⁷ The County records, in this category, expenditures for services provided by the legislative and administrative branches of the County for the benefit of the public and the governmental body as a whole. Such expenditures include financial and administrative services, such as budgeting, accounting, property appraisal, tax collecting, personnel, purchasing, and property control; legal services; comprehensive planning; and non-court information systems (per the *Uniform Accounting System Manual for Florida Counties, 2011 Edition*, developed by the Department of Financial Services,).

¹⁸ *Statement of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual, General Fund - Walton County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014, Page 32.*

¹⁹ *Statement of Revenues, Expenditures and Changes in Fund Balance, Governmental Funds - Walton County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014, Pages 29 (back) and 30.*

Audit Findings:

- There were no audit findings that related to the areas of concern in this request in the annual financial audit reports for either the 2013-14 or 2012-13 fiscal years.
- The 2013-14 fiscal year financial audit report included no current year audit findings and only one prior year audit finding which related to *Information Technology - Social Engineering Training*.
- The 2012-13 fiscal year financial audit report included two current year audit findings related to *Information Technology (Disaster Recovery Testing Plan and Social Engineering Training)* and *Emergency Medical Systems (EMS) Inventory*. In addition, the report included one prior year audit finding related to *Codification of Accounting Policies and Procedures*.

Other Considerations

The Auditor General, if directed by the Committee, will conduct an operational audit and take steps to avoid duplicating the work efforts of the County's auditors performing the financial audit. The primary focus of a financial audit is to examine the financial statements in order to provide reasonable assurance about whether they are fairly presented in all material respects. The focus of an operational audit is to evaluate management's performance in establishing and maintaining internal controls and administering assigned responsibilities in accordance with laws, rules, regulations, contracts, grant agreements, and other guidelines. Also, in accordance with Section 11.45 (2)(j), *Florida Statutes*, the Auditor General will be required to conduct an 18-month follow-up audit to determine the County's progress in addressing the findings and recommendations contained within the previous audit.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to those charged with the County's governance and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of the County's board and management, as well as the citizens living within the boundaries of the County. Alternately, any audit findings that are not corrected after three successive audits are required to be reported to the Committee by the Auditor General, and a process is provided in Section 218.39(8), *Florida Statutes*, for the Committee's involvement. First, the County may be required to provide a written statement explaining why corrective action has not been taken and to provide details of any corrective action that is anticipated. If the statement is not determined to be sufficient, the Committee may request the Chair of the Board of County Commissioners to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to the County until the County complies with the law.

III. Effect of Proposed Request and Committee Staff Recommendation

If the Committee directs the Auditor General to perform an audit, the audit should be an operational audit, as defined in Section 11.45(1)(g), *Florida Statutes*, of Walton County's Planning and Development Services Division and should focus on the operations and internal controls of the Division and its compliance with applicable laws, rules, regulations, and ordinances governing its operations. Pursuant to the authority provided in Section 11.45(3), *Florida Statutes*, the Auditor General shall finalize the scope of the audit during the course of the audit, working with the State Attorney's Office and providing that the audit-related concerns of Senator Gaetz are considered. In addition, the Auditor General should be allowed to set the timing of the audit as audit resources are

available, consistent with her work plan and so as not to jeopardize the timely completion of statutorily mandated assignments.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the Committee directs the audit, the Auditor General will absorb the audit costs within her approved operating budget.

V. Related Issues:

None.

This staff analysis does not reflect the intent or official position of the requestor.
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**IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR
WALTON COUNTY, FLORIDA
AT THE SECOND TERM HEREOF,
IN THE YEAR OF OUR LORD,
TWO THOUSAND AND FIFTEEN**

REPORT

WE THE GRAND JURORS OF THE STATE OF FLORIDA, LAWFULLY SELECTED, IMPANELED AND SWORN, INQUIRING IN AND FOR THE BODY OF THE COUNTY OF WALTON UPON THEIR OATHS AS GRAND JURORS, DO PRESENT THE FOLLOWING REPORT.

At the request of the Office of the State Attorney, we have reviewed the operations and policies of Walton County government. Included in this review were operations of the Planning Department, Human Resource Department, and the Board of County Commissioners. Based on our review, we have determined that one witness who appeared before us was untruthful. For that reason, we have returned an indictment charging Patsy Blackshear with one count of Perjury in an Official Proceeding and one count of Perjury in an Unofficial Proceeding.

The issues leading to our review began in January 2015 when a Walton County employee doing a routine review of a file discovered a memorandum dated May 21, 2008, written by a planning department employee who was accepting responsibility for a miscalculation in determining the amount of money due Walton County for a recreation fee. According to the memorandum, this miscalculation resulted in Walton County failing to collect more than \$600,000.00. This memorandum was brought to the attention of the Office of the State Attorney and the Walton County Sheriff's Office and resulted in a seven-month investigation into multiple areas of Walton County government. As a result of that investigation this matter was brought before the Grand Jury for our review. During the course of our review, we have heard testimony from more than forty witnesses and reviewed hundreds of pages of documents. Based upon our review, we make the following findings and recommendations.

RECREATION FEES

The initial area of concern in this matter involved the failure of Walton County to correctly compute and collect recreation impact fees. This is a fee payable to the County based on the assessed value of land and is to be used to fund public recreation projects. At all relevant times this fee was set at five percent of the land value being developed.

In 2005, a project was being developed known as Lakeside at Blue Mountain Beach. According to the Property Appraiser's Office, the assessed value of this land was \$12,285,000.00. The recreation fee for this project should have been \$614,250.00. As a result of an error by a planning department employee, the fee was set at \$614.25. This resulted in Walton County failing to collect \$613,635.75. According to multiple witnesses, this mistake was discovered in 2008 and brought to the attention of Planning Department Director Patsy Blackshear. A memorandum was then written and placed in the file. There is no evidence that this error was ever brought to the attention of Ms. Blackshear's supervisors or the County Commissioners. Evidence indicates that no further action was taken to collect the unpaid fees.

Evidence of a second mistake involving a recreation fee calculation was also brought to our attention. The facts in this case are virtually identical to the one involving Lakeside at Blue Mountain Beach. The land in this development, Endless Summer, had an assessed value of \$4,111,205.00. The recreation fee for this project should have been \$205,560.25 but only \$20,560.25 was calculated and collected. This resulted in Walton County not receiving \$185,000.00. This error occurred in 2006 and was discovered in 2008. While a memorandum dated July 17, 2008, describing this mistake was located in the file, no witness accepted responsibility for writing the memorandum. Again, it appears that no action was ever taken to collect this fee.

We find the failure to collect almost \$800,000.00 in recreation fees to be egregious and unacceptable. For this reason, we make the following recommendations:

1. That the Planning Department continue a recently instituted peer review process to prevent errors;
2. That new software be purchased for the Planning Department that has the ability to calculate and track recreation fees to ensure accuracy;
3. That various levels of review be established, including at the director level, to prevent errors.

LETTERS OF CREDIT

Letters of credit are a line of credit issued by a bank that guarantee that required infrastructure will be completed by a developer. Prior to 2007, letters of credit were tracked by the Planning Department. Evidence before us indicated that between 20 and 25 letters were allowed to expire without the required infrastructure being completed. When this problem was discovered in 2007, responsibility for tracking letters of credit was transferred to the Engineering Department. One employee was assigned to this task who took it upon herself to improve the tracking system and she ensured that the projects with the expired letters of credit were completed by the developers. While evidence indicates that this employee is doing an excellent job using an Outlook Calendar

and Excel Spreadsheet, more needs to be done to prevent letters of credit from expiring in the future.

In order to adequately address this problem, we make the following recommendations:

1. That Walton County immediately take action to develop a formal method for tracking letters of credit. This method should be available to more than one person and should involve computer software designed for this purpose;
2. That a group or committee be established to study whether letters of credit are in the best interest of the County and whether an alternative process should be developed. This committee should receive input from all groups involved in the development process. It should be noted that the majority of the testimony we have received on letters of credit has recommended that they be eliminated and this should be considered.

PROPORTIONATE FAIR SHARE VERSUS IMPACT FEE

Proportionate Fair Share is a payment that is required for projects that are using road segments that are over capacity. These funds are to pay for improvements to the road segments to increase capacity or for connection roads. According to testimony that we have received, there are numerous problems with Proportionate Fair Share. It is based on a very complicated formula that relies on subjective traffic studies and does not allow for any predictability as to the amounts of the payments. Walton County contracts with outside engineering firms to provide this information at considerable cost. We have also heard testimony that this computation is using data that has not been updated since 2010 despite the Land Development Code requiring that the data be updated annually. This results in inaccurate calculations.

Impact Fees are an alternative to Proportionate Fair Share. In this method, a study is completed to determine which roads in the County are over-burdened and the fee is based on the square footage of a development or the number of houses in a subdivision. Testimony indicates that this method results in greater predictability of fees and more fairness in how the fees are calculated. Testimony also indicates that the majority of counties in Florida now use Impact Fees as opposed to Proportionate Fair Share. The testimony we have heard by far favors a move to the use of Impact Fees.

For these reasons, we make the following recommendations:

1. That the County conduct a study to compare Proportionate Fair Share and Impact Fees to determine which is best.

2. That the data used to calculate Proportionate Fair Share be updated as required by the Land Development Code so that accurate fees are assessed.
3. That the County determine which is most cost effective, whether to continue to use an outside engineering firm to perform the Proportionate Fair Share or Impact Fee computations or if they should be performed by County employees.

LAND DEVELOPMENT CODE AND COMPREHENSIVE PLAN

We have received considerable testimony regarding the Land Development Code and the Comprehensive Plan. The Comprehensive Plan establishes the general policies and objectives for development in the county. It is intended to provide the principles, guidelines, standards, and strategies for the orderly and balanced economic, social, physical, environmental, and fiscal development in the area. Testimony we have received indicates that Walton County was the last County in Florida to adopt a Comprehensive Plan and that mandatory updates required by the State were not completed in a timely manner. The Land Development Code contains the specific requirements for development and is the document that puts the policy of the Comprehensive Plan into action.

Numerous witnesses have testified to the problems with both the Comprehensive Plan and the Land Development Code. They are described as vague and ambiguous, internally inconsistent, and inconsistent with each other. These problems have made it necessary for County planners to interpret the meaning of both the Plan and the Code, sometimes leading to similar situations being treated differently. Employees have testified that these problems result in great frustration and low morale and turnover in the Planning Department. In addition, witnesses have said this allows individuals to try to use these ambiguities to their advantage and have resulted in many lawsuits and monetary loss for the County.

For these reasons, we make the following recommendation:

1. We strongly recommend that the Board of County Commissioners contract with outside consultants to review and recommend changes to both the Comprehensive Plan and the Land Development Code. The extent of these changes should be determined based on the advice of these experts. Based on the testimony we have received, we do not believe the County has sufficient staff to do this review and that Walton County would be best served by retaining an outside consultant.

BEEMAN STUDY

In 2004, Dr. Dan Beeman was retained by Walton County to conduct a study of the Planning Department. At the conclusion of the study, he made numerous recommendations of ways to improve County operations. Based upon our review of Dr. Beeman's recommendations and the testimony we have heard, we believe that very few of his suggestions were put in place. We also believe that had these suggestions been enacted, many of the problems outlined in this report could have been avoided. For this reason, we recommend that each County Commissioner, as well as staff, locate this report and read it. We believe this study should be used as a template for County operations. Each County Commissioner has committed to us that they would review this study and make its recommendations a priority as we move forward. We also recommend that this study be updated in order to take into account the changes that have occurred over the last eleven years.

CLERK'S AUDIT

We have heard testimony that the Clerk of Court has an Internal Audit Department that periodically conducts operational audits of various County departments. Evidence we have reviewed indicates that an audit of the Planning Department was performed in 2010. During that audit, it was discovered that County Administration had entered into a Letter of Agreement to retain the services of a consultant to provide guidance, leadership, and decision making services. This agreement obligated the County to pay \$8,000.00 per month to that consultant.

Numerous concerns were raised as a result of this agreement. Included in these were that the contract was not put out for bid, did not contain any standard contract clauses, and was not presented to the Board of County Commissioners for approval.

Testimony before the Grand Jury established that this consultant, while not a County employee, was acting as the Planning Director at the same time that an official Planning Director was also in place. This consultant routinely signed her name as the Director, attended various board meetings as the Director, and performed employee evaluations. Various witnesses testified that this made it difficult for the Planning Department to operate and employees were unaware of the proper chain of command.

While we find that the Internal Audit Department of the Clerk of Court is doing an excellent job, we believe that it may be understaffed, making it impossible to perform audits in a timely manner. As a result of the issues raised in this report, we believe that a forensic audit would be appropriate.

For that reason, we make the following recommendations:

1. That the State Auditor General be requested to perform both forensic and operational audits of the Walton County Planning Department;

2. That the number of auditors employed by Walton County be reviewed to determine whether it is consistent with industry standards. This review should determine if the number of auditors should be increased.

INVOLVEMENT OF COUNTY COMMISSIONER IN DAY TO DAY COUNTY OPERATIONS

We have heard substantial testimony regarding the role of a County Commissioner in the day to day operations of County government. Numerous witnesses have testified that the role of the Commission is to set policy and establish a budget. As a group, the Commission has authority over the County Administrator, County Attorney, and the Director of the Tourist Development Council. Many witnesses have stated that individually, Commissioners have little or no authority. Despite these limitations, evidence indicates that a particular Commissioner is very involved in directing the day to day operations of County government. Witnesses have testified that this is greater here than in other locations where they have worked.

Of particular concern are the actions of County Administrator Larry Jones and District Five Commissioner Cindy Meadows. Evidence we have heard indicates that both Commissioner Meadows and Administrator Jones became directly involved in the hiring and firing of Planning Department employees. Evidence before us indicates that in these instances the ordinary chain of command was not followed and direct supervisors were given little or no input in the decision-making process.

Evidence indicates that in one case an applicant with a connection to Commissioner Meadows was hired for a position with little input from the department supervisor. Despite having no experience in this position, the employee was hired at a higher salary than others who were already working in the identical position. In a second situation, a planning department employee was terminated with little or no input from the department director and without following the County's progressive disciplinary procedures. Evidence indicates that Commissioner Meadows wanted this employee terminated and that Larry Jones directly ordered the termination.

We have also heard testimony regarding Commissioner Meadows' involvement in a code enforcement issue that resulted in normal procedures not being followed.

For these reasons, we believe County Administrator Larry Jones and Commissioner Cindy Meadows should be reprimanded for their failure to follow proper procedures in the hiring, firing, and direction of County employees. We also believe that every person in County government should strictly adhere to the policies of the Human Resources Department including those dealing with the hiring and firing of employees.

County Commissioners should not be involved in the day to day operations of the County.

PLANNING DEPARTMENT REORGANIZATION

As we have previously written, we believe that an update to the Beeman Study should be done as soon as possible. As part of this study, we recommend that particular attention be given to the Planning Department's operating procedures, chain of command, management, communication, and interaction with other County departments.

We have also heard testimony that the Planning Department Director has requested the purchase of modern, updated software specifically designed for planning. We strongly support this purchase and believe that it should be made as soon as possible.

We also recommend that a more formal training process be established in the Planning Department. This should include areas of conflict resolution and team building. The previous "on the job training" is not sufficient for the difficult tasks facing the department.

Finally, we have heard testimony from many long-standing employees who believe that the County should strongly consider bringing all of the essential aspects of the Planning Department under one roof. They believe this will improve communications and functionality of the department. We realize this may be difficult and leave the ultimate decision to the Board of County Commissioners.

DEVELOPER INFLUENCE

We have received testimony that developers have had greater access to planning department offices than allowed to the general public. Witnesses have also indicated that developers have attempted to influence the decisions of individual employees. We believe that it is important for the County to monitor this situation and ensure that proper safeguards are in place to prevent outside influences from affecting planning department decisions.

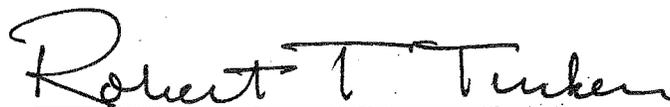
CONCLUSION

We as a Grand Jury believe that the implementation of the findings and recommendations in this report is critical to the improvement of our County. Each Commissioner has personally committed to review this report and implement the changes we have recommended. We expect the Commissioners to be held accountable for their commitment.

Finally, we write to compliment the many fine employees who work for Walton County. Often times these employees work under difficult circumstances. We have heard from many of these employees over the course of our review and appreciate what they do each and every day for Walton County. We strongly urge that great care be taken to avoid even the appearance of retaliation against the employees who have testified before us.

This Grand Jury is comprised of citizens from all areas of Walton County from various occupations and walks of life. We hope that our Report informs the public of issues to be addressed and that the Commissioners use it as the first step forward in a better future for Walton County.

DONE THIS 4th Day of September, 2015, in Walton County, Florida.

A handwritten signature in cursive script that reads "Robert T. Tucker". The signature is written in black ink and is positioned above a horizontal line.

Foreperson

**Audit Request: Transportation
Dept. of Palm Beach Co. DSB
Rep. Slosberg**



Representative Irving Slosberg
District 91
September 8, 2015

7499 West Atlantic Ave
Delray Beach, FL 33446
561-496-5940
Irving.Slosberg@MyFloridaHouse.gov

The Capitol
402 South Monroe Street
Tallahassee, FL 32399

Joint Legislative Auditing Committee

876 Pepper Building
Mailing Address:
111 W. Madison Street
Tallahassee, FL 32399-1400
(850) 487-4110

RE: Audit Request - Public Safety Concerns for Palm Beach County School District, Transportation Department

Presiding Chairman Senator Joseph Abruzzo and Vice Chairman, Representative Daniel Raulerson:

The purpose of this letter is to request the State Auditor General perform an operational audit of the Transportation Department of Palm Beach County School District.

The following concerns support the validity of the audit request:

May 2014 District 91 staff began attempts to schedule an appointment with Mr. Michael Burke, CFO of Palm Beach County School District and Mr. Steve Benino, Transportation Director of Palm Beach County Schools on my behalf.

June 2014 our meeting was successfully scheduled: Discussion topics were to include the unsafe transportation service being provided by Palm Beach County School board; specifically, ridership capacity deficiencies, recurring bus maintenance hazard issues and unprofessional behavior of PBC School District transportation staff.

(See Exhibit 1)

Following our meeting, a comprehensive summary outline was pro-actively submitted to Mr. Burke and Mr. Benino as a means to aid the CFO and Transportation Director in the implementation of the corrective measures discussed.

(See Exhibit 2)

The comprehensive summary outline detailed the following discussed concerns and have not been addressed to-date.

1. Hiring and Retaining Quality School Bus Drivers
2. Addressing Non-Competitive Pay Issues for School Bus Drivers
3. Developing a Smartphone/Web App (similar to UBER) - Location & Safety Tool for Parent Use
4. Finalizing Plans for a Successful, Functioning, Punctual Fleet for the 2015-2016 School Year



Representative Irving Slosberg
District 91
September 8, 2015

7499 West Atlantic Ave
Delray Beach, FL 33446
561-496-5940
Irving.Slosberg@MyFloridaHouse.gov

The Capitol
402 South Monroe Street
Tallahassee, FL 32399

RE: Audit Request - Public Safety Concerns for Palm Beach County School District, Transportation Department

September 3rd, 2015, I sent a letter to Mr. Dave Davis and Mr. Steve Benino saying the current situation going into the fourth week of the 2015-2016 school year was unacceptable for the following reasons:

1. Buses were over-crowded - Public Safety Concern
2. Buses were not air-conditioned - Health Concern
3. Students were left to stand at their bus stops for extensive periods of time; Late-to-School Arrival
4. Failed changes to the new bus traffic-routing computer software
5. ESE students were also left at their designated bus stops and failed to get to school on time.

All of these issues were a clear recipe for disaster, have not been rectified and supplement my request for Palm Beach County School District to be Audited by the State Audit General.

September 8th, 2015, during a meeting with Alex Ring, Political Director, SEIU Public Services Union stated that Palm Beach Schools are facing grave issues regarding ESE students not being picked up at their designated bus stops, continuous over-crowding and school bus traffic-routing software issues.

Mr. Ring went on to describe the troubled culture within the transportation department, explaining that within the SEIU is the Quality Public Service Council, whose mission is to create an environment where district employees can work together with management on solving issues within 15 days of an issue being reported. Unfortunately, according to Mr. Ring, this process, designed for quality control, isn't working efficiently. A defunct Quality Public Service Council has created an environment where workers are not being valued and concerns are not being heard. Quoting Mr. Ring, "Many of the bus drivers feel that the Palm Beach County School district is a 'crappy place to work' in many cases bus drivers are earning 'poverty wages'."

I am asking the State of Florida to audit the Palm Beach County Schools- Transportation Department; to conduct an official examination and verification of the aforementioned accounts. My request is a necessary means to properly investigate whether or not Palm Beach County Schools -Transportation Department is conducting themselves in a negligent manner with regard to our children's safety.

As a **Ranking Member** of the Highway & Waterway Safety Subcommittee, thank you for your attention to this matter and your careful consideration of the Audit request.

Respectfully,

Representative Irving Slosberg, District 91

Exhibit 1 (2 pages)

Florida House of Representatives

Representative Irving Slosberg

District 91

7499 West Atlantic Ave
Suite 200
Delray Beach, FL 33446
(561) 496-5940

1401C The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 488-1302

Email: Irving.Slosberg@MyFloridaHouse.gov

Palm Beach County School District
3300 Forest Hill Blvd
West Palm Beach, FL 33406

June 23rd, 2014

It has come to my attention that Palm Beach County School District has not been providing a satisfactory transportation service to the student population. Problems include constantly delayed bus schedules, unsafe vehicle conditions and inadequate maintenance, and unprofessional driving staff. I respectfully request that the School District investigate these problems and execute solutions quickly. Many of these problems cause serious safety concerns, and as government officials, public safety is our number one priority. Just in the past month there have been several newspaper articles criticizing the Palm Beach County School District transportation services, and I have outlined some of these issues below:

Maintenance Problems

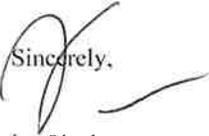
- One in four buses had air conditioning problems this year
- 150/800 buses have no air conditioning at all
- 70% of the buses broke down at least once this year
- Mechanics and drivers are concerned for the safety of children on the buses
- PBC School District doesn't consider bus maintenance a problem but a "challenge"
- School bus caught on fire while driving on April 11th, and that bus had already needed to be repaired 22 times this year, and involved in 3 accidents last year

Unprofessional Staff

- Kevens Jean-Baptiste, a middle schooler, was kicked and injured by Boynton Beach Police Officer while on a school bus
- 13 year old Boca Raton Middle School student kicked out of bus with two kicks and cursed at by bus driver; mother hired attorney
- A charter school bus drove into a school overhang in Boca Raton on May 16th while students were on board, and several were injured

These examples are just a few of the most egregious incidents that I discovered via local newspapers, and all have occurred within the past two months. I am certain that the Palm Beach County School District can perform at a much higher level and provide better service than the current status quo. Although we all understand education resources are limited, public safety is our number one priority. The quality of education a student receives is meaningless if they

cannot arrive at school safely. I urge you to take a thorough look at these issues and determine what needs to happen in order to fix the problem. I am willing to assist the School District in any way possible. Thank you for taking the time to meet with me and I look forward to working together to alleviate this problem immediately.

A handwritten signature in black ink, appearing to read 'Irv Slosberg', with a long horizontal flourish extending to the right.

Irv Slosberg
State Representative, District 91

Exhibit 2 (1 page)

Florida House of Representatives

Representative Irving Slosberg

District 91

7499 West Atlantic Ave
Suite 200
Delray Beach, FL 33446
(561) 496-5940

1401C The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 488-1302

Email: Irving.Slosberg@MyFloridaHouse.gov

June 23rd, 2014

Dear Mr. Burke and Mr. Bonino,

Thank you for taking the time out of both of your busy schedules to discuss the Palm Beach County School District transportation issues with my staff and I today. I appreciate your hard work as providing transportation services for the entire public school population is certainly a challenging task. I wanted to follow up on a few of the issues we discussed today to ensure we both understand the situation.

First off, I would like to schedule a meeting with Mr. Shane Searchwell, as he is in charge of the hiring and retaining of school bus drivers. I would like to understand the point system that determines who the School District deems responsible and qualified enough to transport our children. I understand these drivers are required to undergo a physical exam, a background check, and obtain their Commercial Driver's license. However, I would like to know if these drivers are routinely evaluated, and if so, what does this evaluation entail?

Secondly, I would like to hear your plan for retaining qualified, satisfactory drivers in this growing economic climate. With businesses getting back on track, I'm afraid the low wage of \$12 per hour, for only a partial amount of the year, will deter qualified applicants and employees. Please keep me informed on the upcoming jobs fair as I would like to attend, and how you plan on maintaining a professional pool of school bus drivers.

Next, I would like to see the final plans on how the School District plans on maintaining a fully functioning and punctual fleet of buses for the 2014-2015 school year. I understand the School District's Transportation Department is going through a transitional period and I am hoping the leadership changes and newly purchased vehicles will solve the majority of the transportation problems we discussed.

I understand the School District is getting 110 new vehicles to their fleet. Please keep me updated on the status of these new vehicles and how many will be incorporated into the fleet for the beginning of the school year.

Finally, I would like to see some kind of app, similar to "Uber," that enables parents to follow their children's locations while they ride the school buses. This is an excellent opportunity for Palm Beach County to lead the way in technology.

Sincerely,

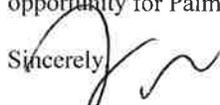

Irv Slosberg
State Representative, District 91

Exhibit 3 (1 page)



September 3, 2015

Palm Beach County School District
Attention: Transportation Division

Dave Davis and Steve Benino:

It has come to my attention that we have a problem regarding overcrowded school buses. Moreover, I appreciate your honesty in acknowledging that we have this problem. Let's not focus on the problem, let's focus on the solution.

As we discussed, this is unacceptable, and the School District, has until tomorrow morning to provide a sufficient number of buses to ensure that every student is safely seated and transported to their school.

I look forward to receiving a favorable report by tomorrow morning.

Thank You,

Irv Slosberg

Irv Slosberg
State Rep. Irv Slosberg
District 91
561-496-5940

Exhibit 4 (1 page)

From: "David Davis (Dir Transportation)" <david.davis.1@palmbeachschools.org>
Date: September 4, 2015 at 9:50:21 AM EDT
To: irvslosberg26@gmail.com
Subject: Re: School Bus Overcrowding Issue

Thank you for the information yesterday.

David Davis
Director of Transportation
Division of Support Operations
Palm Beach School District
2775 Homewood Road
West Palm Beach, FL 33406
Phone **561.242.8303** Px 58303 FAX **561-242-8302**
David.Davis.1@palmbeachschools.org

"Failure is not fatal, but failure to change might be."
(John Wooden)

On Thu, Sep 3, 2015 at 2:19 PM, <irvslosberg26@gmail.com> wrote:

David Davis,

Please allow this letter to serve as confirmation of our telephone conversation today.

Thank You,

Irv Slosberg
Fl. State Representative
District 91

Exhibit 5 (2 pages)

rohnstb2014

Will heads roll over Palm Beach County School District bus chaos?

   COMMENTS 18

August 21, 2015 | Filed in: Education, Local, Transportation.



Robert Avossa, Superintendent of the School District of Palm Beach County, speaks to members of the media about the bus situation in a press conference Wednesday. (Bruce K. Bennett / The Palm Beach Post)

"I think we over-simplified, we over-promised, and we under-delivered," Robert Avossa, superintendent of Palm Beach County Schools, said Wednesday in response to a reporter's question.

As he closed out an impromptu, but necessary press conference on the chaos surrounding the busing of some 60,000 kids this back-to-school week, it was clear that Avossa — who started on the job in June — was frustrated, if not furious.

Good. He should be. And when this mess is all over, some heads should probably roll.

But until then, Avossa was right to say Wednesday that he and his district lieutenants should focus on the "what" and "why" of a massive breakdown in the school district's transportation system. The breakdown caused parents and students countywide to become frightened and irate. In Wellington, West Palm Beach, Palm Beach Gardens, and Boca Raton, there were complaints of buses arriving hours late or not at all.

Kelly Jones of West Palm Beach, who's son attends Bak Middle School of the Arts, sent this email at 8:20 a.m. Tuesday:

"Hi... regarding the county bus situation. Attached is a screen shot of my child's bus GPS tracking app provided by the district. As you can see, the bus is still running very late, not having reached more than half of the stops on the route. Alas, my child was driven by another parent to school once again... I feel very frustrated ... it's the kids that suffer in the long run. This cannot continue."



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She's right. Forget about debates over Common Core, charter vs. traditional public schools and how many choice programs are offered. Ask any school parent. Job one is to get the basics right. First make sure the kids are where they need to be, safe and on time. After then, we can start talking about bigger goals.

Avossa blamed the problems on poor "project management discipline" in the district transportation department involving computer software that designed new bus routes. The routes, 649 of them, were not properly tested to make sure that they would actually work — especially during morning rush hour.

Adding insult to injury was the fact that transportation officials, as recently as two weeks ago, "relied on faulty intelligence" they had a cushion of 36 extra bus drivers. So when 50 hired bus drivers did not show up for work this week, the district was forced to scramble any mechanic or call operator with a CDL license behind the wheel.

Avossa refused Wednesday to blame the bus drivers, instead saying that it was all part of "a perfect storm" of mistakes.

Even if that was the case, what is the excuse for 50 drivers to suddenly call in sick or just not show up at all? Was there some kind of bug going through the school district that affected only bus drivers on a mass scale? That's unlikely.

This was either a coincidence of the worst kind, or a misplaced attempt at making a point.

Either way, parents' patience is certain to be further strained.

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Exhibit 6 (1 Page)

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Andrew Marra

School bus drivers boycott meeting to protest route problems

f t + COMMENTS 2

August 10, 2015 | Filed in: School buses



File photo (Meghan McCarthy/The Palm Beach Daily News)

Frustrated Palm Beach County school bus drivers boycotted a planning meeting with the school district Monday, forcing the meeting's cancellation as drivers protested the district's system for planning bus routes.

The cancellation postponed by at least a day the district's efforts to assign bus routes to drivers before the start of school Monday. A district spokeswoman said the delay would not affect bus service.

The union that represents school bus drivers says that the school district routinely underestimates the time certain routes take to complete. Calling it a systemic flaw, they said it causes drivers to unfairly be labeled as running late and makes it difficult to claim pay for all their time behind the wheel.

"They have no clue what it is to drive a bus," said veteran bus driver Joyce Lynch of school district administrators who oversee the program.

School district spokeswoman Kathy Burstein said transportation officials were working Monday to try to address the drivers' concerns by adjusting the time estimates for some routes.

"That's something that we're reviewing and making adjustments to," Burstein said. "We're going to err on the side of the drivers."

The meeting to assign the school district's 630 bus routes, which are dispensed by seniority, has been rescheduled for Tuesday morning.

More than 58,000 students are expected to ride the school district's buses this school year.

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BY EMAIL

October 1, 2015

TO: Deborah White, CPA, Analyst
Joint Legislative Auditing Committee
FR: Representative Irving Slosberg, District 91
RE: NEW INFORMATION, PBC SCHOOL BUS AUDIT

Dear Ms. White:

Attached please find the following:

EXHIBIT I

Transcript of letter received on September 30, from Frank A. Barbieri Jr., Esq., Vice Chairman of the School Board of Palm Beach County, District 5 Representative

I feel this letter reflects the views of most of the PBC School Board members – helplessness. This is exactly why we need the State to do an audit.

EXHIBIT II

September 22, PALM BEACH POST article regarding the September 20 school bus accident

The driver, who is “a school district employee recruited in the district’s pinch to resolve a shortage of bus drivers,” was cited for carelessness.

Was the bus overcrowded? Was anyone wearing a seat belt?

EXHIBIT III

September 4, PALM BEACH POST article regarding the hiring of an attorney to investigate the bus crisis

The district is spending \$50,000 on a so-called “independent audit.” However, the attorney, Eugene Pettis, has worked for the school board for many years.

Reader Comment on the Article:

“@lonestardoggie You're right about a cover up. Look at the person they hired to do the alleged independent, objective investigation? They hired a guy who contracts with the district regularly. He's not going to issue a report against the people who repeatedly hire him. What a joke that is.”

Below please find the complete transcript from a letter, which was given to me on September 30 by Frank A. Barbieri Jr, Esq., Vice Chairman of the School Board of Palm Beach County, District 5 Representative:

“I am as disgusted and angry as you, (name of recipient). Everyday I get emails and phone calls from parents about late or no show buses, especially those at Don Estridge. Monday, 14 of the 22 buses arrived late at Don Estridge. Tuesday, 17 of them arrived late. Thank God school was closed on Wednesday so none of the buses had to arrive at all. It’s my understanding that yesterday, one of the buses actually arrived an hour late. Everyday I see my neighbors and other people in the community who share their anger with how the District is failing to transport their children to school on time. Everyday I communicate with upper level District Administration pleading – now demanding – that the problem be corrected, and everyday the problem continues. If I had the required license, I’d go get a bus and pick up the kids myself since the District’s Transportation Dept., in the 6th week of the school year, still can’t figure out how to get our students to school on time. As I have done daily, I am copying many members of the District’s Administration to make them aware of your disgust – and mine – that this disgraceful situation goes on and on and on with no end in sight. Please accept my sincerest apology. I don’t know what else I can do to help you. If it’s any consolation, it’s my understanding that Channel 12 was at the school today. Perhaps the negative publicity on the news tonight will be the catalyst to get the Administration to end this fiasco. Frank”



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School bus driver cited for careless driving, nine injured in crash

Updated: 4:50 p.m. Tuesday, Sept. 22, 2015 | Posted: 8:37 a.m. Tuesday, Sept. 22, 2015

By **Sonja Isger** - Palm Beach Post Staff Writer

RIVIERA BEACH —

A school district employee recruited in the district's pinch to resolve a shortage of bus drivers was behind the wheel Tuesday morning when a collision sent seven students to the hospital with minor injuries.

Michel Zamor, who was hired to drive buses in 2007 but had moved on to servicing the big yellow vehicles in the past two years, was cited by Riviera Beach police for careless driving. The driver and a 4-year-old passenger of the car he hit also had minor injuries.

- **Lake Park Kmart employee accused of fraud released from jail**

Zamor has a clean driving record in Palm Beach County. District officials say tests they gave him after the crash indicate he had no drugs or alcohol in

his system when he sideswiped a black Lincoln LS on his way to Inlet Grove High School in Riviera Beach.

The crash happened at 7:40 a.m. as Zamor, with 55 students aboard his bus, was headed north on Australian Avenue and attempted to turn right onto Blue Heron Boulevard. The Lincoln

In this Section

Up to 4 out of 5 Fla. retailers not ready for chip credit cards Oct. 1

John Boehner's exit makes a shutdown far less likely

Boehner could never land the 'big deal' he wanted

Lawyers drop case of Jupiter woman charged with killing girl, 2

Suit: Hauler, county trash agency not enforcing small-business rules

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Local golf courses right to build better

was also headed north to Zamor's left when the bus swung wide and hit the car, police spokeswoman Rose Anne Brown said.

clubhouses, experts say

Inlet Grove's Principal, Emma Banks, said seven students went to St. Mary's Medical Center after complaining of head, back and, in one case, foot pains. The injuries appeared to be minor, but the students were sent to the hospital in "an abundance of caution," she said.

Cerabino: Why does Trump hire foreign workers at Mar-A-Lago?

School bus problems raging on through 6th week of school



Traffic on Australian Avenue was blocked in both directions at Blue Heron for more than an hour while students loaded onto another bus and the Lincoln was towed.

Bridge up; train stopped; Tequesta crews unable to reach wreck scene

The scene of the crash near Blue Heron Boulevard and Australian Avenue. (Lannis Waters/The Palm Beach Post)

The Palm Beach County School District will continue to investigate, reviewing video from the bus as well as GPS data. Zamor holds the requisite commercial driver license needed to get behind the

wheel of a bus, but until this fall he'd been working as a transportation helper.

Zamor's job is to service the district's fleet of buses, trucks and cars at its central compound on Summit Boulevard in suburban West Palm Beach.



But on the first day of school, the bus system fell into chaos in part because of a shortage of roughly 50 drivers. A new, computerized routing system also contributed to the problems that left many students stranded at bus stops in the beginning weeks of school.

Nine people were taken to the hospital after a collision between a school bus and car on Australian Avenue at Blue ...

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Transportation helpers with the proper licenses were among those throughout the district tapped to fill in as the district works to make the necessary hires.



NEWS



Doctor makes shocking find in woman's ear



Even the British want to know: Will Ndamukong Suh and D wake up?



Coming to CityPlace: Chef Lindsay Autry to helm big, new eatery



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CHANGING THE CURRENT EPL

Andrew Marra

Update: Avossa to hire attorney to investigate bus crisis

f t COMMENTS

September 4, 2015 | Filed in: School buses.



PBC School Superintendent Robert Avossa on the first day of the school year. (Lannis Waters/The Palm Beach Post)

Declaring most of Palm Beach County's thorniest school bus problems fixed, schools Superintendent Robert Avossa called Friday for an independent investigation of weeks of busing failures and tapped a Broward County attorney to lead the probe.

The county school district will pay attorney Eugene Pettis up to \$50,000 to investigate the series of missteps that led to the county's weeks-long school bus meltdown, an expense that Avossa said would be "worth every penny."

The new superintendent has criticized the school district's transportation department as poorly run and last month called its leaders "tone deaf" to concerns that bus drivers raised before the school year began.

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**THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL**

**ROBERT M. AVOSSA, Ed.D
SUPERINTENDENT**

**CHUCK SHAW
CHAIRMAN**

**OFFICE OF THE SUPERINTENDENT
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VICE-CHAIRMAN**

MARCIA ANDREWS
KAREN M. BRILL
MIKE MURGIO
DEBRA ROBINSON, M.D.
ERICA WHITFIELD

October 2, 2015

Honorable Joseph Abruzzo, Alternating Chair
Honorable Daniel Raulerson, Alternating Chair
Members of the Joint Legislative Auditing Committee
876 Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400

Dear Chairs Abruzzo, Raulerson, and Committee Members:

As you consider a request from Representative Irving Slosberg for an audit of the School District of Palm Beach County's Transportation Department, I would like to provide you information on our current status and efforts to improve transportation service. A poorly executed, rushed implementation of a new routing system, coupled with a shortage of drivers, lead to a great deal of disruption with only 60% of our buses arriving on time the first day of school. Although on time delivery is now on par with prior year performance at 89%, this level of service remains unacceptable to me as Superintendent. I have been on the job in Palm Beach County for 72 days and previously oversaw a Transportation Department in Fulton County Georgia that delivered 100% of students on time for nearly the entire school year. It is not uncommon to experience minor disruptions during the first week or two of school in a large system, but the problems experienced in Palm Beach go well beyond the typical challenges.

I have taken several steps to improve student transportation service including the following:

- **To correct routing issues:**
 - Information and Technology (IT) and Finance personnel have been reassigned to Transportation since first week of school to help overhaul bus routes. This team manually rewrote over two thousand bus runs, serving over 17,000 bus stops across our 2,386 square mile county.
 - Staff has worked directly with bus drivers to get their input on route revisions.

- **Driver shortage:**
 - All employees holding a Commercial Driver's License (CDL) certified to drive a school bus have been enlisted temporarily.
 - The District ramped up recruitment efforts and held a successful job fair; we will continue to recruit and train new bus drivers until we effectively "over hire" for this critical position. A second job fair is planned for our Glades region on October 12, 2015.
 - Select bus routes are being outsourced to private vendors on a temporary basis until we are fully staffed.

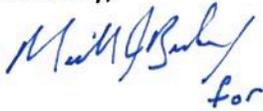
- **Bus Fleet:**
 - 120 new school buses will be purchased this year to help improve the condition of our fleet.
- **Management assistance:**
 - Temporarily reassigned additional staff to oversee the day to day operation of the Transportation Department.

I have launched an external legal investigation to determine what went wrong and hold staff accountable. In addition, I have arranged for the national **Council of Great City Schools** to conduct an in-depth peer review of the entire Transportation operation. Several industry experts from other large school districts will be onsite October 20-24 and follow up with a comprehensive report on their findings and recommendations within a few weeks of their visit. I will be glad to provide the results of both investigations, as well as an operational update, to the Joint Legislative Audit Committee and staff.

For your information, our School District is currently scheduled for our biennial Florida Education Finance Program (FEFP) audit to be performed by the Auditor General. This audit will include student transportation for FY16.

Please consider allowing me and my staff an opportunity to complete the aforementioned work before considering a request for an additional transportation audit. If you should have any questions, please contact me at (561) 649-6833.

Sincerely,



for

Robert M. Avossa, Ed.D.
Superintendent

RMA:MJB/ac

Cc: School Board Members

STAFF ANALYSIS

Date: September 29, 2015

Subject: Request for an Audit of the Transportation Department of the School District of Palm Beach County

Analyst

Coordinator

White DW

DuBose KD

I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from Representative Irving Slosberg to have the Committee direct the Auditor General to conduct an operational audit of the Transportation Department of the School District of Palm Beach County.

II. Present Situation:

Current Law

Joint Rule 4.5(2) provides that the Legislative Auditing Committee may receive requests for audits and reviews from legislators and any audit request, petition for audit, or other matter for investigation directed or referred to it pursuant to general law. The Committee may make any appropriate disposition of such requests or referrals and shall, within a reasonable time, report to the requesting party the disposition of any audit request.

Joint Rule 4.5(1) provides that the Legislative Auditing Committee may direct the Auditor General or the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an audit, review, or examination of any entity or record described in Section 11.45(2) or (3), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, provides that the Auditor General may, pursuant to his or her own authority, or at the discretion of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of the accounts and records of any governmental entity created or established by law.

Section 11.45(2)(e), *Florida Statutes*, provides that the Auditor General shall, once every three years, conduct financial audits of the accounts and records of all district school boards in counties that have populations of 150,000 or more, according to the most recent federal decennial statewide census. In accordance with Section 218.39(1), *Florida Statutes*, for each of the two years that the Auditor General does not conduct the financial audit of these district school boards, each one shall contract for a financial audit of its accounts and records to be completed, within nine months after the end of its fiscal year, by an independent certified public accountant.

Section 11.45(2)(f), *Florida Statutes*, provides, in part, that the Auditor General shall, at least every three years, conduct operational audits of the accounts and records of district school boards.

Request for an Audit of the Transportation Department of the School District of Palm Beach County

Representative Slosberg has requested the Committee to direct an operational audit of the Transportation Department of the School District of Palm Beach County due to public safety concerns. Referenced in, and included as attachments to, his request were:

- (1) Letters he wrote to the District in 2014 and 2015, expressing concerns relating to unsafe transportation service being provided:
 - a) June 2014 letter addressed concerns relating to ridership capacity deficiencies, recurring bus maintenance hazard issues, and unprofessional behavior of transportation staff.
 - b) June 2014 letter, sent after he met with District staff, detailing the following concerns which he stated had not been addressed to date: (1) hiring and retaining quality school bus drivers; (2) addressing non-competitive pay issues for school bus drivers; (3) developing a smartphone/web app (similar to UBER) - location and safety tool for parent use; and (4) finalizing plans for a successful, functioning, punctual fleet for the 2014-15 school year.
 - c) September 2015 letter addressed concerns relating to: (1) overcrowded buses; (2) non air-conditioned buses; (3) extensive wait times for students at bus stops, including ESE students, and late arrivals at school; 4) failed changes to the new bus traffic routing computer software.
- (2) An article from palmbeachpost.com, entitled *Will heads roll over Palm Beach County School District bus chaos?*, dated August 21, 2015. Specific information relating to this news article is further described below under the heading ***Recent Events***.

Some of the above-noted concerns are policy issues rather than audit issues and may be outside of the scope of what an audit would normally address. Certain decisions and actions taken by the School Board and the Superintendent, such as those relating to school bus driver employment, retention, and salaries and benefits, are generally management policy decisions to be established and adjusted as necessary by the governing body, based on its authority established in applicable laws, ordinances, rules, and other requirements.

Background

Pursuant to Section 4 of Article IX of the *Constitution of the State of Florida*¹ and Section 1001.30, *Florida Statutes*, each county shall constitute a school district and shall be known as the school district of “___” County, Florida. The School District of Palm Beach County (District) is part of the state system of public education under the general direction of the Florida Department of Education and is governed by state law and State Board of Education rules.² According to its website, the District is the 11th largest school district in the country, with a student enrollment of more than 183,000 students. The annual budget exceeds \$2.3 billion and the District is the largest employer in Palm Beach County with over 21,000 employees.³ The District currently operates 187 elementary, middle, high, and specialized schools and sponsors 49 charter schools.⁴

¹ As revised in 1968 and subsequently amended.

² State of Florida Auditor General, *Palm Beach County District School Board - Operational Audit*, Report No. 2015-090, 1 (Jan. 2015).

³ www.palmbeachschools.org/superintendent/.

⁴ www.palmbeachschools.org, “Schools” tab.

The District is governed by an elected School Board, consisting of seven members, which is responsible for the operation, control and supervision of all free public schools within the District, determines the rate of District taxes within the limits prescribed in law, and may exercise any power except as expressly prohibited by the State Constitution or general law.⁵ The powers and duties of the School Board are established in Sections 1001.41-42, *Florida Statutes*, and include establishing policies and programs deemed necessary for the efficient operation of the District, and adopting the millage rate annually and approving the budget, which determines the expenditures and revenue necessary to operate all of the District's schools and departments.

Responsibility for the administration and management of the schools and for the supervision of instruction in the District is vested in the Superintendent as the secretary and executive officer of the School Board, as provided by law.⁶ In Palm Beach County (County), the Superintendent is appointed by the School Board rather than elected by the registered voters of the County. The current appointed Superintendent, Robert Avossa, Ed.D., was sworn into office on June 17, 2015.⁷

Section 1006.21, *Florida Statutes*, requires that the district school boards provide school transportation services to certain students whose eligibility is defined in law. These students include the following:⁸

- Pre-kindergarten disability programs and kindergarten through grade 12 students whose homes are more than a reasonable walking distance, from the nearest appropriate school. A reasonable walking distance for a student is defined by State Board of Education Rule 6A-3.001(3), *Florida Administrative Code*, as “any distance not more than two (2) miles between the home and the school or one and one half (1-1/2) miles between the home and the assigned bus stop.”
- Pre-kindergarten through grade 12 students with special needs or disabilities, regardless of the distance from home to school.
- All students enrolled in a Teenage Parent Program and the registered children of such students.
- Elementary age children who live within two miles of their assigned elementary school and who are subject to hazardous walking conditions as defined in Section 1006.23, *Florida Statutes*.

Section 1006.22, *Florida Statutes*, states “[m]aximum regard for safety and adequate protection of health are primary requirements that must be observed by district school boards in routing buses, appointing drivers, and providing and operating equipment, in accordance with all requirements of law and rules of the State Board of Education in providing transportation pursuant to s. 1006.21.”

The mission statement of the District's Transportation Services Department states that it is “dedicated to partnering with schools, families, and communities to provide safe and efficient transportation in support of school programs and services.” In order to provide the required transportation services for

⁵ FLA. CONST. art. IX, s. 4(b).

⁶ Section 1001.32(3), *Florida Statutes*.

⁷ www.boarddocs.com/fl/palmbeach/Board.nsf/Public; Meetings tab, “June 17, 2015 (Wed) 2. SUPERINTENDENT SWEARING-IN CEREMONY.”

⁸ www.palmbeachschools.org/transportation/FAQ.asp; “Who is eligible to receive school bus transportation to and from school?”

approximately 60,000⁹ students, the District employs more than 600 school bus drivers and operates more than 2,000 bus routes.¹⁰

Recent Events

The District's 2015-16 school year began on August 17, 2015. On that day, approximately 40 percent of the school buses ran late, many by more than an hour.¹¹ Several weeks later, while on-time rates for school buses had gradually improved, about 15 percent were still running late.¹²

One of the main causes was that, during the summer, Transportation Department management used a new computer software program to redraw the more than 2,000 school bus routes from scratch without school bus driver input. Issues that occurred with the new bus routes included:¹³

1. Unrealistic timetables for school buses to get from one stop to another;
2. Dangerous requirements such as drivers making U-turns on narrow roads; and
3. Poorly placed school bus stops, with some students required to cross six-lane highways to get to and/or from the stops.

It was reported that, while school bus drivers familiar with the streets and neighborhoods attempted to point out various problems with the newly redrawn routes prior to the start of the school year, District administrators stated that the bus drivers' concerns were largely ignored by Transportation Department management, and the Superintendent criticized management as being "tone deaf."¹⁴

Other contributing factors to the issues that occurred were as follows:

- Faulty information was relied on that indicated there was a cushion of 36 extra bus drivers. However, "when 50 hired bus drivers did not show up for work this week [first week of school], the District was forced to scramble any mechanic or call operator with a CDL license" to drive the school buses.¹⁵ The Superintendent didn't place blame on the bus drivers and stated that "it was all part of 'a perfect storm' of mistakes."¹⁶

⁹ *Will heads roll over Palm Beach County School District bus chaos?*, THE PALM BEACH POST, August 21, 2015.

¹⁰ Andrew Marra, *PBC schools tap new official to oversee bus operations*, THE PALM BEACH POST, September 18, 2015.

¹¹ Andrew Marra, *School bus crisis: No sign of improvement as new routes roll out*, THE PALM BEACH POST, August 27, 2015.

¹² Andrew Marra, *Saying worst bus woes are over, superintendent calls for investigation*, THE PALM BEACH POST, September 5, 2015.

¹³ Andrew Marra, *School bus crisis: No sign of improvement as new routes roll out*, THE PALM BEACH POST, August 27, 2015; and Andrew Marra, *School bus route changed after lawyer threatens to sue*, THE PALM BEACH POST August 31, 2015.

¹⁴ Andrew Marra, *School bus crisis: District says routes aren't fixed, seeks drivers' aid*, THE PALM BEACH POST, August 31, 2015.

¹⁵ *Will heads roll over Palm Beach County School District bus chaos?*, THE PALM BEACH POST, August 21, 2015.

¹⁶ *Ibid.*

- School bus breakdowns: Twelve of the 30 new school buses that the District purchased had mechanical issues and had to be sent back for repairs. As a result, the District was forced to use some older buses, which have stalled or broken down, causing more delays in the bus routes.¹⁷
- An increase of more than 5,000 riders over last year's ridership numbers.¹⁸

District staff have spent the weeks since the start of school trying to correct the technical deficiencies in the bus routes, hiring school bus drivers, and addressing other transportation concerns. The District has recently assigned an employee with prior transportation management experience to supervise the Transportation Department and assist the District's Chief Operating Officer with transportation issues.¹⁹

In early September 2015, the Superintendent called for an independent investigation of the busing failures that had occurred during the first weeks of the 2015-16 school year.²⁰ He selected a Broward County attorney to lead the investigation, which is expected to take from two to eight weeks to complete.²¹ The attorney, who has done legal work for the District for years, will be paid "up to \$50,000 to investigate the series of missteps that led to the County's weeks-long school bus meltdown."²² The Superintendent has stated that he and his management team need to focus on what and why the massive breakdown in the District's transportation system occurred.²³

Committee staff spoke with staff of the District's Inspector General's Office (Office) who indicated the Office is not currently investigating anything relating to the current issues within the Transportation Department; however, they have received complaints over the past few years relating to bus maintenance and believes that an audit covering this area would be a good idea.

Laws and Rules Relating to School District Transportation Operations and Safety

In accordance with Section 1006.22, *Florida Statutes*, the safety and health of students being transported are the primary requirements that must be observed by district school boards in routing buses, appointing drivers, and providing and operating equipment in providing transportation pursuant to law. This law requires that:

- School buses be used for all regular transportation (as defined in law); some exceptions are provided;
- Each district school board designate and adopt a specific plan for adequate examination, maintenance, and repair of transportation equipment;
- The examination of the mechanical and safety condition of each school bus be made as required by State Board of Education Rules;
- School bus routes and schedules be planned to eliminate the necessity for students to stand while a school bus is in motion; and

¹⁷ *School district says it sees progress in solving bus problems*, THE PALM BEACH POST, September 24, 2015.

¹⁸ *Ibid.*

¹⁹ Andrew Marra, *PBC schools tap new official to oversee bus operations*, THE PALM BEACH POST, September 18, 2015.

²⁰ Andrew Marra, *Saying worst bus woes are over, superintendent calls for investigation*, THE PALM BEACH POST, September 5, 2015.

²¹ *Ibid.*

²² *Ibid.*

²³ *Will heads roll over Palm Beach County School District bus chaos?*, THE PALM BEACH POST, August 21, 2015.

- School bus stops be established as necessary at the most reasonably safe locations available.

State Board of Education Rule 6A-3.0141(6), *Florida Administrative Code*, requires the District to obtain and review the driver's history record from the Florida Department of Highway Safety and Motor Vehicles (DHSMV) for each school bus driver prior to initial employment and the first day of the fall semester, and thereafter using automated weekly updates.

State Board of Education Rule 6A-3.0171(8), *Florida Administrative Code*, provides requirements for the inspection and maintenance of school buses, including:

- Inspections shall be conducted in accordance with procedures and include all items listed in the *State of Florida School Bus Safety Inspection Manual, 2008 Edition (Manual)*, as developed by the Florida Department of Education;
- Inspections of buses shall be scheduled and performed at a maximum interval of 30 school days;
- All deficiencies discovered shall be noted on the inspection form;
- Follow-up repairs of all safety-related items shall be made before the school bus is returned to service and shall be documented; and
- Inspections shall be conducted by technicians certified as school bus inspectors in accordance with the *Manual* referenced above.

Finally, State Board of Education Rule 6A-3.0171(9), *Florida Administrative Code*, provides requirements for transportation records, reports, and accounting, including:

- Timely filing of school bus accident reports and the Hazardous Walking Conditions Report for Elementary Students within 2 Miles of Assigned School with the Florida Department of Education;
- Maintenance of a current file of all Medical Examiner Certificates and required dexterity tests for school bus operators;
- Maintenance of records of inspection of each school bus;
- Preparation of maps of routes and attendance zones and performance of studies of transportation that shall enable the Superintendent to measure progress and recommend improvements in transportation services; and
- Preparation and maintenance of additional records, reports, and accounts as necessary to provide complete information regarding transportation services.

Audits and Financial-Related Information of the District

Audits:

As previously mentioned under the heading *Current Law*, at least every three years the Auditor General is required to conduct a financial audit of the accounts and records of all district school boards in counties that have populations of 150,000 or more, as well as an operational audit of the accounts and records of each district school board. The district school board is required to contract for a financial audit by an independent certified public accountant for each of the two years that the Auditor General does not conduct the financial audit. Recent audits of the District have been conducted as follows:

Fiscal Year ²⁴	Type of Audit	Conducted By
2013-14	Financial (includes Federal Single Audit)	CPA Firm
2013-14	Operational (No. 2015-090) ²⁵	Auditor General
2012-13	Financial, Operational, and Federal Single Audit (No. 2014-163)	Auditor General
2011-12	Financial (includes Federal Single Audit)	CPA Firm
2010-11	Financial (includes Federal Single Audit)	CPA Firm

The financial audit for the 2014-15 fiscal year is being conducted by a CPA firm. The Auditor General is scheduled to conduct the financial, operational, and federal single audit of the District for the 2015-16 fiscal year. The audit fieldwork for this audit is anticipated to begin in February 2016.

Auditor General Report No. 2015-090, issued in January 2015, included an audit finding related to school bus driver licenses which disclosed that, while District records indicated that monitoring procedures over school bus drivers were generally adequate, procedures could be improved, as follows:

- “Comparison of District records to the FDHSMV records disclosed that 29 bus drivers had license suspensions during the 2013-14 fiscal year for various reasons, such as expired medical certifications and failure to pay driving citations, and drove regularly scheduled bus routes, ranging from one driver who drove two days with a suspended license to one driver who drove seven months with a suspended license. District personnel indicated that permitting these drivers to operate school buses with suspended licenses resulted from oversights.”
- “Test of District records for 30 bus drivers disclosed 3 bus drivers who received driving citations that should have resulted in points assessed or other types of disciplinary actions; however, District records did not evidence any actions against the 3 bus drivers. Also, the District assessed points on the driving records of 2 other bus drivers tested who were in preventable accidents while driving school buses; however, District records did not evidence that the drivers received warnings or reprimands, contrary to the District’s safe driver standards and point system. District personnel indicated that errors in administering the safe driver standards and point system occurred because review procedures were not in place to ensure that assessed points are appropriately recorded and accumulated against bus drivers who receive driving citations or are responsible for preventable vehicle accidents.”²⁶
- The Auditor General recommended that the District enhance its procedures to ensure that school bus drivers are appropriately licensed to operate school buses and that appropriate disciplinary action against drivers is taken and documented for driving citations and preventable vehicle accidents.”

²⁴ The fiscal year for district school boards in Florida is July 1 to June 30.

²⁵ Per Auditor General staff, this operational audit was conducted to cover certain standard topics that were being included in operational audits of other district school boards for that fiscal year; they did not want to wait until the next rotational audit cycle, which was several years out, for coverage on these topics.

²⁶ Per the audit report, the District had implemented safe driver standards and a point system for driving citations and preventable vehicle accidents that requires administrative actions against drivers, ranging from verbal warnings to employment termination, based on the points accumulated.

There were no other audit findings that related to the operations of the Transportation Department in any of the other audit reports noted above.

Financial Information (for the 2013-14 fiscal year - most recent audit report available):

- General Fund Revenues totaled \$1,388,803,000, with the largest sources from *Ad Valorem Taxes* [\$809,909,000], *FEFP* [\$266,681,000], and *Class Size Reduction* [\$207,018,000].²⁷
- General Fund Current Expenditures totaled \$1,515,879,000; Pupil Transportation Services²⁸ totaled \$46,600,000.²⁹
- The General Fund is the primary operating fund of the District, which accounts for: (1) ad valorem tax revenues, revenues from the Florida Education Finance Program (FEFP), and other receipts not allocated by law or contractual agreement to other funds; and (2) general operating expenditures, fixed charges, and capital improvement costs that are not paid through other funds.³⁰

Other Considerations

The Auditor General, if directed by the Committee, will conduct an operational audit and take steps to avoid duplicating the work efforts of other audits or investigations being performed of District operations. The primary focus of a financial audit is to examine the financial statements in order to provide reasonable assurance about whether they are fairly presented in all material respects. The focus of an operational audit is to evaluate management's performance in establishing and maintaining internal controls and administering assigned responsibilities in accordance with laws, rules, regulations, contracts, grant agreements, and other guidelines.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to those charged with the District's governance and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of the School Board and District management, as well as the citizens living within the boundaries of the County. Alternately, any audit findings that are not corrected after three successive audits are required to be reported to the Committee by the Auditor General, and a process is provided in Sections 11.45(7)(j) and 218.39(8), *Florida Statutes*, for the Committee's involvement. First, the District may be required to provide a written statement explaining why corrective action has not been taken and to provide details of any corrective action that is anticipated.

²⁷ *Statement of Revenues, Expenditures and Changes in Fund Balances, Governmental Funds – The School District of Palm Beach County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014, page 22.*

²⁸ The District records, in this category, expenditures for activities associated with the transportation of students to and from school activities, either between home and school, from school to school, or on trips for curricular or cocurricular activities. Expenditures for the administration of student transportation services are recorded under this account, together with other student transportation service expenditures. (per the *Financial & Program Cost Accounting & Reporting for Florida Schools (Red Book), 2014 Edition*, developed by the Florida Department of Education)

²⁹ *Statement of Revenues, Expenditures and Changes in Fund Balances, Governmental Funds – The School District of Palm Beach County, Florida; Comprehensive Annual Financial Report, Year Ended September 30, 2014, page 22.*

³⁰ *Note 1.B. - Notes to Financial Statements - Auditor General Report No. 2014-163, Palm Beach County District School Board; Financial, Operational, and Federal Single Audit for the Fiscal Year Ended September 30, 2013, Page 34.*

If the statement is not determined to be sufficient, the Committee may request the Chair of the School Board to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to the District until the District complies with the law.

III. Effect of Proposed Request and Committee Staff Recommendation

If the Committee directs the Auditor General to perform an audit, the audit-related issues pertaining to the operations of the District's Transportation Department should be incorporated into the scope of the financial, operational, and federal single audit of the District that the Auditor General is scheduled to conduct for the 2015-16 fiscal year.

Pursuant to the authority provided in Section 11.45(3), Florida Statutes, the Auditor General shall finalize the scope of the audit during the course of the audit, providing that the audit-related concerns of Representative Slosberg are considered. As mentioned previously, the audit fieldwork for this audit is anticipated to begin in February 2016; however, the Auditor General should be allowed to adjust the timing of the audit as audit resources are available, consistent with her work plan and so as not to jeopardize the timely completion of statutorily mandated assignments.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the Committee directs the audit, the Auditor General will absorb the audit costs within her approved operating budget.

V. Related Issues:

None.

This staff analysis does not reflect the intent or official position of the requestor.
--

Florida Municipal Power Agency (FMPA)

What is the FMPA?

The FMPA is a Joint Use Action Agency authorized by the Joint Power Act, s. 361.10, F.S. The FMPA website describes the agency as “a wholesale power agency owned by municipal electric utilities. FMPA provides economies of scale in power generation and related services to support community-owned electric utilities.”¹ Its purpose is to finance, acquire, contract, manage, and operate its own electric power projects or jointly accomplish the same purposes with other public or private utilities.²

Thirty-one municipalities³ are members of the FMPA; each of these municipalities appoints one member to serve on the Board of Directors. The Board is responsible for decisions relating to all projects with the exception of the All Requirements Project (ARP). Slightly less than half of the FMPA member municipalities participate in the ARP, which is governed by an Executive Committee. The members of the ARP each appoint one member to the Executive Committee. The FMPA members may choose to participate in one or more of the four projects, or none at all.

Auditor General Audit

Proviso language in the 2014-15 *General Appropriations Act* directed the Auditor General to conduct an audit of any entity created under s. 361.10, F.S. (Joint Power Act). The FMPA is the only such entity in the State of Florida. At a minimum, the audit was required to analyze all revenues, expenditures, administrative costs, bond agreements, contracts and employment records and also provide a complete review of the rates of the entities. Due to the technical nature of the audit, the proviso language included \$200,000 for the Auditor General to hire subject matter experts.

The audit report, released in March 2015, included a total of 15 findings in the following areas: (1) Hedging Activities, (2) Investments, (3) Personnel and Payroll Administration, (4) Procurement of Goods and Services, (5) Travel, (6) All Requirements Project (ARP) Contract Provisions, and (7) Information Technology. The audit findings are listed below, under the heading **Corrective Action Plan Provided by FMPA**, and include an update provided by FMPA. The audit report was presented to the Joint Legislative Auditing Committee (Committee) on March 30, 2015. The report and the Auditor General’s presentation may be accessed from the Committee’s [website](#) (see pages 20-93); a summary and the full audit report may also be accessed from the Auditor General’s [website](#).

Florida TaxWatch Report

Based on a request from Representative Debbie Mayfield, Florida TaxWatch analyzed the Auditor General’s audit report and provided conclusions and recommendations with the intent “to improve the oversight and accountability of FMPA, and to make the activities of the FMPA more transparent to the taxpayers.”⁴

At the March 30, 2015, Committee meeting, TaxWatch presented a brief overview and provided copies of the report to members. The recommendations relate to the Committee’s oversight, membership of the FMPA Board of Directors and Executive Committee, exit provisions in existing power supply contracts,

¹ <http://fmpa.com>

² State of Florida Auditor General, *Florida Municipal Power Agency Operational Audit*, Report No. 2015-165, March 2015, p. 2.

³ Ibid.

⁴ Florida TaxWatch, *An Analysis of the Florida Municipal Power Agency Audit*, March 2015, p. 1

periodic audits by the Auditor General, and a suggested study by the Office of Program Policy Analysis and Government Accountability (OPPAGA). This report is available from Florida TaxWatch’s website by selecting “Library” on the Home Page and then scrolling to [An Analysis of the Florida Municipal Power Agency Audit](#) (3/2015).

Town of Indian River Shores

The Committee received a letter, dated March 27, 2015, from the Mayor of the Town of Indian River Shores, which was included in the meeting packet for the Committee’s March 30th meeting (available on the Committee’s [website](#); see page 94). According to the letter, approximately 3,200 of the Town’s 4,000 residents receive power from Vero Beach utility, which is an FMPA member. The remaining residents receive power from Florida Power & Light (FPL). The Mayor stated, “[f]or the calendar year 2013, Vero Beach’s rates were 41.19 percent higher than FPL’s. Over the last decade, the 3,200 Town residents receiving electric service from Vero Beach’s utility have collectively paid over \$16 million more than they would have paid if the same electric service had been provided by FPL. This rate crisis is driven in large part by FMPA’s high costs and continues to plague our Town and our region.” He further stated that, “Vero Beach reached an agreement with FPL and others which called for Vero to sell its utility to FPL. That sale was overwhelmingly supported by citizens of Vero Beach and its electric customers throughout the region. Unfortunately, that sale has been obstructed by FMPA. FMPA leaders have refused to meet with Vero Beach and FPL to find a mutually beneficial solution, and have shown no willingness to help Vero’s electric customers achieve relief from excessive rates.”

Committee Meeting on March 30, 2015

As previously mentioned, staff of the Auditor General’s Office presented the audit findings at the meeting. The consultants used for the audit, Energy & Resource Consulting Group, also presented some of the findings. The officials from FMPA who spoke were Bill Conrad, Chairman of the Board of Directors, and Jody Finklea, the Assistant General Counsel.

Public testimony was given by the following individuals:

Speaker	Summary/Excerpt of Comments
Bruce Christmas, President , RBC Resources	His company is an energy consulting firm that was retained by FMPA to look at some of their hedging practices (fuel hedging and public gas partnership). He stated that “the hedging program, specifically, is very comparable to what we’ve used in my 25 years in the utility business.”
Kent Guinn, Mayor of Ocala	Ocala is the largest member of the All Requirements Project (ARP) and has been a participant since 1986. He answered some questions that had been asked by members regarding potential impact to rate payers and accountability.
Howard McKinnon, Havana Electric [Chairman, All-Requirements Project Executive Committee]	“As a member of FMPA ... we are very pleased with the service it provides to us and our residents. The FMPA board and staff have always been responsive to any of our needs and we have an excellent working relationship with them. FMPA has been a good partner for our community.”
Barbara Quinones, Homestead Energy Services [Vice Chair, FMPA Board of Directors]	The City of Homestead is a member of FMPA; it does not belong to the All Requirements Project, but it does belong to several projects. As an FMPA Board member, “when the audit, the preliminary results came out we all had some very open and candid discussions about the findings. We are dedicated to addressing every one of those findings, making the organization better for all of the members...”

Speaker	Summary/Excerpt of Comments
Grant Lacerte, General Counsel, Kissimmee Utility Authority	The Kissimmee Utility Authority serves 70,000 customers and “for the better part of 30 years, we have partnered with FMPA on a number of very successful power generation projects and we joined the All Requirements Project in 2002 to meet all our wholesale power needs.”
Dylan Reingold, Indian River County Attorney	“One of the issues I would like to state is that this is a significant issue, not just in Vero Beach, not just for the outside rate payers, but it affects 2,000,000 Floridian customers...What you heard today was from the Mayor of Newberry and I really appreciate his comments.... but my question for you is – how are we going to hold their feet to the fire? What is going to happen in the future? What is going to correct the issues? I heard some arrogance in the response today concerning the presence of individuals and my question to you is what’s going to change that corporate culture? I think what’s necessary is we need accountability. We need transparency and we need to have authority over this entity.”
Glenn Heran, CPA	Has been studying this issue since 2008; traveled to meeting from Vero Beach on own time and money. Requests that the Auditor General “go back and look at the value of the generation of assets. What is the fair market value of the generation of assets, the cash, the investments? Measure that against the debt. What is the FMPA worth after 30+ years of ownership? I think the public has a right to know. You are going to find out two things: you are going to find out that either the FMPA has equity, which would raise the question about why there’s penalties for exiting members; or, that they’re underwater. If they’re underwater, the public has a right to know.”
Sheamus McNeely, St. Augustine citizen	“Here in Florida, we are faced with rising costs from health care to food to rent to utilities and the problems indicative with the FMPA exacerbate the existing problems underlying in that area...When you look at the mismanagement and lack of accountability of the FMPA, I would cite finding number seven [CEO’s employment contract provides for severance pay and postretirement benefits for life if he is terminated for cause.] as one...I believe that it is the responsibility of this Committee to move forward and further examine the actions of the FMPA and hold them accountable.”
Frank Wuco, CEO, Red Mind Solutions, Inc.	CEO of small tech start-up firm; considered locating in Lakeland but FMPA issues came to his attention, so he is located in another county. Stated that FMPA “needs to be disbanded. It needs to be replaced with a new organization that is properly overseen.”
Julius Melendez, Osceola County	Lives in unincorporated Osceola County, pays a different utility rate than those who live in the City of Kissimmee [an FMPA member], and is not satisfied with his utility rate. He stated that “the agency doesn’t even need to exist. Just hire actual professionals that hedge funds, that’s what they do. So, there’s no need for all this extra regulation... have them hire the agency... have it under PSC, that way it’s a regulatory authority.”

Corrective Action Plan Provided by FMPA

As directed by the Committee, the FMPA responded with a letter to the Auditor General, within 60 days of the Committee’s March meeting, in which it provided the status of corrective action for each of the 15 audit findings. The initial response, dated May 28, 2015, was followed by a second voluntary progress report, dated July 29, 2015. FMPA indicated that it would continue to submit a progress report every 60 days until all findings have been addressed. A summary of each audit finding and the status of corrective action(s) is included in the following table:

Area	Finding Number	Finding	Status as of July 29, 2015
Hedging Activities	1	Fuel hedging practices were not consistent with industry practices utilized by other comparable joint action agencies.	On May 21, 2015, FMPA's Executive Committee voted to cease its fuel hedging program known as FST (FMPA Short-term) Program. The Executive Committee also approved issuing a Request for Qualifications (RFQ) to retain an independent management consulting firm to provide analysis and recommendations on this finding. The consultant is expected to present its initial results in November 2015, and the FMPA will begin addressing the consultant's recommendations at that time.
	2	Investments in natural gas exploration and drilling were not consistent with industry practices utilized by other comparable joint action agencies and were more complex and involved more risk than alternative forms of hedging commonly practiced.	To be discussed by FMPA Executive Committee in the August or September timeframe; final action anticipated in September or October 2015.
	3	Certain interest rate swaps were not employed consistent with industry practices utilized by other comparable joint action agencies, which resulted in significant termination fees likely to be incurred.	Action is complete.
Investments	4	The FMA's investment policy needed to be enhanced to clarify requirements regarding allowable investment credit ratings and to establish geographic diversification requirements for investments.	Action is complete.
Personnel and Payroll Administration	5	Compensated absences increased by 75 percent in four years, and the cost of future postretirement benefits for certain employees may result in payouts that negatively impact future rates.	In August, FMPA's governing boards are expected to consider a policy analysis regarding projected increases in benefit package costs; final action anticipated in September 2015.
	6	The Board of Directors (Board) set the compensation package for the General Counsel through a series of actions over several years rather than through the use of a written employment agreement and FMPA was unable to provide documentation for one of the benefits provided by Board action.	To be discussed by the FMPA Board of Directors in the August and September timeframe; final action anticipated by October 2015.
	7	The Chief Executive Officer's employment contract provides for severance pay and postretirement benefits for life if he is terminated for cause.	To be discussed by the FMPA Board of Directors in the August and September timeframe; final action anticipated by October 2015.
Procurement of Goods and Services (Also includes #11)	8	FMPA records did not always evidence the public purpose served for purchase of goods and services.	Action is complete.
	9	The FMPA did not always follow its purchasing policies regarding competitive selection.	Action is complete.
	10	The FMPA had not recently used a competitive selection process when selecting financial advisors and bond counsel for bond issues, potentially increasing costs associated with bond issues.	Action is complete.

Area	Finding Number	Finding	Status as of July 29, 2015
	11	The FMPA did not always follow its policies regarding credit card issuance and purchases, and did not employ procedures for monitoring credit limits for reasonableness.	Action is complete.
Travel	12	The FMPA did not always follow its travel policies or ensure that travel-related receipts were submitted by contractors. Additionally, the FMPA's travel policies could be enhanced.	FMPA staff is preparing a policy analysis to address this recommendation. This recommendation will be discussed by the FMPA governing bodies in September, and final action is anticipated in October 2015. The audit finding regarding family member travel expenses was an error on FMPA's part. As soon as FMPA became aware, it was corrected and enhanced travel approval procedures were adopted.
All Requirements Project (ARP) Contract Provisions	13	The ARP power supply project contracts did not address peak shaving and, although the Executive Committee agreed to curtail peak-shaving activities, the agreement appears primarily voluntary in nature, relies on self-reporting, and contains no consequences for noncompliance.	To be discussed by FMPA Executive Committee in August; final action anticipated in September 2015.
	14	Certain ARP power supply project contract provisions relating to withdrawing members are ambiguous, used a fixed discount rate rather than one associated with current capital costs, and did not provide for independent verification by the withdrawing member.	On May 21, 2015, FMPA's Executive Committee approved issuing a Request for Qualifications (RFQ) to retain an independent management consulting firm to provide analysis and recommendations on defining the terms "additional benefits" and "excess amounts" as it relates to the withdrawal payment calculation. If anticipated schedule is met, the consultant is expected to present its initial results to FMPA's Executive Committee in November 2015, and FMPA will begin addressing the consultant's recommendations at that time.
Information Technology	15	The FMPA's disaster recovery plan could be enhanced.	FMPA has taken steps, including renewing its contract with the alternate processing site for one year rather than the standard five years. Renewed contract includes no-cost option of moving backup computer equipment and systems from Orlando to another location (Atlanta, GA or Boise, ID). FMPA is currently evaluating additional options for backup data processing needs. FMPA expects to have a final resolution in August 2015.

October 5, 2015 Committee Meeting

A follow-up discussion of the Auditor General's audit of the FMPA is on the agenda for the Committee's next meeting, on October 5th. Staff of the Auditor General will provide a recap of the audit findings. The officials of the FMPA who have been requested to attend are: (1) Bill Conrad, Chair of the Board of Directors, (2) Nicholas Guarriello, General Manager and CEO, and (3) Frederick Bryant, General Counsel and CLO. These individuals are expected to provide an update on the corrective actions that FMPA has taken to address audit findings and to respond to the members' questions.



Florida Municipal Power Agency

July 29, 2015

Ms. Sherrill F. Norman, CPA
Auditor General, State of Florida
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

Re: Auditor General Report No. 2015-165

Dear Ms. Norman:

On May 28, 2015, the Florida Municipal Power Agency (FMPA) filed with the Auditor General a 60-day written corrective action plan detailing FMPA's plans and timetable for addressing findings in the Auditor General's operational audit of FMPA. That filing was made as directed by the Florida Joint Legislative Auditing Committee in a meeting held March 30, 2015.

FMPA's governing boards and member utilities take very seriously the findings of the Auditor General and are committed to addressing each recommendation in a prompt and thorough manner. As evidence of this commitment, FMPA hereby submits another 60-day report to update you regarding our progress and plans for addressing each finding. We will continue to submit reports every 60 days until all findings have been addressed.

The attached report documents that FMPA has completed action on six of the 15 audit findings. The remaining nine items are scheduled for governing board action between now and the end of the calendar year, as described more fully in the report. If you require additional information, please contact Nicholas P. Guarriello, FMPA's General Manager and CEO, at 407-355-7767 or nick.guarriello@fmpa.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Conrad", written over a light blue horizontal line.

Bill Conrad
Chairman
FMPA Board of Directors

A handwritten signature in black ink, appearing to read "Howard McKinnon", written over a light blue horizontal line.

Howard McKinnon
Chairman
FMPA Executive Committee

Enclosure

cc: FMPA Board of Directors
FMPA Executive Committee
Nicholas P. Guarriello, FMPA
Frederick M. Bryant, FMPA



Florida Municipal Power Agency

Re: Auditor General Report No. 2015-165

FMPA Audit Response Report

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SUBMITTED TO

State of Florida
Auditor General
Sherrill F. Norman, CPA

July 29, 2015

Community Power + Statewide Strength

Introduction

The Florida Joint Legislative Auditing Committee (JLAC) met March 30, 2015, and heard a presentation from the Auditor General regarding its operational audit of the Florida Municipal Power Agency (FMPA or the Agency). At the conclusion of that meeting, the JLAC directed FMPA to provide to the Auditor General within 60 days a written corrective action plan detailing FMPA's plans and timetable for addressing each of the 15 audit findings. FMPA filed a report with the Auditor General on May 28, 2015, that responded to the JLAC's directive. FMPA's governing boards and member utilities take very seriously the findings of the Auditor General. As evidence of our commitment to addressing each finding in a prompt and thorough manner, FMPA hereby voluntarily submits another 60-day progress report, and FMPA will continue to submit reports every 60 days until all findings have been addressed.

FMPA has two governing boards: the Board of Directors and the Executive Committee. The Board of Directors is made up of one representative from each of the Agency's 31 member municipal electric utilities. The Board of Directors governs general activities of the Agency and all of its power supply projects except FMPA's All-Requirements Power Supply Project (the All-Requirements Project). The All-Requirements Project is independently governed by the Executive Committee. Each of the 13 municipal electric utilities that are participants and purchase power through the All-Requirements Project appoints a representative to the Executive Committee. Depending on the nature of each audit finding, some recommendations are within the exclusive authority of FMPA's Executive Committee and some findings are, or will be, addressed by both governing boards.

To address each of the Auditor General's recommendations, FMPA's Board of Directors or Executive Committee, or both, will conduct a public discussion and a vote. Action on the Auditor General's findings are or will be scheduled as agenda items for governing board meetings. FMPA's governing boards have a practice of hearing a matter first as an information item and then a second time at a subsequent meeting for action. FMPA's governing boards generally meet once per month.

The following report documents FMPA's actions as of July 29, 2015, and provides an anticipated timetable for addressing each of the findings.

Executive Summary

This report provides a 120-day status update on FMPA's response to the 15 findings and recommendations from the Auditor General. As of July 29, 2015, FMPA's governing boards have completed work on six audit recommendations (Findings No. 3, 4, 8, 9, 10 and 11), as described in the following report. For two recommendations (Findings No. 1 and 14), FMPA's Executive Committee has decided to retain an independent management consulting firm to fully address the Auditor General's recommendations. Due to the time required for a competitive selection process, the consultant's recommendations may not be available until November 2015. Between now and the end of this calendar year, FMPA's governing boards will address the remaining seven recommendations on the estimated timetable described in the following report. Comparing the estimated timetable in this report to the estimated timetable in the prior report of May 28, 2015, FMPA now anticipates that two findings (No. 13 and 15) will be completed one month earlier than originally planned and one finding (No. 2) might take one month longer than originally planned.

Florida Municipal Power Agency

FMPA Audit Response Report

July 29, 2015

FINDING 1: Fuel Hedging

Finding: Fuel hedging practices were not consistent with industry practices utilized by other joint action agencies.

Recommendation: The FMPA should consider amending its fuel hedging policies to focus on offsetting changes in the cost of natural gas rather than the benefit from upward and downward price volatility. In doing so, the policy should provide for hedging using only derivative instruments necessary to achieve a simple effective fuel hedge at current natural gas prices rather than at present trigger amounts.

FMPA Status Report: On May 21, 2015, FMPA's Executive Committee voted to cease its fuel hedging program known as FST (FMPA Short-term) Program. On May 21, 2015, FMPA's Executive Committee also approved issuing a Request for Qualifications (RFQ) to retain an independent management consulting firm to provide analysis and recommendations on this finding. Responses to the RFQ were received on June 26. Interviews with respondents are planned on July 30. FMPA anticipates making a consultant selection by mid-August and having a contract executed with the consultant by mid-September. The consultant is expected to present its initial results to FMPA's Executive Committee in November 2015, and FMPA will begin addressing the consultant's recommendations at that time.

FINDING 2: Natural Gas Supply Agency Participation

Finding: Investment in natural gas exploration and drilling were not consistent with industry practices utilized by other joint action agencies and were more complex and involved more risk than alternative forms of hedging commonly practiced.

Recommendation: The FMPA should establish written policies regarding future gas production investments. These policies should state the circumstances under which the FMPA may consider participation in further PGP projects or other gas production investments, and the circumstances under which the FMPA may consider exiting its PGP participation. Additionally, these policies should identify the categories of risk that must be considered by the FMPA when deciding on new or increased gas production investments and place an appropriate value on risk.

FMPA Status Report: This recommendation will be discussed by the FMPA Executive Committee in the August or September timeframe, and final action is anticipated in September or October 2015.

FINDING 3: Interest Rate Swaps

Finding: Certain interest rate swaps were not employed consistent with industry practices utilized by other joint action agencies, which resulted in significant termination fees likely to be incurred.

Recommendation: The FMPA should refrain from employing interest rate swaps in the future without concurrently issuing debt to bring its interest rate hedging practices more in line with industry standard risk tolerance. Further, such activities should not be undertaken before required approvals for projects are obtained from regulatory bodies. In addition, the Executive Committee should consider, without regard to prior unrealized losses incurred, developing and executing an exit strategy for the Taylor swaps that removes the ongoing risk to the ARP members.

FMPA Status Report: Action on this recommendation is complete. On May 21, 2015, FMPA's Executive Committee approved amendments to its Debt Risk Management Policy that implemented two of the three Auditor General's recommendations: 1) prohibiting the employment of interest rate swaps without concurrently issuing debt, and 2) prohibiting interest rate swaps before required approvals for projects are obtained from regulatory bodies. The Auditor General's third recommendation about developing an exit strategy for Taylor swaps also has been addressed. FMPA's Executive Committee approved actions on April 16, 2015, and May 6, 2015, providing policy direction on when and how to exit the Taylor swaps, and then on May 21, 2015, the Executive Committee approved resolutions authorizing the permanent financing structure for the Taylor swap termination costs. All nine swaps contracts were terminated as of June 16, 2015, removing the ongoing risk to ARP members, and FMPA closed June 30, 2015, on the permanent financing for the Taylor swap termination costs.

FINDING 4: Investment Policy

Finding: The FMPA's investment policy needed to be enhanced to clarify requirements regarding allowable investment credit ratings and to establish geographic diversification requirements for investments.

Recommendation: The FMPA should enhance its investment policy to clarify the application of credit ratings. Additionally, the FMPA should enhance its investment policy to clarify that the investment diversification requirements are to be applied at the individual project level and to establish requirements for geographical diversification.

FMPA Status Report: Action on this recommendation is complete. On May 21, 2015, FMPA's Board of Directors and Executive Committee approved amendments to the Agency's Investment Policy that fully address all three of the Auditor General's recommendations: 1) clarifying the meaning of the "two highest credit rating categories," 2) clarifying that the Investment Policy applies individually to each Project, not in any combination of Projects, and 3) establishing an investment limit based on geographic concentration.

FINDING 5: Employee Benefits

Finding: Compensated absences increased by 75 percent in four years, and the cost of future postretirement benefits for certain employees may result in payouts that negatively impact future rates.

Recommendation: The FMPA should periodically evaluate the impact of projected increases in benefit package costs provided to employees.

FMPA Status Report: FMPA staff is preparing a policy analysis to evaluate the impact of projected increases in benefit package costs, which will be presented to FMPA's governing boards in August, and final action is anticipated in September 2015.

FINDING 6: General Counsel Contract

Finding: The Board of Directors (Board) set the compensation package for the General Counsel through a series of actions over several years rather than through the use of a written employment agreement and FMPA was unable to provide documentation for all of the benefits provided by Board action.

Recommendation: The FMPA should enter into a contract with the General Counsel encompassing all Board-approved compensation arrangements cumulatively provided to the General Counsel and implement any further compensation changes as contract amendments.

FMPA Status Report: This recommendation will be discussed by the FMPA Board of Directors in the August and September timeframe during the General Counsel's annual performance review, and final action is anticipated by October 2015.

FINDING 7: Severance Pay and Benefits

Finding: The Chief Executive Officer's employment contract provides for severance pay and postretirement benefits for life if he is terminated for cause.

Recommendation: The FMPA should consider amending the CEO's contract to remove any severance compensation and postretirement benefits associated with termination for cause.

FMPA Status Report: This recommendation will be discussed by the FMPA Board of Directors in the August and September timeframe during the General Manager and CEO's annual review, and final action is anticipated by October 2015.

FINDING 8: Questioned Expenditures

Findings: FMPA records did not always evidence the public purpose served for purchases of goods and services.

Recommendation: The FMPA should strengthen its procedures to require documentation that expenditures serve an authorized public purpose and retain such documentation in its records prior to payment.

FMPA Status Report: Action on this recommendation is complete. On June 18, 2015, FMPA's Board of Directors and Executive Committee approved a new Public Purpose Policy and a new Public Purpose Determination Procedure. The new policy and procedure provide that FMPA's governing bodies will specifically provide a public purpose finding for certain expenditures and retain such documentation in FMPA's records before and after payment. In addition, FMPA's budgets will include language stating that all expenditures have been authorized and approved for a public purpose.

This follows FMPA's immediate action, after the preliminary and tentative audit report was issued in January, to discontinue several expenditures questioned by the Auditor General, including Orlando Magic tickets, an indoor plant service, Christmas tree rental and an annual conference dinner for members in Washington, D.C.

FINDING 9: Competitive Selection

Finding: The FMPA did not always follow its purchasing policies regarding competitive selection.

Recommendation: The FMPA should ensure that goods and services purchased through contractors are competitively procured in accordance with established policies and procedures.

FMPA Status Report: Action on this recommendation is complete. On July 24, 2015, FMPA's Board of Directors and Executive Committee approved revisions to FMPA's Procurement Policy and FMPA's Accounting and Internal Controls Policy. In addition, FMPA staff committed to perform an annual training session on the Procurement Policy to ensure that appropriate FMPA staff are familiar with the policy requirements. Finally, FMPA's governing boards approved on July 24, 2015, an amendment to FMPA's Accounting and Internal Controls Policy that provides for FMPA's Contract Compliance Audit Department to conduct an annual review of compliance with FMPA's Procurement Policy and report the results to FMPA's General Manager and CEO or FMPA's Audit and Risk Oversight Committee. Taken together, these policy updates, annual training, and annual testing are expected to fully address the Auditor General's recommendation to ensure that goods and services are competitively procured in accordance with policies.

FINDING 10: Selection of Bond Professionals

Finding: The FMPA had not recently used a competitive selection process when selecting financial advisors and bond counsel for bond issues, potentially increasing costs associated with bond issues.

Recommendation: To ensure that qualified financial and professional services are acquired at the lowest possible cost consistent with the size, nature, and complexity of the bond issue, the FMPA should select financial advisors and bond counsel using a competitive selection process whereby RFPs or RFQs are solicited from a reasonable number of professionals.

FMPA Status Report: Action on this recommendation is complete. On May 21, 2015, FMPA's governing boards approved amendments to the Agency's Debt Risk Management Policy that add requirements for a competitive selection process for all professionals associated with FMPA's debt. FMPA will issue its initial competitive selection request for trustee, registrar and paying agent by the end of October 2015. Additional competitive selection processes will be undertaken by FMPA for other bond professionals until all bond professionals have been engaged under the amended Debt Risk Management Policy.

FINDING 11: Credit Cards

Finding: The FMPA did not always follow its policies regarding credit card issuance and purchases, and did not employ procedures for monitoring credit limits for reasonableness.

Recommendation: The FMPA should enhance its procedures to ensure compliance with its policies regarding credit card user agreements. The FMPA should also enhance its existing policies to clarify responsibilities regarding notification of credit card user termination and associated card cancellation, including notification requirements of member municipalities; require all credit card users to sign the monthly credit card activity reports; and require periodic reviews of credit card user credit limits for reasonableness.

FMPA Status Report: Action on this recommendation is complete. On June 18, 2015, FMPA's Board of Directors and Executive Committee approved revisions to FMPA's Credit Card Policy, new Credit Card Procedures, and revised Credit Card Use Agreements for employees and employees of FMPA members that work at power generation facilities contractually under FMPA's operational control. The policy and the procedures fully address all of the Auditor General's recommendations, including: 1) providing for regular checks of credit card user agreements on file, 2) providing notification requirements for credit card user terminations and associated card cancellation, including notification requirements of member municipalities, 3) requiring signatures on monthly activity reports, and 4) requiring periodic review of credit card user credit limits for reasonableness.

FINDING 12: Travel Expenditures

Finding: The FMPA did not always follow its travel policies or ensure that travel-related receipts were submitted by contractors. Additionally, the FMPA's travel policies could be enhanced.

Recommendation: The FMPA should consider amending its Travel Policy to include a cap on per-meal costs. The FMPA should also enhance its procedures to ensure compliance with its policies regarding family member travel expenses and most economical cost of air travel, and to require supporting receipts for out-of-pocket expenses incurred by contractors. In addition, the FMPA should discontinue providing mileage reimbursements to employees who also receive vehicle allowances.

FMPA Status Report: FMPA staff is preparing a policy analysis to address this recommendation. This recommendation will be discussed by the FMPA governing bodies in September, and final action is anticipated in October 2015.

The audit finding regarding family member travel expenses was an error on FMPA's part. As soon as the matter was brought to FMPA's attention, it was corrected with repayment made to FMPA and appropriate taxes paid to the State of Florida. Since then, FMPA has adopted an enhanced travel expense approval procedure to prevent reoccurrence.

FINDING 13: Peak Shaving

Finding: The ARP power supply project contracts did not address peak shaving and, although the Executive Committee agreed to curtail peak-shaving activities, the agreement appears primarily voluntary in nature, relies on self-reporting, and contains no consequences for noncompliance.

Recommendation: If the FMPA desires to affirmatively eliminate peak shaving activities of its members, the FMPA should consider amending the power supply project contracts to prohibit such activities and establish consequences for noncompliance.

FMPA Status Report: This recommendation will be discussed by the FMPA Executive Committee in August, and final action is anticipated in September 2015.

FINDING 14: ARP Termination Provisions

Finding: Certain ARP power supply project contract provisions relating to withdrawing members are ambiguous, used a fixed discount rate rather than one associated with current capital costs, and did not provide for independent verification by the withdrawing member.

Recommendation: Since ARP revenue requirements are calculated using monthly coincident peak demands, the FMPA should consider using a 12-month average of coincident peak to more accurately estimate the withdrawing member's share of fixed costs. Also, the FMPA should consider amending the power supply project contracts to clarify how withdrawal payments are to be calculated, define "additional benefits" and "excess amounts," establish a variable withdrawal payment discount rate that fluctuates with the actual cost of debt, and remove the 90 percent cap of an ARP member's withdrawal payment. Additionally, since the withdrawal payment can be used to temporarily correct deficiencies in other operating funds and for "excess amounts" to be deposited in the "General Reserve Fund," it should be determined how this ability to use these funds is recognized in the monthly revenue requirement calculation for remaining ARP participants.

FMPA Status Report: On May 21, 2015, FMPA's Executive Committee approved issuing a Request for Qualifications (RFQ) to retain an independent management consulting firm to provide analysis and recommendations on defining the terms "additional benefits" and "excess amounts" as it relates to the withdrawal payment calculation. Responses to the RFQ were received on June 26. Interviews with respondents are planned on July 30. FMPA anticipates making a consultant selection by mid-August and having a contract executed with the consultant by mid-September. If those deadlines are met, the consultant is expected to present its initial results to FMPA's Executive Committee in November 2015, and FMPA will begin addressing the consultant's recommendations at that time.

FINDING 15: Disaster Recovery Plan

Finding: The FMPA's disaster recovery plan could be enhanced.

Recommendation: The FMPA should enter into a written agreement to procure an alternate processing site that is sufficiently geographically distant to minimize the risk of being unable to continue critical operations in the event of a hurricane or other geographically large disaster.

FMPA Status Report: Following the preliminary and tentative findings issued by the Auditor General on Jan. 21, 2015, FMPA immediately reviewed its relationship with the current alternate processing site. At that time, the agreement for FMPA's alternate data processing site had a March 1, 2015, expiration date. FMPA worked with the incumbent provider to renew the contract for one year, rather than the standard five-year term, and included in the renewed contract a no-cost option of moving FMPA's backup computer equipment and systems from the provider's current location in Orlando, Florida, to one of its other locations in Atlanta, Georgia, or Boise, Idaho. FMPA is currently evaluating additional options for its backup data processing needs. Working with FMPA's governing boards, FMPA staff expects to have a final resolution to this recommendation in August 2015.



**Operational Audit of the
Florida Municipal Power Agency
No. 2015-165**

Legislative Auditing Committee October 5, 2015

Florida Municipal Power Agency



- The Florida Municipal Power Agency (FMMPA) is a Joint Use Action Agency (JAA) created in 1978.
- The FMMPA finances, acquires, contracts, manages, and operates its own electric power projects.
- Members choose whether to participate in projects and each of the projects are independent from the other projects. Project bond resolutions specify that no revenues or funds from one project can be used to pay the costs of any other project.
- At October 31, 2014, the FMMPA had 31 member municipalities, 20 of which participated in one or more projects.
- Board of Directors govern over all except the All Requirements Project (ARP); Executive Committee governs the ARP. Member municipalities appoint individuals to serve on the Board and Committee.

Audit Focus



- Our audit of the FMIPA focused primarily on management's performance in establishing and maintaining internal controls and in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines.
- In conducting this audit, we engaged consultants with significant industry expertise to assist us in evaluating the FMIPA's practices, including comparisons to best industry practices and with other comparable JAAs.

Finding Nos. 1, 2, and 3



Hedging Activities

- Fuel hedging practices were not consistent with industry practices utilized by other comparable JAAs. Specifically, the FMPA used practices more consistent with a strategy for trading gas than a strategy focused on offsetting the changes in fuel costs.
- Investments in natural gas exploration and drilling were not consistent with industry practices utilized by other comparable JAAs and were more complex and involved more risk than alternative forms of hedging commonly practiced.
- Certain interest rate swaps were not employed consistent with industry practices utilized by other comparable JAAs, which resulted in significant termination fees likely to be incurred. These swaps were entered into far in advance of the anticipated issuance of debt and the debt was never issued.

Finding No. 4



Investments

- The FMIPA's investment policy needed to be enhanced to clarify requirements regarding allowable investment credit ratings and to establish geographic diversification requirements for investments.

Finding Nos. 5, 6, and 7



Personnel and Payroll Administration

- Compensated absences (absences for which employees will be paid, such as annual and sick leave) increased by 75 percent in 4 years, and the cost of future postretirement benefits for certain employees may result in payouts that negatively impact future rates.
- The Board of Directors set the compensation package for the General Counsel through a series of actions over several years rather than through the use of a written employment agreement and the FMPA was unable to provide documentation for one of the benefits provided by Board action.
- The Chief Executive Officer's employment contract provides for severance pay and postretirement benefits for life if he is terminated for cause.

Finding Nos. 8 through 11



Procurement of Goods and Services

- FMPA records did not always evidence the public purpose served for purchases of goods and services. For example, FMPA records did not evidence the public purpose for \$12,688 expended for holiday parties.
- The FMPA, in some instances, did not obtain quotes or proposals for purchases of goods and services, contrary to FMPA policies.
- The FMPA had not recently used a competitive selection process when selecting financial advisors and bond counsel for bond issues, potentially increasing costs associated with bond issues.
- The FMPA did not always follow its policies regarding credit card issuance and purchases, and did not employ procedures for monitoring credit limits for reasonableness.

Finding No. 12



Travel

- The FMPA did not always follow its travel policies or ensure that travel-related receipts were submitted by contractors. Additionally, the FMPA's travel policies could be enhanced.

Finding Nos. 13 and 14



All Requirements Project (ARP) Contract Provisions

Demand charge is billed to a member based on the member's relative percentage of power purchased on the monthly coincident peak demand day (during the peak hour of the peak day of demand for the ARP system).

Temporary attempts to control or lower a member's power load at the time of coincident peak demand to reduce demand charges is "peak shaving."

- The ARP power supply project contracts did not address peak shaving.
- At an Executive Committee meeting, members agreed to curtail peak shaving activities; however, the agreement appears primarily voluntary in nature, relies on self-reporting, and contains no consequences for noncompliance.

Finding Nos. 13 and 14



All Requirements Project (ARP) Contract Provisions (continued)

- Certain ARP power supply project contract provisions relating to withdrawing members are ambiguous, used a fixed discount rate rather than one associated with current capital costs, and did not provide for independent verification by the withdrawing member.

Finding No. 15



Information Technology

- The FMPA's disaster recovery plan could be enhanced.

Questions?

FLORIDA MUNICIPAL POWER AGENCY

Operational Audit



**FLORIDA MUNICIPAL POWER AGENCY
BOARD OF DIRECTORS AND EXECUTIVE COMMITTEE**

The Florida Municipal Power Agency is a Joint Use Action Agency created pursuant to a series of interlocal agreements with Florida municipalities under the authority of Sections 163.01 (Florida Interlocal Cooperation Act of 1969), and 361.10 (Joint Power Act), Florida Statutes, to finance, acquire, contract, manage, and operate its own electric power projects or jointly accomplish the same purposes with other public or private utilities.

The Florida Municipal Power Agency is governed by a Board of Directors, with one Board member appointed by each member municipality. The Board decides all issues concerning each project except for the All Requirements Project. The All Requirements Project is governed by an Executive Committee, with each All Requirements Project member municipality that purchases power from the project appointing one Executive Committee member.

Members that served on the Board of Directors and Executive Committee during the period October 2012 through June 2014 are listed in Exhibit A.

The audit team leader was Jeffrey Brizendine, CPA, and the audit was supervised by Derek Noonan, CPA. Please address inquiries regarding this report to Marilyn D. Rosetti, CPA, Audit Manager, by e-mail at marilynrosetti@aud.state.fl.us or by telephone at (850) 412-2881.

This report and other reports prepared by the Auditor General can be obtained on our Web site at www.myflorida.com/audgen; by telephone at (850) 412-2722; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

FLORIDA MUNICIPAL POWER AGENCY

EXECUTIVE SUMMARY

Our operational audit of the Florida Municipal Power Agency (FMPA) disclosed the following:

HEDGING ACTIVITIES

Finding No. 1: Fuel hedging practices were not consistent with industry practices utilized by other comparable joint action agencies.

Finding No. 2: Investments in natural gas exploration and drilling were not consistent with industry practices utilized by other comparable joint action agencies and were more complex and involved more risk than alternative forms of hedging commonly practiced.

Finding No. 3: Certain interest rate swaps were not employed consistent with industry practices utilized by other comparable joint action agencies, which resulted in significant termination fees likely to be incurred.

INVESTMENTS

Finding No. 4: The FMPA's investment policy needed to be enhanced to clarify requirements regarding allowable investment credit ratings and to establish geographic diversification requirements for investments.

PERSONNEL AND PAYROLL ADMINISTRATION

Finding No. 5: Compensated absences increased by 75 percent in four years, and the cost of future postretirement benefits for certain employees may result in payouts that negatively impact future rates.

Finding No. 6: The Board of Directors (Board) set the compensation package for the General Counsel through a series of actions over several years rather than through the use of a written employment agreement and FMPA was unable to provide documentation for one of the benefits provided by Board action.

Finding No. 7: The Chief Executive Officer's employment contract provides for severance pay and postretirement benefits for life if he is terminated for cause.

PROCUREMENT OF GOODS AND SERVICES

Finding No. 8: FMPA records did not always evidence the public purpose served for purchases of goods and services.

Finding No. 9: The FMPA did not always follow its purchasing policies regarding competitive selection.

Finding No. 10: The FMPA had not recently used a competitive selection process when selecting financial advisors and bond counsel for bond issues, potentially increasing costs associated with bond issues.

Finding No. 11: The FMPA did not always follow its policies regarding credit card issuance and purchases, and did not employ procedures for monitoring credit limits for reasonableness.

TRAVEL

Finding No. 12: The FMPA did not always follow its travel policies or ensure that travel-related receipts were submitted by contractors. Additionally, the FMPA's travel policies could be enhanced.

ALL REQUIREMENTS PROJECT (ARP) CONTRACT PROVISIONS

Finding No. 13: The ARP power supply project contracts did not address peak shaving and, although the Executive Committee agreed to curtail peak-shaving activities, the agreement appears primarily voluntary in nature, relies on self-reporting, and contains no consequences for noncompliance.

Finding No. 14: Certain ARP power supply project contract provisions relating to withdrawing members are ambiguous, used a fixed discount rate rather than one associated with current capital costs, and did not provide for independent verification by the withdrawing member.

INFORMATION TECHNOLOGY

Finding No. 15: The FMPA's disaster recovery plan could be enhanced.

BACKGROUND

The Florida Municipal Power Agency (FMPA), is a Joint Use Action Agency (JAA) created in 1978 pursuant to a series of interlocal agreements with Florida municipalities under the authority of Sections 163.01 (Florida Interlocal Cooperation Act of 1969), and 361.10 (Joint Power Act), Florida Statutes. Although the FMPA is a governmental entity, many of the laws applicable to local governments, including municipalities, do not apply to the FMPA. Further, unlike investor owned utilities (IOUs), the FMPA is not subject to any rate-setting authority by the Florida Public Service Commission, which is consistent with JAAs in other states.

The FMPA finances, acquires, contracts, manages, and operates its own electric power projects or jointly accomplishes the same purposes with other public or private utilities. The FMPA's structure allows each member municipality the option to participate in one or more projects or not to participate in any project. Each of the projects are independent from the other projects, and the project bond resolutions specify that no revenues or funds from one project can be used to pay the costs of any other project. Projects are as follows:

- The St. Lucie Project consists of 8.8 percent ownership interest in St. Lucie Unit 2, a 984 megawatt (MW) nuclear power plant located on Hutchinson Island in St. Lucie County and primarily owned and operated by Florida Power and Light.
- The Stanton and Tri-City Projects consist of 14.8 and 5.3 percent ownership, respectively, in a 441 MW coal-fired power plant located in Orlando and primarily owned and operated by the Orlando Utilities Commission (OUC).
- The Stanton II Project consists of 23.2 percent ownership in a 453 MW coal-fired power plant located in Orlando and primarily owned and operated by the OUC.
- The All Requirements Project (ARP) consists of varying ownership interest in several power plants located throughout Florida, including the Stanton Energy Center Units 1 and 2; Indian River Combustion Turbines A, B, C, and D; and Stanton Unit A. In addition, the ARP wholly owns the following units: Treasure Coast Energy Center; Cane Island Units 1, 2, 3, and 4; Key West Units 1, 2, 3, and 4; and Stock Island MS Units 1 and 2.

As of October 31, 2014, the FMPA had 31 member municipalities, 20 of which participated in one or more projects as described in Table 1:

Table 1

| Member Municipality | All Requirements Project | St. Lucie Project | Stanton Project | Stanton II Project | Tri-City Project |
|----------------------------|--------------------------|-------------------|-----------------|--------------------|------------------|
| City of Alachua | | X | | | |
| City of Bushnell | X | | | | |
| City of Clewiston | X | X | | | |
| City of Fort Meade | X | X | | | |
| City of Fort Pierce | X | X | X | X | X |
| City of Green Cove Springs | X | X | | | |
| Town of Havana | X | | | | |
| City of Homestead | | X | X | X | X |
| City of Jacksonville Beach | X | X | | | |
| City of Key West | X | | | X | X |
| City of Kissimmee | X | X | X | X | |
| City of Lake Worth | X (1) | X | X | | |
| City of Leesburg | X | X | | | |
| City of Moore Haven | | X | | | |
| City of New Smyrna Beach | | X | | | |
| City of Newberry | X | X | | | |
| City of Ocala | X | | | | |
| City of St. Cloud | | | | X | |
| City of Starke | X | X | X | X | |
| City of Vero Beach | X (2) | X | X | X | |

Notes (1): Member of the ARP, but has not purchased power from the project since January, 1, 2014.

(2): Member of the ARP, but has not purchased power from the project since January, 1, 2010.

Source: FMPA Records

The remaining 11 municipalities, which include the Cities of Bartow, Blountstown, Chattahoochee, Gainesville, Lakeland, Mount Dora, Orlando, Quincy, Wauchula, Williston, and Winter Park, were members of the FMPA and participated in various activities, such as training, but were not participants in any power projects.

The FMPA is governed by a Board of Directors (Board), with one Board member appointed by each member municipality. The Board decides all issues concerning each project except for the ARP. Board members from municipalities that do not participate in any FMPA power projects have one vote each; ARP participants have two votes each; and the remaining Board members have 1.5 votes each. The ARP is governed by an Executive Committee, with each ARP member municipality that purchases power from the project appointing one Executive Committee member. The FMPA’s bond resolutions require that its rate structure be designed to produce revenues sufficient to pay operating, debt service, and other specified costs. The Board and the Executive Committee are responsible for approving the rate structures for the non-ARP and ARP projects, respectively.

The majority of financial activity occurs in the ARP, in which the FMPA is responsible for providing all electricity needs for the ARP members that are not provided by other FMPA projects. In contrast, the other projects have less financial activity, as these projects represent minority ownership in joint electricity projects with other power providers. Revenues and expenses for the various projects for the 2012-13 fiscal year, the most recent audited information available as of December 2014, were as noted in Table 2 (amounts reported in thousands):

Table 2

| Description | All Requirements Project | St. Lucie Project | Stanton Project | Stanton II Project | Tri-City Project | Agency Fund (1) |
|--------------------------|--------------------------|-------------------|-----------------|--------------------|------------------|-----------------|
| Operating Revenue | \$ 481,573 | \$ 46,230 | \$ 23,260 | \$ 51,003 | \$ 9,122 | \$ 12,531 |
| Operating Expenses | 431,660 | 44,771 | 16,539 | 36,064 | 6,477 | 12,718 |
| Nonoperating Net Expense | 8,276 | 11,277 | 3,102 | 7,342 | 1,429 | 11 |

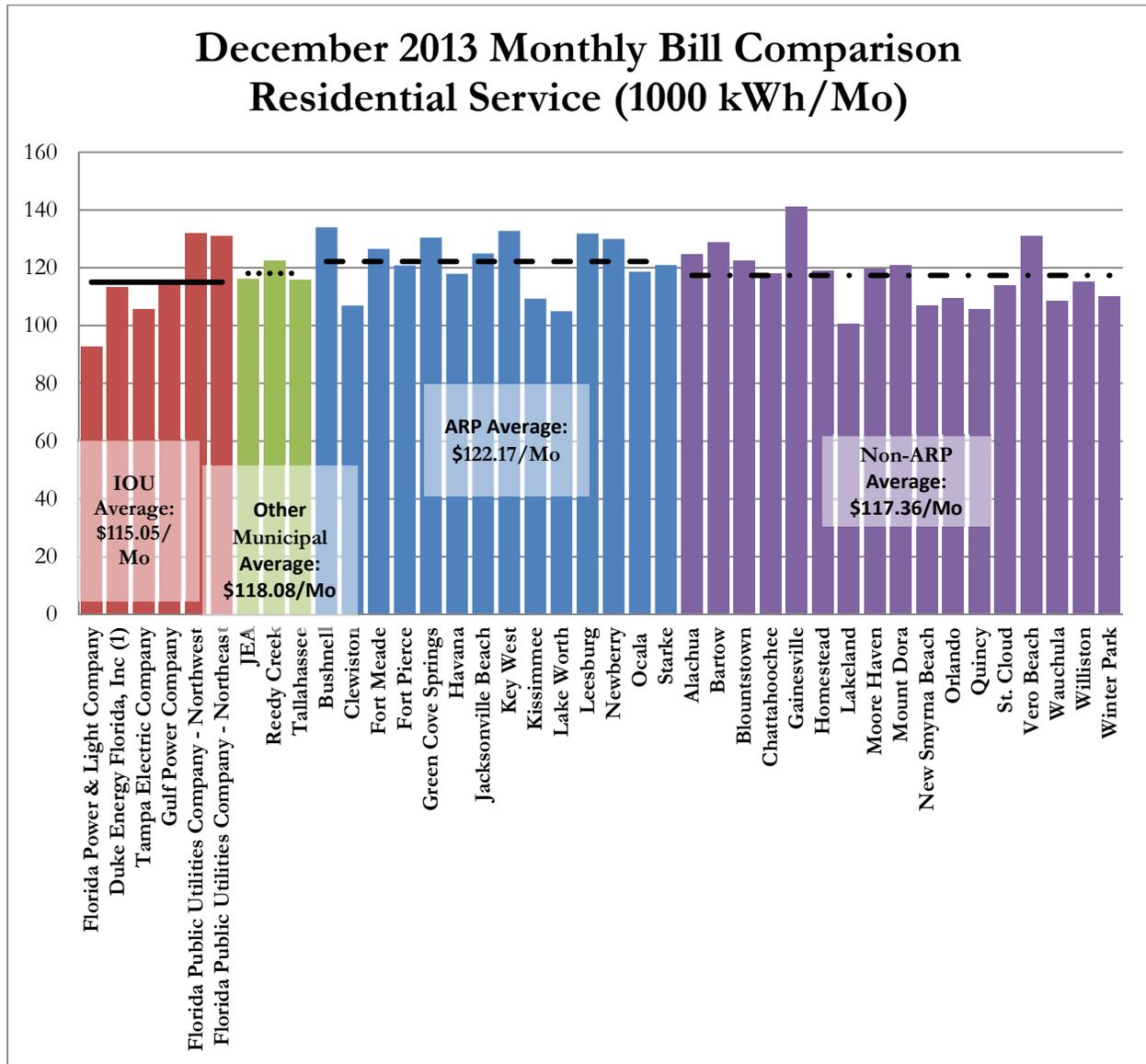
Note (1): The Agency Fund is not associated with a particular project; rather, it accounts for general operations benefiting all projects.

Source: FMPA 2012-13 fiscal year audited financial statements

Table 3 shows comparative residential service bills for the month of December 2013 for IOUs, non-FMPA member municipal electrical utilities, FMPA ARP members, and FMPA non-ARP members. The average FMPA ARP members’ bill is greater than the average IOUs’ bill and average non-FMPA member municipal electric utilities’ bill by \$7.12 (6 percent), and \$4.09 (3 percent), respectively. Additionally, the average bill for an FMPA ARP member is higher than the average bill for an FMPA non-ARP member by \$4.81, or 4 percent. There are multiple factors that impact FMPA ARP members’ residential rates, some of which are not attributable to FMPA, including:

- Several ARP members also participate in non-ARP projects. Consequently, the ARP member receives power from multiple sources at differing wholesale rates, which are factored into customer billings.
- ARP members add additional costs, such as electrical service costs associated with delivery of power, to customer billings.
- According to Moody’s Investors Service, “Many FMPA member electric utilities have sizable transfers of electric fund revenues to their municipal General Funds which can sometimes contribute to above average retail rates for some members.”

Table 3



Notes:

- (1) Duke Energy completed a merger with Progress Energy on July 2, 2012. Upon completion of the transaction, the new entity operates in Florida as Duke Energy Florida, Inc.
- (2) IOU amounts do not include franchise fees and certain other taxes, both of which vary by locality, as such information was not readily available.

Source: Florida Public Service Commission

Charges billed to individual ARP members vary based on FMPA cost allocations, member-owned capacity credits, and other factors. Table 4 shows the weighted average cost per MWh or kilowatt (kW) month, as applicable, over the last ten years for the primary monthly billing components invoiced to ARP members.

Table 4

| Fiscal Year | Demand Charge (1) | Energy Charge (2) | Transmission (1) |
|-----------------|-------------------|-------------------|------------------|
| 2015 (Budgeted) | \$ 22.46 | \$ 32.62 | \$ 2.60 |
| 2014 | 21.98 | 30.80 | 2.25 |
| 2013 | 20.98 | 32.53 | 2.00 |
| 2012 | 19.92 | 29.59 | 1.79 |
| 2011 | 17.86 | 39.44 | 1.85 |
| 2010 | 18.16 | 52.04 | 1.39 |
| 2009 | 16.08 | 64.48 | 1.82 |
| 2008 | 13.08 | 65.49 | 1.24 |
| 2007 | 11.12 | 55.56 | 1.25 |
| 2006 | 10.81 | 54.82 | 1.37 |

Notes: (1) Per Kilowatt month

(2) Per Megawatt hour

Source: FMPA Records

As shown in Table 4, the demand and energy charge components are the two largest components on ARP member billings. From the 2005-06 fiscal year to the 2013-14 fiscal year, the energy charge, which represents the cost of purchased fuel, decreased from \$54.82 per MWh to \$30.80 per MWh, a decrease of 44 percent. In contrast, the weighted average demand charge increased from \$10.81 per MWh to \$21.98 per MWh, a 103 percent increase, over the same time period. The demand charge is composed of fixed costs allocated to members based upon a member’s peak demand during the peak hour of the peak day of the ARP monthly coincident peak demand (i.e., the peak demand for the ARP system as a whole). The largest component of the demand charge is for debt service principal and interest payments, the total of which were budgeted at \$108.3 million during the 2014-15 fiscal year, an increase of \$88.5 million, or 447 percent, over \$19.8 million in the 2005-06 fiscal year. Much of the increase in debt cost is attributable to the recently constructed Treasure Coast and Cane Island Units.

Demand cost allocation among members may fluctuate, but total demand costs for the ARP as a whole do not increase or decrease based upon the amount of electricity generated by the FMPA. As Table 5 shows, electricity demand has decreased steadily from the 2008-09 fiscal year to the proposed budget for the 2014-15 fiscal year. Specifically, average monthly billed MW has decreased by 18 percent from 13,919 to 11,455 MW over the past six years primarily due to a weaker economy, energy conservation programs, and the cessation of ARP power delivery by the Cities of Vero Beach and Lake Worth in January 2010 and January 2014, respectively. Consequently, increased fixed demand costs are being allocated to a decreasing number of billed MW, which increases member billing rates.

Table 5

| Fiscal Year | 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 (Proposed Budget) |
|--------------------|---------|---------|---------|---------|---------|---------|---------------------------|
| MW Billed - Demand | 13,919 | 12,739 | 12,157 | 12,379 | 12,218 | 11,331 | 11,455 |

Source: FMPA Records

FINDINGS AND RECOMMENDATIONS

Insofar as the FMPA must recover all costs of providing power to members through billings, decisions as to the level of spending and the nature of specific activities undertaken, such as hedging, investment, and debt issuance activities by the FMPA have an impact on the amounts charged to FMPA members. We have disclosed several FMPA activities or practices in this report that may have contributed to higher costs billed to FMPA members.

Hedging Activities

Given the volatility in fuel prices, hedging using derivatives, such as commodities futures contracts, is a common industry practice. The usage of interest rate swaps to hedge interest rate volatility on variable rate debt is also a common industry practice. However, as indicated in finding Nos. 1 through 3, the FMPA's risk tolerance for usage of derivative hedging instruments was higher than the industry norm.

Finding No. 1: Fuel Hedging

Governmental Accounting Standards Board (GASB) Statement No. 53, *Accounting and Financial Reporting for Derivative Instruments*, addresses the goal of effective hedging, saying, "effectiveness is determined by considering whether the changes in cash flows or fair values of the potential hedging derivative instrument substantially offset the changes in cash flows or fair values of the hedgeable item." The goal of effective hedging, therefore, should be to offset changes in the cost of fuel, not to reduce fuel costs. The simplest effective fuel price hedge vehicle would be to have a payout that increases dollar-for-dollar with the increase in spot fuel prices (i.e., fuel prices purchased at market price rather than a contracted futures price), thereby offsetting variability in a utility's fuel costs. Forwards, futures, and swaps are examples of hedging vehicles with characteristics similar to the simplest effective fuel hedge in that their payout approximately increases dollar-for-dollar with the increase in spot gas prices.

The FMPA has implemented its *Natural Gas & Fuel Oil Risk Management Policy* to authorize hedging of fuel prices. Section 3.2 of the FMPA policy states, "FMPA shall implement the FST (FMPA Short-term) Program to mitigate the impact of upward trending natural gas price movements while concurrently allowing participation, to the extent possible, in downward price movements." This statement is inconsistent with the simplest effective fuel hedge in that it contemplates offsetting upward fuel price movement while capturing the cost savings of downward price movement.

The FMPA's policy allows for exchange-based futures, over-the-counter transactions, such as forwards, swaps, and options; forward physical purchases; fixed price physical natural gas purchases of longer than one month; natural gas storage; and fuel oil storage. Given this hedging flexibility and variety of hedging instruments allowed, the FMPA provided for training of applicable staff regarding various hedging practices and mechanisms. From September 2008 through April 2013, the FMPA engaged in complex trading practices utilizing matched combinations of options positions (i.e. spreads) and futures positions that were not consistent with a simple fuel hedge and were inconsistent with industry practices utilized by eight comparable JAAs¹ that employ fuel hedging derivatives. Further, FMPA source documents for derivative trades from July 2008 to June 2013 did not demonstrate that the FMPA's trading program was calculated to offset changes in the spot price of fuel as would a simple effective fuel hedge. As shown in Table 6, the FMPA incurred net total losses of \$247.6 million related to fuel hedging activities over the past 12 fiscal years.

¹ Comparability to the FMPA was based on reported peak MW load, wholesale electric revenues, the number of member municipalities, total number of retail customers served, and the generation fuel types employed.

Table 6

| Fiscal Year Ended
September 30 | Gain/(Loss) from Fuel
Hedging Activity |
|-----------------------------------|---|
| 2003 | \$(3,844,385) |
| 2004 | 6,211,729 |
| 2005 | 19,254,388 |
| 2006 | 482,038 |
| 2007 | (32,303,698) |
| 2008 | 11,136,570 |
| 2009 | (140,564,807) |
| 2010 | (41,347,894) |
| 2011 | (23,639,173) |
| 2012 | (21,899,554) |
| 2013 | (18,437,623) |
| 2014 | (2,679,175) |
| Total | <u>\$(247,631,584)</u> |

Source: FMPA Records

Due to losses in fuel hedging, on May 15, 2014, the Executive Committee decided not to hedge fuel prices until natural gas prices reach \$7 per MMBtu (Million British Thermal Units), although prices during May 2014 were approximately \$4.50 per MMBtu. In contrast, general industry practice is to hedge fuel prices at current prices rather than at future predetermined price trading triggers. As a result, the FMPA's natural gas costs were unhedged under this \$7 trigger amount, where industry practice suggests that some hedging would be prudent, meaning that the FMPA was accepting more risk in the form of potential natural gas cost volatility. In October 2014, the Executive Committee adopted a one-time seasonal hedging policy providing hedging of up to 25 percent of projected natural gas demand at trigger prices of \$3.90 and \$4.10 per MMBtu.

Recommendation: The FMPA should consider amending its fuel hedging policies to focus on offsetting changes in the cost of natural gas rather than the benefit from upward and downward price volatility. In doing so, the policy should provide for hedging using only derivative instruments necessary to achieve a simple effective fuel hedge at current natural gas prices rather than at preset trigger amounts.

Follow-up to Management's Response

In its response to finding No. 1, the FMPA indicated that it followed common industry practice with its hedging programs. While the FMPA's fuel hedging policy documents were consistent with general industry practice, the FMPA's fuel hedging program was not consistent with general industry practice due to the FMPA's initial use of unnecessarily complex option spreads and the triggering of its trades based on spot gas prices and trends in spot gas prices. Consequently the FMPA's fuel hedging practices were more consistent with a strategy for trading gas than with a strategy for hedging fuel costs.

Also, in its response to finding Nos. 1 through 3, the FMPA indicated that it does not feel that the JAAs used for comparison purposes are comparable to the FMPA. The FMPA refers to the “75 JAAs and more than 3,000 electrical utilities,” and indicates that 8 JAAs are insufficient for comparability purposes. However, insofar as JAAs are public governmental entities and are not subject to the same level of regulatory oversight, comparison to investor owned utilities would not be appropriate. Additionally, insofar as the FMPA is governed by a Board of Directors (Board), with one Board member appointed by each member municipality, and the ARP is governed by an Executive Committee with each ARP member municipality that purchases power from the project appointing one Executive Committee member, it is not directly governed by elected officials. Consequently, comparing the FMPA to non-JAA municipal power providers is similarly not appropriate. The FMPA also notes that the JAAs used for comparison purposes do not use natural gas to generate power to the extent that the FMPA does. However, the same hedging concepts that apply to natural gas also apply to other types of fuels in that all fuel commodities are subject to market volatility. While no two JAAs are identical, based on several attributes that the 8 JAAs have in common with the FMPA, we believe these JAAs are sufficiently comparable to the FMPA for purposes of our audit.

Finding No. 2: Natural Gas Supply Agency Participation

In November 2004, the FMPA signed an agreement with six other public gas and electric utilities in five different states to form a natural gas supply agency called Public Gas Partners, Inc. (PGP). The PGP was created to secure economical, long-term wholesale natural gas supplies for its members to stabilize and reduce the cost of natural gas.

The PGP’s acquisition activities are organized by gas supply pools, and FMPA members elected to participate in two gas supply pools. Each gas supply pool stands alone with rights and obligations separate from the PGP’s other pools. As a member of the PGP, the FMPA is obligated to pay its share of all common costs and 100 percent of any costs incurred by the PGP on FMPA’s behalf. By contract, FMPA also has accepted a step-up provision that requires a maximum additional exposure of 25 percent of its original contracted amount if other PGP members default on any of their obligations. No rights exist to withdraw from the PGP without the unanimous consent of the PGP Operating Committee and the subsequent unanimous consent of the PGP Board of Directors.

In calendar years 2004 and 2005, the FMPA’s ARP became a participant in PGP Gas Supply Pool 1 (PGP1) and PGP Gas Supply Pool 2 (PGP2). Section 12.2 of the PGP agreements indicates that the PGP will acquire interests in gas reserves and that the member shall be responsible for paying its participation share of all such capital expenditures. Pursuant to its participation in the pools, the FMPA has issued ARP revenue bonds as described in Table 7.

Table 7

| Calendar Year | Bond Issuance |
|----------------------|-----------------------------|
| 2006 | \$45,000,000 (1) |
| 2008 | 60,000,000 |
| 2009 | 15,000,000 |
| 2013 | 15,000,000 |
| Total | <u>\$135,000,000</u> |

Note (1): The original bond issuance amount was \$50,000,000; however, \$5,000,000 was refunded by the 2008 issue.

Source: FMPA Records

Participation in a natural gas development project, similar to FMPAs’ participation in the PGP, should fix gas costs at a rate equal to operational expenses plus depletion of gas properties, less revenues (e.g., the sale of nonmethane products like ethane and liquid petroleum), such that PGP participation is reasonably expected to be a natural physical hedge to the price of natural gas. An analysis of 17 comparable JAAs² disclosed that only one of those JAAs was involved in similar natural gas pool activity. The results of this analysis indicate that the FMPA’s investment in natural gas exploration and production via its participation in PGP was not a common industry practice or common form of fuel hedging, with the most typical forms of such hedging consisting of a combination of long and short-term natural gas purchases, contracted storage, and use of financial hedges. The natural gas procurement strategy most similar to the FMPA’s PGP participation is a prepaid natural gas contract. Table 8 compares the relative risk characteristics of the two natural gas procurement strategies:

Table 8

| Comparison of Natural Gas Procurement Strategies | | |
|--|--|--|
| Characteristic | PGP Participation | Prepaid Natural Gas Contract |
| Upfront payment of costs? | Yes, majority of costs prepaid | Yes, all costs prepaid |
| Fixed quantity of natural gas? | Yes, subject to accuracy of forecasts | Yes |
| Fixed prices of natural gas? | Yes, subject to certain risks | Yes, subject to prepaid contract counterparty risk |
| Regulatory risk? | Yes, production can be affected by new regulation | No, regulatory risk is borne by counterparty |
| Duration of production? | Variable, based on continued investment and value of proven reserves | Fixed |
| Operational risk? | Yes, operational anomaly risk borne by PGP participants | No, the counterparty is responsible for operations |
| Mandatory future costs? | Yes, subject to future costs associated with capital development of existing wells | No, further purchases of prepaid natural gas contracts not required. |
| Multiple counterparties? | Yes, the FMPA's goals and risk tolerance are considered along with the goals and risk tolerances of all other PGP participants | No, the prepaid contract has a single counterparty |

Source: Contracted consultants and PGP agreements

As shown in Table 8 above, the FMPA’s participation in the PGP is more complex and involves more categories of risk than the alternative of entering into a prepaid natural gas contract.

The FMPA did not actually take delivery of any natural gas provided by the PGP pools; rather, the PGP sold FMPA’s share of the natural gas and remitted the proceeds monthly to the FMPA. Our review of the FMPA’s overall investment in the PGP as of September 30, 2014, found that its investment was valued at a deficit of \$14.6 million, consisting primarily of debt payments for acquisition costs and continual capital development of \$15.8 million in excess of amounts received from the PGP gas pools netted against FMPA’s PGP assets in excess of liabilities of \$1.2 million. The losses primarily resulted from declines in prices of natural gas from approximately \$12 per one million British Thermal Units (MmBtu) in September 2005 to approximately \$4 per MmBtu in September 2014. This deficit caused ARP members to annually subsidize the PGP investment, since the funds generated by the investment were insufficient to cover the ARP’s PGP-related revenue bonds’ required debt service amounts. As the ARP’s participation in PGP continues, the FMPA’s financial position will be subject to changes in the valuation of estimated natural gas reserves to be recovered and any additional debt required to fund ongoing PGP capital development costs.

² Comparability to the FMPA was based on reported peak MW load, wholesale electric revenues, the number of member municipalities, total number of retail customers served, and the generation fuel types employed.

Recommendation: The FMPA should establish written policies regarding future gas production investments. These policies should state the circumstances under which the FMPA may consider participation in further PGP projects or other gas production investments, and the circumstances under which the FMPA may consider exiting its PGP participation. Additionally, these policies should identify the categories of risk that must be considered by the FMPA when deciding on new or increased gas production investments and place an appropriate value on risk.

Follow-up to Management's Response

In its response, the FMPA indicated that its investment in fuel production is common industry practice and cites examples of investor owned utilities (IOUs) that have invested in fuel production. Notwithstanding the practices of selected IOUs, given the extensive difference in the regulatory environment between IOUs and the FMPA and considering that gas development investments by utilities is not universally accepted, we remain of the opinion that the FMPA should establish written policies clearly describing the circumstances and risk conditions under which such investments are to be determined appropriate.

Finding No. 3: Interest Rate Swaps

As previously noted, GASB Statement No. 53, in addressing the goal of effective hedging, states “effectiveness is determined by considering whether the changes in cash flows or fair values of the potential hedging derivative instrument substantially offset the changes in cash flows or fair values of the hedgeable item.”

In December 2002, the FMPA joined a group of municipal power agencies for the planned construction of a coal powered plant in Taylor County, Florida, for an estimated total cost of \$1.6 billion. The FMPA had planned to provide this power to the ARP. The FMPA's anticipated share of the cost of the project was \$624 million, which would be funded by a bond issuance. In June 2006, the Board approved issuance of bonds and the issuance of interest rate swaps up to a \$700 million notional amount (Taylor swaps). The meeting presentation provided by FMPA staff indicated that the swaps would “lock in financing rates for a project that might not need permanent funding until the 2012 to 2015 timeframe” under the assumption that future interest rates would rise. The FMPA's expectation was that the issuance of variable interest rate debt with an accompanying pay-fixed swap would create synthetically fixed interest rate debt that would be economically advantageous to the FMPA. In September 2006, a Need for Power Determination was filed with the Florida Public Service Commission (PSC) for licensing of the Taylor County coal project.

In November 2006, the FMPA entered into 14 pay-fixed interest rate swaps (Taylor swaps), with notional amounts totaling \$700 million, whereby the FMPA agreed to pay interest on the notional predetermined rate and to receive interest on the notional amount at a variable benchmark rate. In the case of these swaps, the FMPA agreed to pay fixed interest rates ranging from 3.699 to 3.849 percent and receive variable payments of 72 percent of the 30-day LIBOR (London Interbank Overnight Rate), a variable interest rate benchmark. In February 2007, the PSC postponed the decision on the Taylor County coal project licensing, and in July 2007, the Governor issued an Executive Order prohibiting new coal plant construction. Consequently, no bonds were issued as the coal powered plant was never constructed, and the FMPA entered into swap agreements without associating those swaps with any underlying debt. Insofar as the Taylor swaps were not associated with a specific hedgeable item (bonds), the swaps were not serving to effectively manage interest rate risk.

In June 2009, when the Taylor swaps were valued at negative \$34 million, the Executive Committee voted to exit from its Taylor Swap positions but only when the exit would not result in a realized loss (i.e., a loss requiring cash outflow from the FMPA). During January through April 2010, five swaps issued for notional amounts totaling \$250

million were terminated at a gain of \$84 thousand in accordance with the Executive Committee’s directive, leaving swaps with a notional amount of \$450 million outstanding. In September 2014, when the nine remaining Taylor swaps were valued at negative \$99 million, the Executive Committee authorized staff to automatically pay the termination fee to exit the swaps when the net termination costs did not exceed \$5 million per swap contract. In the October 2014 Executive Committee meeting, staff presented several options for exiting the Taylor swaps when the value was negative \$108 million, but no official action was taken.

A review of source documents from 17 comparable JAAs³ indicated that 4 of those JAAs have issued variable rate bonds with accompanying pay-fixed interest rate swaps. While issuing variable rate bonds with corresponding pay-fixed interest rate swaps is a standard industry practice, none of the 17 JAAs reported an interest rate derivative position absent an underlying bond. Entering into an interest rate derivative position absent an accompanying bond issue is more consistent with a bet that prevailing bond interest rates will rise before any accompanying bond may be issued than a hedge against interest rate changes, which represents risk-taking in excess of industry practice. Further, the Executive Committee minutes discussed above indicated that discussion of exiting the Taylor swaps was focused on avoiding the appearance of a significant realized loss rather than focused on prudent risk tolerance and projections of future changes in the fair value of the swaps.

Recommendation: The FMPA should refrain from employing interest rate swaps in the future without concurrently issuing debt to bring its interest rate hedging practices more in line with industry standard risk tolerance. Further, such activities should not be undertaken before required approvals for projects are obtained from regulatory bodies. In addition, the Executive Committee should consider, without regard to prior unrealized losses incurred, developing and executing an exit strategy for the Taylor swaps that removes the ongoing risk to the ARP members.

Follow-up to Management’s Response

In its response, the FMPA asserts that interest-rate swaps are common industry practice. However, we found no evidence that employing interest rate swaps in advance of debt issuance is a practice common to other JAAs. While the FMPA may have had good reason to expect it would issue variable rate debt to match its Taylor swaps, it was taking a substantial risk based on expectation of the need for funding six years in advance. Further, when the construction of the coal plant was canceled, leaving the FMPA with an interest rate swap not attached to any underlying debt, prudent behavior suggests that the FMPA should have exited from its entire swap position expeditiously rather than remain exposed to interest rate changes against the entire \$700 million in notional principal.

| |
|-------------|
| Investments |
|-------------|

Finding No. 4: Investment Policy

The FMPA reported investments with a fair value of approximately \$587 million at September 30, 2014. The FMPA promulgated a comprehensive investment policy to establish requirements for investment of idle funds, which includes the required elements specified in Section 218.415, Florida Statutes. However, some elements of the investment plan could be enhanced as described below:

³ Comparability to the FMPA was based on reported peak MW load, wholesale electric revenues, the number of member municipalities, total number of retail customers served, and the generation fuel types employed.

Credit Ratings. Appendix A of the investment policy provides that credit risk shall be mitigated by establishing minimum credit ratings for securities purchased by the FMPA and requires that securities be rated in either of the two highest credit rating categories, depending upon security type. However, the policy does not define “two highest credit ratings,” which could be interpreted two ways. As shown in Table 9, based on ratings used by Moody’s Investors Service (Moody’s), Standard & Poor’s (S&P), and Fitch, the two highest ratings are AAA and AA+ for both S&P and Fitch and Aaa and Aa1 for Moody’s. However, while the highest ratings description for “prime” investments includes only AAA investments for S&P and Fitch and Aaa investments for Moody’s, the next highest description of “high grade” investments includes securities rated AA+, AA, and AA- for S&P and Fitch and Aa1, Aa2, and Aa3 from Moody’s.

Table 9

| Moody’s Ratings | S & P Ratings | Fitch Ratings | Rating Description |
|-----------------|---------------|---------------|--------------------|
| Aaa | AAA | AAA | Prime |
| Aa1 | AA+ | AA+ | High Grade |
| Aa2 | AA | AA | |
| Aa3 | AA- | AA- | |

Source: Rating agencies

Consequently, the policy could be interpreted as allowing only the top two highest ratings of AAA and AA+ for S&P and Fitch and Aaa and Aa1 for Moody’s, or it could be interpreted as allowing any investments within the prime and high grade descriptions, which would include any securities rated at or above AA- for S&P and Fitch and at or above Aa3 for Moody’s.

Based on a September 30, 2014, monthly Treasury investment compliance report prepared by FMPA personnel, securities rated AA by S&P and Fitch and securities rated Aa2 by Moody’s were listed as exceptions, which implies that FMPA personnel interpret the investment policy to only allow investments in bonds rated AA+ or higher for S&P and Fitch securities and Aa1 or higher for Moody’s rated securities. In contrast, an e-mail from the FMPA’s Treasurer to us indicated that the policy is interpreted to allow any investments rated as prime or high grade. The September 30, 2014, report indicates that FMPA investments included bonds with a face value of \$6 million that were rated lower than AA+ by S&P and Fitch and lower than Aa1 by Moody’s, which would require the Treasurer to submit a rationale to the Risk Management Department for maintaining the security if it had not been sold if the policy were interpreted to only allow AAA and AA+ for S&P and Fitch and Aaa and Aa1 from Moody’s. However, if the policy were interpreted based on the Treasurer’s e-mail, then only two bond issues, totaling \$1.1 million, one rated A+ by both S&P and Fitch, and one rated A by S&P would require reporting by the Treasurer to the Risk Management Department for maintaining the security if it had not been sold. Amending the policy to clarify the Board’s intention regarding the precise ratings allowable for various types of securities would help ensure that future investments are purchased with ratings consistent with Board intent.

Additionally, the September 30, 2014, report indicated that FMPA investments included two bond issues totaling approximately \$1.9 million, one of which was rated AA by S&P but only rated A+ by Fitch, and one rated AA-by Fitch but only rated A+ by S&P. Because the investment policy does not specifically indicate how many rating firms are required to assign a rating, and there are multiple rating agencies that sometimes assign different ratings, the policy may be subject to inconsistent application.

Diversification. Section 5.5 of the investment policy addresses diversification of investments, both by type of investment and by issuer, by establishing maximum percentages by type and by issuer; however, it does not address

whether the percentage limitation applies for investments held by the FMPA in its entirety or by each individual project. In practice, FMPA personnel interpret the maximum percentages as applying to individual projects; however, amending the policy to clarify the Board's intention, regarding whether the diversification percentages apply to the FMPA as a whole or to each individual project, would reduce the risk that diversification requirements may not be implemented consistent with Board intent.

Additionally, the policy does not address diversification based upon geography. Pursuant to an agreement with a forward paying agent, in which the purchasing agent would purchase and provide securities to the FMPA to pay debt associated with the St. Lucie project at a future date, the FMPA has been investing in capital appreciation bonds (CABs). CABs are deep discount debt, which do not pay interest because they are issued at steep discounts to face value and redeemed for face value at maturity. As of September 30, 2014, the FMPA had CAB investments with a face value of approximately \$155 million and fair market value of approximately \$114 million. While the CABs are diversified across several issuers, they are predominantly issued by California school districts, resulting in increased risk that a large natural disaster or localized economic conditions could impact multiple CABs simultaneously, increasing the FMPA's exposure to investment losses.

Recommendation: The FMPA should enhance its investment policy to clarify the application of credit ratings. Additionally, the FMPA should enhance its investment policy to clarify that the investment diversification requirements are to be applied at the individual project level and to establish requirements for geographical diversification.

Personnel and Payroll Administration

As of September 30, 2014, the FMPA employed 73 full and part-time staff and maintained 5 vacant positions. Salary and benefit expenditures for the fiscal year ended September 30, 2014, totaled \$7.2 million for administrative and general salaries and \$2.4 million for benefits.

Finding No. 5: Employee Benefits

The Government Finance Officer Association's (GFOA) best practice titled *Measuring the Full Cost of Government Service* (2004) indicates that it is important for all costs of government services that may not be fully funded in the current period, such as compensated absences, be used appropriately in decision making.

The FMPA has provided OPEB benefits and compensated absences benefits to its employees through its *Manual*, in employment contracts, and by Board motions. As discussed below, FMPA needs to periodically evaluate the reasonableness of these benefits and their impact on wholesale electricity rates charged to members.

Postretirement Healthcare. For retiring full-time employees hired prior to October 1, 2004, who are at least 55 years of age and have a total of at least 900 cumulative months of age plus months of active service, the FMPA will continue to pay the health insurance premiums, and all but \$600 of the \$5,000 (single coverage)/\$10,000 (family coverage) deductibles for qualifying retirees and dependents through FMPA's then existing group health carrier, or, if not applicable, through an equivalent insurance product. Group health insurance is also available for the retiree's eligible dependents, provided the retiree had dependent coverage prior to retirement; however, the retiree must pay the dependent's premium. In the event the retiree and covered dependents are not able to continue on the FMPA's then-current insurance policy for contractual reasons by the carrier, the FMPA will ensure that the retiree (and dependents if covered at the time of retirement) does not suffer any loss of benefits through retiree coverage.

Additionally, the FMPA will purchase a Medicare supplemental plan for retirees age 65 and above with partial coverage for prescriptions and allow the retirees and their covered dependent to submit receipts for unreimbursed medical expenses and prescription payments for reimbursement by the FMPA of up to \$3,000 each per calendar year.

In an effort to contain costs, the FMPA discontinued these benefits for employees hired on or after October 1, 2004. As of September 30, 2014, 7 FMPA retirees receive at least some of these benefits and another 26 active employees hired prior to October 1, 2004, are vested to receive benefits or will potentially vest to receive benefits, depending upon when they retire. As of October 1, 2004, none of the 26 active employees met the qualifications for these benefits, and as of December 8, 2014, 22 of the 26 employees had not vested. While these OPEB benefits are no longer available to employees hired on or after October 1, 2004, the future costs of providing the benefits to the employees that have not vested with regard to these benefits should be periodically reevaluated to determine the long-term impact these benefits will have on member rates.

Annual and Sick Leave. Absent contract provisions to the contrary, full-time employees earn annual leave of 10 to 20 days per year, depending upon the number of years of service, and 12 days of sick leave per year. Part-time employees also earn annual and sick leave prorated based on hours worked. The *Manual* provides that, upon termination, an employee will be paid for 100 percent of accumulated annual leave at the employee's hourly rate on the last day of employment. Employees with five or more years of service are also eligible to be paid for unused sick leave hours, at percentages ranging from 25 percent to 50 percent based on years of service at their regular salary rate as of the last day of employment in good standing. The following policies apply to usage and accumulation of leave.

- The *Manual* provides that employees may not carry forward more than two times their annual leave accrual amount into the subsequent year; however, sick leave may be accumulated without limit.
- Additionally, while hourly employees must account for annual and sick leave usage in 15-minute increments, salaried employees are not required to use annual or sick leave for absences from the office for personal business of less than 4 hours.
- Salary and benefits for the Chief Executive Officer (CEO) and General Counsel are established by the Board. The CEO's salary and benefits are delineated by contract, but as indicated in finding No. 6, the General Counsel's salary and benefits are not set forth in a contract but are established through Board actions. Neither the CEO nor General Counsel⁴ are subject to any annual leave caps, and the CEO's sick leave is to be paid out at 100 percent of his rate of pay, rather than the 25 to 50 percent caps established for other FMPA personnel. Additionally, the CEO was awarded a total of 600 additional hours of annual leave to be added to his leave balance as part of contract amendments dated February 16, 2012, October 1, 2013, and October 16, 2014.

Based on these leave usage and accumulation policies, total hours of annual and sick leave that will be paid upon employee resignation or retirement have steadily accumulated over time and may result in significant future payouts as employees retire. For example, as of September 30, 2014, had the CEO and General Counsel resigned or retired, the FMPA would have been required to pay approximately \$355,000 for accumulated annual and sick leave attributable to these two individuals.

The compensated absences liability, by annual and sick leave balances by fiscal year for all employees, including the CEO and General Counsel, are included in Table 10.

⁴ According to FMPA personnel. As discussed in finding No. 6, FMPA records did not evidence the official Board action establishing the General Counsel's annual leave provisions.

Table 10

| Fiscal Year Ended September 30 | Total Accrued Sick Leave Hours | Sick Leave Liability | Total Accrued Annual Leave Hours | Total Annual Leave Liability | Total Compensated Absences Liability |
|--------------------------------|--------------------------------|----------------------|----------------------------------|------------------------------|--------------------------------------|
| 2010 | 17,961 | \$252,695 | 8,991 | \$470,240 | \$ 722,935 |
| 2011 | 19,402 | 315,904 | 10,163 | 535,345 | 851,249 |
| 2012 | 20,963 | 407,794 | 10,886 | 617,411 | 1,025,205 |
| 2013 | 22,778 | 477,271 | 11,711 | 675,254 | 1,152,525 |
| 2014 | 23,545 | 491,675 | 12,941 | 771,757 | 1,263,432 |

Source: FMPA Records

As shown in the table above, from the 2009-10 fiscal year to the 2013-14 fiscal year, the projected compensated absences liability has increased by \$540,497, or 75 percent, from \$722,935 to \$1,263,432. Insofar as the ongoing growth in the compensated absences liability will ultimately result in actual cash payouts in the future, current leave provisions established by policy and contract provisions should be periodically reevaluated for reasonableness and to determine the long-term impact these benefits will have on member rates.

Recommendation: The FMPA should periodically evaluate the impact of projected increases in benefit package costs provided to employees.

Finding No. 6: General Counsel Contract

The *Manual* states, “The Board shall set the position level, pay range, and specific components of the total compensation package for the General Counsel and the CEO.” The CEO and General Counsel have received benefits, such as additional annual leave and contributions to retirement health savings accounts, which are not afforded to other FMPA employees. While the Board has documented this process for the CEO through the establishment of a contract and associated amendments, no contract has been established for the General Counsel; rather, the General Counsel’s compensation package has been established pursuant to a series of Board-approved motions spread over several years, making it difficult to identify all benefits provided. For example, the General Counsel’s annual leave is not subject to the cap established for regular employees in the *Manual*; however, although requested, FMPA personnel did not provide us Board minutes evidencing the Board action that exempted the General Counsel from caps on annual leave accrual. While Board minutes from September 17, 2010, clearly indicate that the Board was aware that the General Counsel could earn unlimited annual leave, lack of a contract enumerating compensation provisions creates difficulty in verifying that the General Counsel’s pay and benefits are in accordance with the Board’s intent and increases the risk of error due to inability to locate Board motions establishing specific aspects of salary and benefits and misinterpretation of same.

Recommendation: The FMPA should enter into a contract with the General Counsel encompassing all Board-approved compensation arrangements cumulatively provided to the General Counsel and implement any further compensation changes as contract amendments.

Finding No. 7: Severance Pay and Benefits

As indicated in finding No. 5, the Board sets the CEO’s compensation package based upon a Board-approved contract and amendments thereto. Paragraph 3(d) of the contract in effect as of September 30, 2014, indicated that the CEO would receive six months of base salary if terminated for cause. Under these contract provisions, if the CEO was terminated with cause as of September 30, 2014, the CEO would have received a one-time payout equal to 50 percent of his annual salary, totaling \$137,500. Contract provisions also indicate that certain healthcare benefits are to be retained after termination for a certain number of months based upon the termination date. The contract provides that the FMPA will either pay for, or reimburse, the CEO’s health insurance premiums for life and fund the CEO’s health reimbursement account (HRA) for life. The current annual costs of health insurance and HRA contributions, to be provided for life, are \$4,946 and \$9,400, respectively.

While including severance compensation and postretirement benefits in the CEO’s employment contract for termination without cause may serve a valid business purpose, it is not apparent why the FMPA would extend these provisions to instances in which the CEO is terminated for cause.

Recommendation: The FMPA should consider amending the CEO’s contract to remove any severance compensation and postretirement benefits associated with termination for cause.

Procurement of Goods and Services

Finding No. 8: Questioned Expenditures

Expenditures of public funds must be shown to be authorized by applicable law or resolution; reasonable in the circumstances and necessary to the accomplishment of authorized purposes of the governmental unit; and in pursuit of a public, rather than a private, purpose. The Attorney General has indicated on numerous occasions that documentation of an expenditure in sufficient detail to establish the authorized public purpose served, and how that particular expenditure serves to further the identified public purpose, should be present at the point in time when the voucher is presented for payment of funds. The Attorney General has further indicated that unless such documentation is present, the request for payment should be denied.

We judgmentally selected and reviewed 59 expenditures made during the period October 2012 through June 2014 totaling \$358,029 and noted 16 expenditures totaling \$28,297 for which FMPA records did not evidence the public purpose, as follows.

Employee Activities, Awards, and Recognitions. The FMPA charged and coded \$82,354 to “Employee Activities” or “Awards and Recognition.” Of the 59 expenditures tested, 11 expenditures totaling \$23,844 were charged to these accounts for which FMPA records did not evidence the public purpose served, as noted in Table 11.

Table 11

| Expenditures Coded to Employee Activities or Awards and Recognition | |
|---|--|
| Amount | Description |
| \$12,688 | Holiday parties |
| 4,627 | Purchase of 86 adult and 13 child tickets to a local tourist attraction for FMPA's summer picnic |
| 3,270 | Gift cards given to staff for birthdays, anniversaries, overall appreciation |
| 2,098 | For 2 Orlando Magic season tickets to be used each game by an employee and guest |
| 905 | Luncheon to raise funds for charity purchases |
| 256 | Retirement party |
| \$23,844 | Total |

Source: FMPA Records

- **Flowers.** The FMPA charged and coded \$12,030 to “flowers.” One of the 59 expenditures tested of \$1,517 was for rental of a Christmas tree and decorations for the FMPA’s office building. The FMPA’s records did not evidence the public purpose served by this expenditure.
- **Meetings.** The FMPA charged and coded \$106,850 to “meetings.” Of the 59 expenditures tested, one expenditure for \$1,206 was a payment to a refreshment services company for one month of beverages, and another was a \$965 payment to another vendor for various utensils, paper products such as plates and cups, and other various supplies, all of which are monthly recurring expenditures for stocking the FMPA catering and break rooms. A total of \$44,809 was paid to these two companies during the period October 2012 through June 2014.
- **Other.** One of the 59 expenditures tested was a \$616 payment to a restaurant for an employee fun day/field day for which FMPA records did not evidence the public purpose.

Absent documentation evidencing how expenditures serve an authorized public purpose, there is an increased risk that expenditures may not be reasonable or necessary to serve a public purpose.

Recommendation: The FMPA should strengthen its procedures to require documentation that expenditures serve an authorized public purpose and retain such documentation in its records prior to payment.

Finding No. 9: Competitive Selection

The FMPA’s Purchasing Policy, as part of the *FMPA Policy and Employee Manual* (Manual) establishes thresholds for the purchase of goods and services as follows: purchases with a value above \$1,000 and below \$5,001 require a minimum of three quotes obtained via the internet, e-mail, written, or verbal communication (verbal requires documentation); purchases with a value above \$5,000 and below \$10,001 require three written quotes; and purchases with a value above \$10,000 require three formal bids or proposals, unless less than three bids or proposals are received. In addition, purchases with a value above \$25,000 require approval of the Executive Committee (for FMPA administrative and ARP transactions) or Board of Directors (for non-ARP transactions), as appropriate.

We reviewed 18 purchases of goods or services exceeding \$1,001 during the period October 2012 through June 2014 for compliance with FMPA’s Purchasing Policy and noted the following:

- For four purchases above \$1,000 and below \$5,001, consisting of furniture repairs, an ice machine purchase, Christmas tree decoration and rental, and embroidered jackets, FMPA records did not evidence that three

quotes were obtained. The FMPA obtained one quote for each of the first three items and FMPA records did not evidence proper justifications for not obtaining the required three quotes for these purchases. The FMPA did not obtain any quotes for the fourth item, which FMPA personnel indicated was a sole source purchase; however, it was not evident why jacket embroidery would entail a sole source exemption.

- For a purchasing arrangement, exceeding \$10,000 annually but not \$25,000 annually, for break room supplies, only one proposal was obtained. FMPA records did not evidence proper justification for not obtaining the required three bids or proposals.
- During the period October 2012 through June 2014, the FMPA expended \$189,062 for financial audit services. The contract, dated May 8, 2009, with the FMPA's financial statement auditors was for the 2008-09, 2009-10, and 2010-11 fiscal years with optional renewals for the 2011-12 and 2012-13 fiscal years. The FMPA Accounting and Internal Controls Policy Section 5.2 provides that no audit firm shall be selected for more than a five-year term with two additional one-year optional extensions. However, the FMPA Board, at its April 17, 2014, meeting voted to accept the recommendation from the Audit Risk Oversight Committee and "deviate from the Accounting and Internal Controls Policy" and the FMPA's Purchasing Policy and issued a new contract for an additional three years with two optional renewals, expiring with the 2017-18 fiscal year audit. Failure to follow established competitive selection processes increases the risk that the FMPA will not acquire goods and services at the lowest cost consistent with acceptable quality.

Recommendation: The FMPA should ensure that goods and services purchased through contractors are competitively procured in accordance with established policies and procedures.

Finding No. 10: Selection of Bond Professionals

Governments typically employ a number of professionals to assist them in the bond issuance process; primarily a financial advisor, an underwriter, and bond counsel. Financial advisors can be used in determining the bond sale method and may have various other roles depending on which sale method is selected.⁵ The primary role of the underwriter in a negotiated sale is to market the issuer's bonds to investors. Assuming that the issuer and underwriter reach agreement on the pricing of the bonds at the time of sale, the underwriters are likely to provide ideas and suggestions with respect to structure, timing, and marketing of the bonds being sold.⁶ Bond counsel renders an opinion on the validity of the bond offering, the security for the offering, and whether and to what extent interest on the bonds is exempt from income and other taxation. The opinion of bond counsel provides assurance both to issuers and to investors who purchase the bonds that all legal and tax requirements relevant to the matters covered by the opinion are met.⁷

The GFOA recommends that issuers selecting financial advisors, underwriters, and bond counsel employ a competitive process using a Request for Proposal (RFP) or Request for Qualifications (RFQ). A competitive process allows the issuer to compare the qualifications of proposers and to select the most qualified firm based on the scope of services and evaluation criteria outlined in the RFP or RFQ. A competitive process also provides objective assurance that the best services and interest rates are obtained at the lowest cost possible and demonstrates that marketing and procurement decisions are free of self-interest and personal or political influences. Furthermore, a competitive process reduces the opportunity for fraud and abuse and is fair to competing professionals.⁸ The GFOA's best practice further recommends that debt issuers review their relationships with bond professionals periodically.

⁵ GFOA Best Practice: *Selecting and Managing Municipal Advisors* (2014)

⁶ GFOA Best Practice: *Selecting and Managing Underwriters for Negotiated Bond Sales* (2014)

⁷ GFOA Best Practice: *Selecting Bond Counsel* (1998 and 2008)

⁸ GFOA Best Practice: *Selecting and Managing Municipal Advisors* (2014); GFOA Best Practice: *Selecting and Managing Underwriters for Negotiated Bond Sales* (2014); GFOA Best Practice: *Selecting Bond Counsel* (1998 and 2008)

- **Financial Advisor Services.** Contrary to the GFOA’s best practice, the FMPA contracted with its current financial advisor since 1978 without utilizing effective competitive selection. In April 2007, the FMPA did undertake a financial advisor selection process by forming a Financial Advisor Committee (Committee) and issuing an RFQ for financial advisor services. Four firms responded and gave presentations in July 2007 to the Committee. Subsequently, the Committee sent the firms a list of questions and requested written responses. The existing financial advisor did not provide written responses and withdrew from the selection process. The Committee met on August 24, 2007, to select a financial advisor from the remaining three firms, and unanimously recommended a new financial advisor to be presented to the Board for approval. However, on September 27, 2007, the Board voted to table the RFQ and to issue a new RFQ to the initial four firms to be awarded solely on a retainer and hourly fee basis, retaining its existing financial advisor in the interim. On October 5, 2007, the Committee evaluated the retainer and hourly fees submitted by the four financial advisors and selected its existing financial advisor, although the rates were higher than the other three respondents, because the Committee members felt comfortable working with the financial advisor.⁹ At the December 6, 2007, Board meeting, the Committee recommendation was presented to the Board for approval. Despite FMPA staff recommendations to consider two of the other financial advisors, the Board voted to continue contracting with its existing financial advisor.

In addition, the RFQ indicated that the resulting contract would be for a three-year period, with two optional one year extensions, for a total of five years; however, the contract signed with its existing financial advisor dated December 6, 2007, indicated that “the term of this contract is for so long as the parties continue to both desire to be bound by this contract.” Accordingly, as of September 30, 2014, the FMPA has made no additional effort to competitively select a financial advisor

- **Bond Counsel Services.** Contrary to the GFOA’s best practice, the FMPA last contracted with its bond counsel in 1996 and had not, as of November 2014, issued an RFP or RFQ for bond counsel services.

Recommendation: To ensure that qualified financial and professional services are acquired at the lowest possible cost consistent with the size, nature, and complexity of the bond issue, the FMPA should select financial advisors and bond counsel using a competitive selection process whereby RFPs or RFQs are solicited from a reasonable number of professionals.

Finding No. 11: Credit Cards

During the period October 2012 through June 2014, the FMPA had 51 active credit cards, including 42 issued to its own employees and 9 issued to employees of member municipalities. The 9 credit cards issued to employees of member municipalities were issued to allow individuals with responsibility for power plant maintenance to purchase small tools and supplies and to travel for FMPA business purposes, such as preventive maintenance at the Stock Island plant. FMPA policies require credit card users to sign user agreements indicating their understanding of the credit card policy and responsibilities regarding credit cards before the user is issued a card.

For the period October 2012 through June 2014, We reviewed 21 user agreements and tested 29 credit card expenditures totaling \$52,331, and noted the following:

- Of 21 credit card agreements selected for review, FMPA records did not evidence signed agreements for 3 (14 percent) credit cards issued. Upon our inquiry, FMPA personnel indicated that user agreements were signed prior to credit card issuance but had been misplaced. Subsequently, in September 2014, all three users signed new user agreements. Failure to obtain signed user agreements prior to issuing credit cards increases the risk that inappropriate purchases could occur.
- Good business practice requires that credit card users attest to their respective purchases by signed monthly credit card activity reports. Of the 29 credit card purchases tested, we noted 5 instances related to 3 employees, in which the employees did not sign the monthly activity reports. While the reports were signed

⁹ The financial advisor provided services to four of the five member municipalities.

by the employees’ supervisors in accordance with FMPA policy, when employees do not review and attest to their purchases, there is an increased risk that errors or unauthorized purchases could occur without timely detection.

The FMPA *Policy and Employee Manual* requires employees to return their credit cards upon termination but is silent as to where they are to be returned. The FMPA’s informal procedure is that either the terminated employee’s supervisor or the Human Resources Department is to notify the credit card administrator, the Chief Financial Officer, so that the card may be canceled electronically. No FMPA employees with credit cards terminated employment during the period October 2012 through June 2014; however, one employee of a member municipality terminated in April 2014, but the employee’s credit card had not been canceled at the time of our review in September 2014. Subsequent to our inquiry, the FMPA canceled the card in October 2014. FMPA personnel informed us that the card was not timely canceled because the member municipality had not notified the FMPA credit card administrator of the employee’s termination. Untimely cancellation of credit cards of terminated individuals increases the risk of unauthorized credit card activity.

The FMPA established a monthly credit limit for each individual assigned a credit card, and the credit limits ranged from \$2,500 to \$15,000. However, the FMPA had not established procedures to periodically monitor the reasonableness of credit card limits, such as comparing credit card limits to actual credit card activity. Effectively monitoring the reasonableness of credit card limits would reduce the FMPA’s dollar exposure in the event that the credit cards are used for unauthorized purchases.

Recommendation: The FMPA should enhance its procedures to ensure compliance with its policies regarding credit card user agreements. The FMPA should also enhance its existing policies to clarify responsibilities regarding notification of credit card user termination and associated card cancellation, including notification requirements of member municipalities; require all credit card users to sign the monthly credit card activity reports; and require periodic reviews of credit card user credit limits for reasonableness.

Travel

Finding No. 12: Travel Expenditures

Section 166.021, Florida Statutes, provides that the governing body of a municipality or an agency thereof may provide for a per diem and travel expense policy for its travelers that varies from the provisions of Section 112.061, Florida Statutes. Accordingly, the FMPA, as a municipal agency, has established policies and procedures related to travel in its *Per Diem and Travel Expense Policy (Travel Policy)*. During the period October 2012 through June 2014, FMPA charged and coded a total of \$591,999 to account codes “travel,” “Board of Director travel,” “government relations events,” and “training.” We tested 26 expenditures charged to these account codes during this period totaling \$95,543 and noted the following:

- **Meal Cost.** The *Travel Policy* provides that “Each employee or officer will be reimbursed for his or her actual meal expenses incurred that are just and reasonable as determined by the General Manager (or Chairman of the Executive Committee in the case of the General Manager).”¹⁰ Insofar as there are no ranges or limitations on meal costs individually or in aggregate in the *Travel Policy*, the potential exists for inconsistency in determining what qualifies as “just and reasonable” and for excessive meal costs to occur. Specifically, we noted 2 payments of \$3,453 and \$3,830, coded as “travel” and “government relations events,” respectively, paid to the same restaurant during the annual legislative rallies in Washington, D.C., in March 2014 and March 2013, respectively. The average expenditure per meal per person of \$105 in 2014 and \$109 in 2013,

¹⁰ The term General Manager and Chief Executive Officer are used interchangeably by the FMPA.

appear to be excessive. Additionally, \$1,022 and \$1,207 of the bills from 2014 and 2013, respectively, included alcoholic beverages, which are not expressly prohibited by the *Travel Policy*, and associated taxes and tips.

- **Family Travel Expenses.** The *Travel Policy* provides that if any expense of a spouse is paid in conjunction with the travel expense of an officer or employee, FMPA will invoice the officer or employee who shall promptly reimburse FMPA for such expense.

In connection with the 2013 Florida Municipal Electric Association (FMEA)/FMPA Annual Conference, FMPA paid \$14,420 for hotel rooms and meeting rooms for its employees including three hotel rooms costing \$1,080 for family members of the FMPA's CEO, General Counsel, and former Chairman of the Board. The FMPA also paid \$42 for valet charges for the family of the Chairman of the Board. For the 2014 FMEA/FMPA Annual Conference, FMPA paid \$14,163 for hotel rooms and meeting rooms for its employees including two hotel rooms costing \$1,295 for family members of the CEO and General Counsel. Contrary to the *Travel Policy*, these hotel expenses and associated valet expenses were not initially invoiced to officers and employees and reimbursed to the FMPA. Subsequent to our inquiry, the FMPA researched personal use of rooms for the CEO and General Counsel from 2010 through 2014 and received reimbursement totaling \$5,727 from the CEO and General Counsel for such personal use of these rooms.

- **Most Economical Class of Air Travel.** The *Travel Policy* states, "If transportation other than the most economical class is provided by common carrier, the officer or employee must reimburse FMPA for charges in excess of the most economical class." An exception may be authorized by the CEO, Chairman of the Executive Committee, or a designated representative when "there is no reasonable alternative." We noted five departures from this policy as follows:

- One instance in which the most economical seat on an airline was not purchased. A reimbursement to the CEO for his trip to the 2014 Keys Strategic Planning Workshop included \$626 for roundtrip airfare from Orlando to Key West. However, the tickets were for "Business Select," while a fellow FMPA employee purchased a standard ticket on the same flight for \$495. FMPA records did not evidence the lack of a reasonable alternative (i.e., purchase of a standard ticket), contrary to the *Travel Policy*. In response to our inquiry, FMPA staff indicated that the "Business Select" tickets were fully refundable and were purchased by the CEO in case he was not able to attend the event; however, such explanation was not documented in the FMPA records at the time of the ticket purchase.
- Four instances, totaling \$287, of charges for "preferred" or "choice" seating, three of which were paid to the employees as travel reimbursements and one paid directly to the airline using an FMPA credit card. FMPA records did not evidence the lack of a reasonable alternative (i.e., standard seating), contrary to the *Travel Policy*.

- **Contractor Travel.** The FMPA paid \$6,343, coded as "travel" in its accounting system, for consultant's fees of \$4,950 and travel costs of \$1,393. The contract with the consultant stated that, "All invoices shall be accompanied by reasonable supporting information in a manner sufficient for FMPA to verify the services performed by the Consultant." However, the travel costs invoiced, which were comprised of \$833 for airfare, \$236 for rental car and gas, \$272 for lodging, \$36 for meals, and \$16 for miscellaneous expenses, were not supported by receipts or other documentation. Absent such documentation, the FMPA could not substantiate the reimbursement requested and paid.

- **Vehicle Allowances and Mileage Reimbursements.** The FMPA has authorized ten employee positions to receive vehicle allowances, which are paid in biweekly installments. Of these ten positions, nine are authorized at the annual rate of \$5,877, and one position is authorized at the annual rate of \$9,396. In addition, the *FMPA Policy and Employee Manual* allows for these employees to also receive mileage reimbursement in the amount of half of the approved mileage rate paid to employees not receiving a vehicle allowance, although the employment contract of the employee authorized a vehicle allowance at an annual rate of \$9,396 indicated the employee should receive full mileage reimbursement at the approved rate. During the period October 2012 through June 2014, the employees were paid a total of \$93,495 for vehicle allowances and \$47,052 for travel reimbursements, which includes other travel reimbursements in addition to mileage reimbursements. FMPA records did not evidence the basis for the established travel allowance amounts. In addition, it is not apparent why employees receiving vehicle allowances to compensate them for

business use of their personal vehicles also receive full or partial mileage reimbursement for business use of their personal vehicles.

Recommendation: The FMPA should consider amending its *Travel Policy* to include a cap on per-meal costs. The FMPA should also enhance its procedures to ensure compliance with its policies regarding family member travel expenses and most economical cost of air travel, and to require supporting receipts for out-of-pocket expenses incurred by contractors. In addition, the FMPA should discontinue providing mileage reimbursements to employees who also receive vehicle allowances.

All Requirements Project (ARP) Contract Provisions

Finding No. 13: Peak Shaving

ARP monthly rates are primarily comprised of three components: demand charge, energy charge, and transmission charge. The demand charge is comprised of fixed costs, the largest of which, is debt service costs. Schedule B-1, Part 5, of the ARP power supply project contract specifies that the demand charge cost component is to be allocated based on electricity consumption during the peak hour of the peak day of integrated demand for the entire ARP system, which the FMPA refers to as “coincident peak demand.”

The demand charge is allocated among ARP members based on the relative percentage of power purchased from the FMPA on the monthly coincident peak demand day. The coincident peak demand day is the day of the month for which overall ARP power usage is highest, and because the demand component of the monthly FMPA electricity bill is based solely on a member’s percentage share of power usage on the coincident peak demand day, members have financial incentive to predict the day of coincident peak demand and reduce electricity consumption on that day. Temporary attempts to control or lower the ARP member’s load at the time of the ARP’s coincident peak demand to reduce the demand cost component on an ARP member’s monthly bill is termed “peak shaving.” However, the total ARP demand costs are fixed, so any actions taken by one ARP member to lower its power consumption on the coincident peak demand day adds a dollar-for-dollar cost increase to other members’ demand costs. The ARP power supply project contracts do not address peak shaving.

The FMPA submitted surveys to ARP members regarding management of their local electric systems, and the minutes of the February 7, 2014, Executive Committee meeting, noted that the Cities of Fort Meade, Fort Pierce, Jacksonville Beach, and Leesburg indicated that they conducted peak shaving activities such as utilizing their own power rather than power obtained through the FMPA to reduce their FMPA demand on peak days. Examples of these peak shaving activities are as follows:

- According to minutes of the FMPA’s Executive Committee meetings, in 2013, the City of Fort Meade began utilizing a City-owned generator to shave peak and planned to connect an additional generator to its system.
- A review of the Fort Pierce Utility Authority’s February 19, 2013, meeting minutes disclosed that the Authority consistently shaves peak as follows: staff monitors ARP load in real time with a one-hour delay, and concurrently monitors weather forecasts to predict ARP peak demand days and then shaves peak through load management, generators, and customer generators.
- The City of Jacksonville Beach City Council meeting minutes from March 1, 2010, and a memorandum dated February 25, 2011, describe an arrangement in which the City contracted with an energy services provider and issued memoranda of understanding with certain commercial power companies whereby the energy services provider would continually monitor ARP load and would remotely activate City-owned generators and commercial customer generators during peak periods. The minutes indicate that the City’s intent in taking these actions was to shave peak through the use of alternative power sources. .

- A review of the City of Leesburg's January 21, 2014, Commission Report, indicated that the City consistently and intentionally shaved peak through use of its own generators, commercially owned generators, solar stations, and load control devices such as programmable communicating thermostats. Usage of these items at times of predicted ARP peak, lowers usage on the ARP coincident peak demand day, thereby lowering the demand component of the FMPA bill and shifting the costs to other members.

Under the coincident peak demand methodology, ARP members with the resources to monitor and manage demand (whether peak shaving or a broader program of demand side management) to reduce their monthly peak demand coincident with FMPA's coincident peak demand have a distinct advantage over members without such resources. In an attempt to address the effects of peak shaving and demand side management, the FMPA formed a Business Model Working Group to evaluate alternative rate structures. On February 24, 2011, the Executive Committee approved an alternate demand cost rate calculation methodology by an 8 to 6 vote; however, the City of Leesburg called for a supermajority vote pursuant to Article IV, Section 5 of the Executive Committee Bylaws, and the resulting 9 to 5 vote in favor of changing the cost methodology failed to achieve the required 75 percent supermajority affirmation. Subsequently, at the May 15, 2014, Executive Committee meeting, a motion passed whereby certain peak shaving practices would be curtailed as follows:

- By September 30, 2014, ARP members will not engage in intermittent voltage reduction methods to shave peak or to deploy ARP member-owned emergency generation to intentionally reduce system demand costs.
- By September 30, 2014, ARP members must notify the FMPA within ten days each time any of its emergency generators are operated above or beyond routine operational testing.
- By September 30, 2015, ARP members will not deploy customer emergency generation to intentionally reduce the ARP member's demand costs.

While the policy addresses certain peak shaving activities, it appears primarily voluntary in nature and relies on self-reporting of ARP members, although FMPA personnel has informed us that the FMPA will be reviewing hourly meter data for potential peak shaving. Additionally, no consequences for noncompliance are specified in the approved motion, and according to FMPA personnel, any consequences would be within the Executive Committee's discretion.

Recommendation: If the FMPA desires to affirmatively eliminate peak shaving activities of its members, the FMPA should consider amending the power supply project contracts to prohibit such activities and establish consequences for noncompliance.

Finding No. 14: ARP Termination Provisions

The FMPA has issued revenue bonds to finance the cost of generating units planned and constructed or procured to supply the total power and energy requirements for the ARP. Power supply project contracts between the FMPA and ARP members were utilized to provide the underlying security for repayment of the bonds. The bond resolution establishes the specific obligations of the FMPA related to bond issuance and specific performance requirements over the life of the bond issue, and describes the substantive provisions of the underlying power supply project contracts. These types of bond resolution and power supply project contract provisions are typical of other JAAs.

The power supply project contracts between the FMPA and ARP members are 30-year contracts that are automatically extended annually so that the contractual period remains at 30 years. However, Sections 2 and 29 of the ARP power supply project contracts provide that members may terminate participation in the project. Section 2 provides for a long-term termination through elimination of the automatic extensions to the contract with a specified notice period. Section 29 provides the participant the right to terminate its contract and withdraw from the ARP in

three years with at least three years prior written notice. Section 29(c) identifies the fixed costs, defined as two categories, which must be paid by the participant in the event of withdrawal, as follows:

- **Debt.** Section 29(c)1. establishes the member's responsibility to pay a portion of the ARP's outstanding bonds as of the termination notice or withdrawal date. Such payment is based on the greater of the ARP member's load ratio share of the outstanding bonds as of the date of its termination notice, or its load ratio share as of its withdrawal date. Specifically, these fixed costs are calculated as the amount needed to retire the member's current share of all bond principal and interest paid to maturity or redemption, bond premiums, and lines of credit. The member's excluded resources and ARP's excluded resources¹¹ are subtracted from the coincident peak demand calculation to estimate the member's share.¹² The calculation estimating the withdrawing ARP member's share to retire debt assumes that the bonds are serviced to maturity. A percentage (applicable to the member and rounded to the minimum allowable denomination) of each series, and each maturity within each series, is applied to calculate the member's obligation. The member's share of interest cost is calculated from termination notice or withdrawal date to maturity date of the debt. The FMPA calculates the load ratio share percentage using a single summer coincident ARP peak demand. However, since the ARP fixed cost component of revenue requirements are calculated using monthly coincident peak demands, using a 12-month average of coincident peak demand would more accurately estimate the withdrawing member's share of fixed costs.
- **Stranded Costs.** Section 29(c)2. establishes the withdrawing ARP member's responsibility to pay for "all of the additional costs reasonably paid or incurred, reasonably anticipated to be paid or incurred, or reasonably projected to be incurred by FMPA (as determined by FMPA in its sole discretion) as a result of the withdrawal of the Project Participant," which is commonly referred to in the electrical utilities industry as "stranded costs." Further, such costs are based on the assumption that, "during the remaining term of such Project Participant's All-Requirements Power Supply Project Contract, FMPA was unable to make use of or sell any generating, transmission or other resources (or portions thereof) which FMPA had anticipated would be used to supply, or had acquired with the intention of supplying, all or any portion of the withdrawing Project Participant's electric load" Specifically, these costs are calculated as the member's share, as of the date of notice termination, of all operational fixed costs applicable to the member and projected through the remainder of the power supply project contract term, expressed in current dollars. Consequently, the ARP contract termination provisions place all risk on the withdrawing member. The concept of assessing stranded costs to withdrawing customers is an established utility industry concept.¹³

The calculation of projected operational fixed costs to be paid by a participant in the event of withdrawal employs the most recently approved fiscal year budget with an assumption for inflation of 2.4 percent per annum applied to each ARP operational fixed cost applicable to the member, including deposits to the Renewal and Replacement and the General Reserve Funds. Known ARP project costs applicable to the member and expected in future years (such as expiration of purchased power agreements and major plant overhauls) are applied in addition to the projections of the recent budget. The present value of the member's share of all projected operational fixed costs on the withdrawal date is calculated at the discount rate of 6 percent per year, which was set in the initial ARP power supply project contract with no provision to calculate a current cost of capital for a current discount rate. In utility rate-setting, discount rates are typically related to the current average embedded cost of debt rather than being fixed over the term of the contract. Over the extended period of the contract, the average embedded cost of debt may vary substantially from the fixed 6 percent rate. Each ARP power supply project contract provides for:

¹¹ Excluded resources are the amount of electric capacity and energy that an ARP member is entitled to receive (a) from its percentage of undivided ownership interest in a generation unit (based on the seasonal net capability of the unit), (b) pursuant to a power supply project contract determined in accordance with its power entitlement share under said contract, or (c) any other member-owned generation projects such as hydro projects. Excluded resources may require back-up and support services under the member's ARP power supply project contract with FMPA.

¹² Based on industry practice, this is a reasonable form of practice to employ in this form of calculation.

¹³ The Federal Energy Regulatory Commission (FERC), which has jurisdiction over wholesale electricity sales, issued a ruling in May 1996 (Ruling No. 888) that certain utilities could recover 100 percent of their wholesale stranded costs.

- An annual “true-up” to actual costs. The “true-up” provision for the withdrawing ARP member would be applied in each year following withdrawal to adjust the projected operational fixed costs applicable to the withdrawing member with actual fixed costs; however, the application is at the sole discretion of the FMPA.
- An annual payment to the member of “additional benefits” actually received by the FMPA during the preceding year as a result of such withdrawal as calculated by the FMPA in its sole discretion, which is capped at 90 percent of the withdrawal payment. However, the power supply project contract does not provide any rationale for the 90 percent cap on “additional benefits” and does not clearly specify what constitutes “additional benefits.”
- Any annual payments to the withdrawing member for “additional benefits” to be made from a separate account established for withdrawal payments, or recognized as an ARP expense if the funds are no longer available in the separate account.
- An accounting treatment to pay these annual amounts to the member from the separate account maintained for withdrawal payments.
- Use of the withdrawal payment funds to temporarily correct deficiencies in other operating funds.
- Provisions for the FMPA to use “excess amounts” of the funds from the withdrawal payment account at its sole discretion. However, there is no clear specification in the power supply project contract of what constitutes “excess amounts.”

Although one ARP member submitted a termination notice that indicated a withdrawal date of September 30, 2016, no ARP members have actually withdrawn from the FMPA. As such, the FMPA has not prepared any such true-up calculations and it is not clear how the FMPA will interpret the terms “additional benefits” and “excess amounts” when the member ultimately withdraws. The FMPA’s sole discretion to determine “additional benefits” to the member and move “excess” amounts to the “General Reserve Fund” enables the FMPA to unilaterally direct the use of withdrawal payments beyond the assurance of the fixed costs responsibility of the withdrawing member.

A review of termination and exit provisions of bond resolutions and power supply project contracts as described in the official statements for eight JAAs’ all requirements service system revenue bond issues¹⁴ disclosed that only four of the eight JAAs’ power supply project contracts contain any exit provisions, such provisions are highly restrictive, and none of these JAAs provided for a three-year notice termination provision. Three of the four JAAs provided for member withdrawal but only when there is no debt outstanding, which is standard industry practice. While debt-free JAA projects can occur, it is not the industry norm for JAA projects to be debt-free. Based on the results of the review, the FMPA’s termination and exit notice provisions are not consistent with common JAA practice because JAA power supply contracts normally do not allow members to exit the contract while any project debt is outstanding. As indicated above, only one other JAA allowed a member to exit while project debt was still outstanding, and the contract required the withdrawing member to pay its share of debt service, which is consistent with the FMPA contract provisions.

The FMPA’s assumptions used in estimating the withdrawing member’s share of costs to retire debt and project operational fixed costs, and the practice of subtracting excluded resources from the coincident peak demand calculation to estimate the member’s share, appear to be reasonable. An evaluation of the FMPA’s calculations of estimated withdrawal payments in April 2012 and June 2014, in the amounts of \$386 million (\$108 million for debt and \$278 million for operational fixed costs) and \$46 million, for the Cities of Key West and Vero Beach, respectively, disclosed that the primary differences in the withdrawal payments for the two Cities are (1) Key West would be required pursuant to its contract with the FMPA to purchase at net value all generation, transmission, and related

¹⁴ The official bond statements of these JAAs contained summaries of power sales contracts in sufficient detail to identify the relevant termination provisions. While such official statements do not include provisions of power supply project contracts and bond resolutions in their entirety, they do provide summary language covering their most substantive provisions.

assets owned by the FMPA in providing ARP service to Key West, and (2) Vero Beach would not be required to pay the debt component as the City had not, since 2010, obtained any power through the ARP. The FMPA’s calculations of the withdrawal payments in these instances followed the respective ARP power supply power contracts’ withdrawal provisions. However, the fact that the FMPA has the sole discretion in determining the actual severance amount and the substantial cash payment due on withdrawal, in effect, represents a compelling case against the decision for an ARP member to withdraw.

Recommendation: Since ARP revenue requirements are calculated using monthly coincident peak demands, the FMPA should consider using a 12-month average of coincident peak to more accurately estimate the withdrawing member’s share of fixed costs. Also, the FMPA should consider amending the power supply project contracts to clarify how withdrawal payments are to be calculated, define “additional benefits” and “excess amounts,” establish a variable withdrawal payment discount rate that fluctuates with the actual cost of debt, and remove the 90 percent cap of an ARP member’s withdrawal payment. Additionally, since the withdrawal payment can be used to temporarily correct deficiencies in other operating funds and for “excess amounts” to be deposited in the “General Reserve Fund,” it should be determined how this ability to use these funds is recognized in the monthly revenue requirement calculation for remaining ARP participants.

Follow-up to Management’s Response

In its response, the FMPA indicated that using a 12-month average of coincident peaks would detach the withdrawal payment from the reality of FMPA’s obligation and could put the non-withdrawing participants at risk of bearing higher debt service. The FMPA is required to fully recover its costs. To this end, the FMPA uses a 12-month coincident peak billing methodology to recover its demand costs. As the FMPA deems the 12-month coincident peak billing methodology to be adequate to fully recover its costs on a monthly and annual basis, it is not apparent why it would use a different methodology (the single highest coincident peak) when calculating the withdrawal payment, essentially penalizing the withdrawing member.

Information Technology

Finding No. 15: Disaster Recovery Plan

An important element of an effective internal control system over information technology (IT) operations is a disaster recovery plan to help minimize data and asset loss in the event of a major hardware or software failure. One essential element of a disaster recovery plan is a written agreement for an alternate processing facility that can be utilized for continuity of operations, if necessary, including the specific responsibilities of both parties relating to the availability and use of the facility.

While the FMPA had a disaster recovery plan that included a written agreement with an alternate processing site, the alternate processing site was within the same city as the FMPA. A disaster covering a large geographical area, such as a hurricane, could impact both the FMPA and the alternate processing site simultaneously, increasing the risk that the FMPA may be unable to continue critical operations, or maintain availability of information systems data and resources, in the event of a disruption of IT operations.

Recommendation: The FMPA should enter into a written agreement to procure an alternate processing site that is sufficiently geographically distant to minimize the risk of being unable to continue critical operations in the event of a hurricane or other geographically large disaster.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from July 2014 to December 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. In conducting this audit, we engaged a consulting firm that provides engineering, economic, financial and management consulting services to utilities, insurance and financial institutions, law firms, private developers, governmental utilities (including municipal and JAA utilities), and industrial entities involved in the energy industry. The consulting firm assisted us in developing certain comparative information provided in the **Findings and Recommendations** section of this report, and in evaluating the FMPA's practices, including comparisons to similar JAAs or industry practices as reported in finding Nos. 1, 2, 3, and 14.

We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of this operational audit were to:

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse and in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those controls.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management's internal controls, instances of noncompliance with applicable laws, rules, regulations, contracts, grant agreements and other guidelines, and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

For those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

The scope and methodology of this operational audit are described in Exhibit B. Our audit included selection and examinations of various records and transactions from October 2012 through June 2014, and selected actions taken prior and subsequent thereto. Unless otherwise indicated in this report, these records and transactions were not selected with the intent of statistically projecting the results, although we have presented for perspective, where

practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, waste, abuse, or inefficiency.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT'S RESPONSE

Management's response is included as Exhibit C.

**EXHIBIT A
FLORIDA MUNICIPAL POWER AGENCY
BOARD OF DIRECTORS AND EXECUTIVE COMMITTEE
DURING THE PERIOD OCTOBER 2012 THROUGH JUNE 2014**

| Municipality | Board of Directors | Executive Committee |
|----------------------------|--|---|
| City of Alachua | Gary Hardacre | |
| City of Bartow | Vacant | |
| City of Blountstown | Vacant to 12-11-13
Emory Pierce from 12-12-13 | |
| City of Bushnell | Vince Ruano to 7-31-13, Chair to 7-18-13
Vacant from 8-1-13 to 8-4-13
Bruce Hickle from 8-5-13 | Vince Ruano to 7-31-13
Vacant from 8-1-13 to 8-4-13
Bruce Hickle from 8-5-13 |
| City of Chattahoochee | Elmon Lee Garner | |
| City of Clewiston | Kevin McCarthy, Vice Chair to 12-13-12 (1)
Vacant from 12-14-12 to 4-16-14
Danny Williams from 4-17-14 | Kevin McCarthy to 12-13-12
Vacant from 12-14-12 to 4-17-13
Jimmy Pittman from 4-18-13 to 4-16-14
Danny Williams from 4-17-14 |
| City of Fort Meade | Fred Hilliard | Fred Hilliard |
| City of Fort Pierce | Bill Thiess, Treasurer from 7-19-13 | Bill Thiess |
| City of Gainesville | Robert Hunzinger to 10-17-13, Vice Chair from 7-19-13 to 10-17-13 (1)
Vacant from 10-18-13 to 12-11-13
David Beaulieu from 12-12-13 | |
| City of Green Cove Springs | Gregg Griffin to 1-23-13
Robert Page from 1-24-13 to 6-17-13
Ray Braly from 6-18-13 | Gregg Griffin to 1-23-13
Robert Page from 1-24-13 to 6-17-13
Ray Braly from 6-18-13 |
| Town of Havana | Howard McKinnon | Howard McKinnon, Chair |
| City of Homestead | Barbara Quinones, Vice Chair from 1-23-14 (1) | |
| City of Jacksonville Beach | Roy Trotter | Roy Trotter |
| City of Key West | Lou Hernandez, Secretary to 7-18-13
Lynne Tejada, Secretary from 7-19-13 | Lynne Tejada |
| City of Kissimmee | Jim Welsh to 1-22-14
Larry Mattern from 1-23-14 | Larry Mattern |
| City of Lake Worth | Clay Lindstrom | Clay Lindstrom to 12-31-13 (2) |
| City of Lakeland | Alan Shaffer | |
| City of Leesburg | Paul Kalv to 1-3-14
Vacant 1-4-14 to 1-22-14
Patrick Foster from 1-23-14 | Paul Kalv to 1-3-14
Vacant from 1-4-14 to 1-22-14
Patrick Foster from 1-23-14 |
| City of Moore Haven | Harry Ogletree | |
| City of Mount Dora | Charles Revell | |
| City of Newberry | Bill Conrad, Treasurer to 7-18-13, Chair from 7-19-13 | Bill Conrad |
| City of New Smyrna Beach | William Mitchum | |
| City of Ocala | Matt Brower | Matt Brower, Vice Chair |
| City of Orlando | Claston Sunanon | |

EXHIBIT A (CONTINUED)
FLORIDA MUNICIPAL POWER AGENCY
BOARD OF DIRECTORS AND EXECUTIVE COMMITTEE
DURING THE PERIOD OCTOBER 2012, THROUGH JUNE 2014

| Municipality | Board of Directors | Executive Committee |
|--------------------------------|---|---------------------|
| City of Quincy | Mike Wade | |
| City of St. Cloud | Michael Turner | |
| City of Starke | Marc Oody | Marc Oody |
| City of Vero Beach | Pilar Turner | |
| City of Wauchula | Vacant to 7-18-13
Terry Atchley from 7-19-13 | |
| City of Williston | CJ Zimoski to 3-5-13
Scott Lippman from 3-6-13 | |
| City of Winter Park (3) | Jerry Warren | |

(1) Vice Chair position was vacant from 12-14-12 to 7-18-13 and from 10-18-13 to 1-22-14.
 (2) The City of Lake Worth ceased membership in the Executive Committee when it stopped purchasing power from the All Requirements Project on 1-1-14.
 (3) Became a member of the FMPA on 10-13-12.

EXHIBIT B
AUDIT SCOPE AND METHODOLOGY

| Scope (Topic) | Methodology |
|--|--|
| Organizational Structure, Public Records, and Minutes | Reviewed organizational structure of the FMPA and assessed the functional responsibilities within the organizational structure to determine whether they were adequately separated to provide effective internal controls. Our contracted consultants compared the FMPA’s governance structure to other comparable JAAs. Examined and reviewed Board of Director and Executive Committee meeting notices and related minutes, and other FMPA records, to determine compliance with applicable laws and other guidelines. Reviewed usage of the Executive Committee’s supermajority voting provision. |
| Audit Findings Disclosed by the FMPA’s 2012-13 Fiscal Year Financial Audit | Reviewed findings reported in the FMPA’s 2012-13 fiscal year financial audit relevant to the scope of our audit and determined the status of the FMPA’s corrective actions. |
| Written Policies and Procedures | Determined whether the FMPA had written policies and procedures in place for major business functions. |
| Related-Party Transactions | For selected FMPA officials, reviewed Florida Department of State, Division of Corporation, records and FMPA records to identify any potential relationships that represent a conflict of interest with FMPA vendors. |
| Information Technology | Reviewed recent findings included in consultant reports and determined the status of the FMPA’s corrective actions. |
| Investments | Determined whether the FMPA established investment policies and procedures, whether those policies and procedures were reasonable, and whether investments were in accordance with those policies and procedures. |
| Long-Term Debt | Determined whether the FMPA established debt policies and procedures and whether debt issued or refunded during the audit period was executed in accordance with those policies and procedures. Determined whether the FMPA followed GFOA best practices regarding selection of bond professionals when issuing long-term debt. Also, evaluated whether debt refundings were undertaken for valid business purposes. |
| Interest Rate Swaps | Our contracted consultants compared the FMPA’s usage of interest rate swaps to standard industry practices. Evaluated the FMPA’s management of the swaps and decisions regarding ultimate disposition. |
| Natural Gas Hedging | Our contracted consultants compared the FMPA’s natural gas hedging activity to standard industry practices. |
| Natural Gas Supply Agency Participation | Evaluated the FMPA’s management of the Public Gas Partners, Inc., investment. Our contracted consultants compared the FMPA’s participation in such arrangement to other comparable JAAs. |
| Revenues | Reviewed policies and procedures for billing project members and tested accuracy of calculations and compliance with governing contract provisions. |
| Power Projects Rates | Our contracted consultants compared the FMPA’s rates, rate structure, and billing practices to other comparable JAAs. |

EXHIBIT B (CONTINUED)
AUDIT SCOPE AND METHODOLOGY

| Scope (Topic) | Methodology |
|---|--|
| Power Capacity Management | Our contracted consultants evaluated the FMPA’s effort to mitigate overcapacity issues relative to standard industry practices. |
| Personnel and Payroll Administration | Reviewed the FMPA’s procedures for completion and maintenance of key payroll records. Tested compensation, new hires, payroll transactions, and evaluation procedures for compliance with the FMPA’s policies and procedures. Evaluated reasonableness and sustainability of employee termination benefits. Also, reviewed contracts of contracted employees for reasonableness. |
| Employee Bonuses | Reviewed bonuses awarded to employees for compliance with FMPA policies and procedures. |
| Postretirement Healthcare | Evaluated the FMPA’s policies and procedures regarding postretirement healthcare benefits for reasonableness and sustainability. |
| Procurement and Expenditures | Reviewed the FMPA’s assignment and use of credit cards. Reviewed the FMPA’s travel policies for reasonableness. Tested disbursements, including charge account payments and travel-related payments, to determine whether they were properly authorized, served a public purpose, and were in accordance with applicable laws, FMPA policies and procedures, and other guidelines. |
| Contractual Services | Tested selected contracts and contract and service arrangement payments to determine compliance with competitive selection requirements; whether contracts clearly specified deliverables, time frames, documentation requirements, and compensation; and whether the FMPA complied with its policies regarding competitive procurement. |
| ARP Contract Termination Provisions | Our contracted consultants compared the FMPA’s ARP contract termination provisions to those of other JAAs. Additionally, they evaluated the FMPA’s provisions related to “stranded cost” recovery for reasonableness and reviewed withdrawal payment calculations for reasonableness. |
| Non-ARP Contract Termination Provisions | Our contracted consultants compared the FMPA’s non-ARP contract termination provisions to those of other JAA’s. |
| Environmental Protection Agency (EPA) Requirements | Our contracted consultants evaluated the FMPA’s financial exposure to upcoming EPA requirements and FMPA’s efforts to comply. |
| Legal Environment | Our contracted consultants compared powers and duties established by Florida law to laws applicable to JAAs in other states. |
| Long-term Capital Planning and Debt Management Activities | Our contracted consultants compared the FMPA’s long-term capital planning and management of associated debt to other comparable JAAs. |

**EXHIBIT C
MANAGEMENT'S RESPONSE**



Florida Municipal Power Agency

VIA: Email

March 25, 2015

Substitute to February 20, 2015 response letter

Mr. David W. Martin, CPA
Auditor General
State of Florida
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

RESPONSE TO PRELIMINARY AND TENTATIVE FINDINGS

Dear Mr. Martin:

Per your request, this letter provides responses of the Florida Municipal Power Agency (FMPA) to the Auditor General's preliminary and tentative findings related to its operational audit of FMPA.

The Board of Directors and the Executive Committee of FMPA have reviewed and discussed the preliminary and tentative findings and recommendations (P&T Report) and have approved this response. As representatives of the member city owners of FMPA, and as officers of the Board of Directors and Executive Committee, we appreciate the Auditor General's review of the FMPA's practices and policies, and we welcome the opportunity to improve efficiency and control costs for the member city owners of the Agency. The Board of Directors, Executive Committee and FMPA staff appreciate the professionalism and independence of the Auditor General's staff in conducting its audit of the Agency.

Note that this response is a substitute for the previous response dated February 20, 2015, and is based on draft revisions to the P&T Report that have been provided by the Auditor General (in e-mails on March 13 and March 20). This substitute response addresses these draft revisions provided to FMPA, which were reflected in a draft red-lined P&T Report provided on March 25.¹ We presume that the final report will simply be the clean version of the redline provided March 25; however, to the extent that the P&T Report may be changed in ways that FMPA is not aware of, this substitute FMPA response dated March 25, 2015 cannot reflect those changes.

¹ Note that the provided redlined P&T Report did not have page numbers; hence, references to quotes from the P&T report are made by section instead of page numbers.

EXHIBIT C (CONTINUED)
MANAGEMENT'S RESPONSE

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1. INTRODUCTION

FMPA was created in 1978, and every year since its formation, FMPA has had a financial audit conducted by an independent auditor in accordance with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those audits have been filed with the State of Florida. FMPA values independent reviews that promote transparency, accountability, and continuous improvement.

We understand that the Auditor General performed an operational audit of FMPA, as defined in section 11.45(1)(g), Florida Statutes. The objectives of this type of audit are, in general, to evaluate management's performance in establishing and maintaining internal controls, including controls designed to detect fraud, waste and abuse, as well as to evaluate management's performance in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts and other guidelines. Your multi-person audit staff began work on July 28, 2014, and your P&T Report was released six months later on January 21, 2015. During the audit, your staff requested unrestricted access to FMPA's records and personnel. As will be discussed in greater detail in the following pages, many of your audit inquiries, though not all, were for the 20-month period of October 2012 through June 2014. During that audit period, FMPA had total expenses of nearly \$1 billion for the Agency and its power supply projects.

FMPA's member city owners have placed tremendous trust and received great value from FMPA's power supply and other services. The Agency plays an important role providing competition in the Florida wholesale power market. The Agency has a history dating back to 1978. In the past 37 years, FMPA has helped its members diversify their wholesale supply options with cost-effective power resources, reduced municipal power costs by hundreds of millions of dollars,² and represented municipals in regulatory forums, which led to even greater savings. FMPA's All-Requirements Project (ARP) has reduced wholesale power costs 23% from its all-time peak in 2009, and today, rates are close to the average wholesale rates of Florida's investor-owned utilities, as ARP has been for most of its existence.

For five of the Auditor General's findings, FMPA's Executive Committee took action on February 19, 2015, in addition to FMPA's responses and clarifications contained in this letter, approving beginning a process to retain an independent management consulting firm to advise the Executive Committee concerning Finding 1 (Fuel Hedging), Finding 2 (Natural Gas Supply Agency Participation), Finding 3 (Interest Rate Swaps), Finding 13 (Peak Shaving), and Finding 14 (ARP Termination Provisions).

For the other 10 findings, action to address the recommendations will require public discussion and a vote by FMPA's Board of Directors or Executive Committee, or both. To accomplish this,

² Conservatively, FMPA's consulting engineer estimated that FMPA's All-Requirements Project (ARP) saved its cities approximately \$100 million during its first 10 years of operation from 1986 through 1996. In addition, ARP saved \$34 million for nine municipals whose wholesale power supplier agreed to match ARP's rates from 1986 through 1998. Later, negative fiscal impacts were felt or arose out of decisions made in the 2006-2009 timeframe. However, FMPA is now again the competitive voice of Florida's municipal electric utilities.

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the findings will be scheduled as agenda items for governing board meetings. FMPA's governing boards have a practice of first hearing a matter as an information item and then scheduling the matter for action at the next meeting. Considering FMPA's meeting schedule and approval process, FMPA is committed to addressing each finding as soon as practical. Some responsive actions have already been taken by FMPA, as are noted later in this response.

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2. EXECUTIVE SUMMARY

FINDING 1 (Fuel Hedging): FMPA's Executive Committee will consider the Auditor General's recommendations. A review of fuel hedging policies will be included in the Executive Committee's proposed scope of work for an independent management consulting firm.

FINDING 2 (Natural Gas Supply Agency Participation): FMPA's Executive Committee will consider the Auditor General's recommendations for establishing written policies regarding future gas production investments. An assessment of fuel production investments will be included in the Executive Committee's proposed scope of work for an independent management consulting firm.

FINDING 3 (Interest Rate Swaps): FMPA's Executive Committee will consider updating FMPA's existing Debt Policy, taking the Auditor General's recommendations under consideration. FMPA's Executive Committee has developed a strategy for exiting the interest rate swaps before September 30, 2015. A review of the Debt Policy and exit strategy will be included in the Executive Committee's proposed scope of work for an independent management consulting firm.

FINDING 4 (Investment Policy): FMPA's governing boards will consider updating FMPA's existing Investment Policy consistent with the Auditor General's recommendations as soon as practical.

FINDING 5 (Employee Benefits): FMPA's Board of Directors will address how to periodically evaluate the projected costs of employee benefits, specifically post-retirement healthcare and annual leave, as soon as practical.

FINDING 6 (General Counsel Contract): FMPA's Board of Directors will consider its employment arrangements with the General Counsel and consider how to document it as soon as practical.

FINDING 7 (Severance Pay and Benefits): FMPA's Board of Directors will discuss and review this matter with its General Manager and CEO as soon as practical.

FINDING 8 (Questioned Expenditures): FMPA's governing boards will discuss how to more fully document the authorized public purpose as soon as practical. In the meantime, FMPA will discontinue, as soon as contract commitments allow, expenditures for Orlando Magic tickets, an indoor plant service and a Christmas tree.

FINDING 9 (Competitive Selection): FMPA will strengthen internal controls to ensure that purchases are made in accordance with the existing Procurement Policy and other policies related to competitive selection as soon as practical.

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FINDING 10 (Selection of Bond Professionals): FMPA's governing boards will review its Debt Policy and consider the modifications of its current language to address the Auditor General's recommendation for a competitive selection process of qualified financial services in the future to include but not be limited to financial advisors and bond counsel as soon as practical.

FINDING 11 (Credit Cards): FMPA will enhance its policies, procedures and documentation for credit cards consistent with the Auditor General's recommendations as soon as practical.

FINDING 12 (Travel Expenditures): FMPA's Board of Directors will consider updating FMPA's existing Travel Expense Policy, taking the Auditor General's recommendations into consideration as soon as practical. In the meantime, FMPA will stop hosting a dinner during the annual legislative rally in Washington, D.C., which will eliminate this meal cost and the rare occasion where alcoholic beverages were provided. As part of updating FMPA's Travel Policy, FMPA will expressly prohibit reimbursement for alcohol, although FMPA has had a practice of "no alcohol" for many years.

FINDING 13 (Peak Shaving): The issues identified by the Auditor General concerning the value of peak shaving and monitoring compliance with contract/policy were considered by FMPA's Executive Committee when the policy was approved in 2014. FMPA currently has some capability to verify compliance and options to address any non-compliance. Amending the contract is a lengthy process and is not within FMPA's sole discretion. A review of the peak shaving policy and enforcement options will be included in the Executive Committee's proposed scope of work for an independent management consulting firm.

FINDING 14 (ARP Termination Provisions): FMPA's Executive Committee will discuss the Auditor General's comments. Amending the contract is a lengthy process and is not within FMPA's sole discretion. A review of the Auditor General's recommendations will be included in the Executive Committee's proposed scope of work for an independent management consulting firm.

FINDING 15 (Disaster Recovery Plan): FMPA will investigate an alternate data processing facility, consistent with the Auditor General's recommendations as soon as practical.

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3. AUDITOR GENERAL'S FINDINGS

A. Background (Rate Comparison)

The P&T Report provides a Background section which includes a retail rate comparison among FMPA's member city owners and Florida's Investor Owned Utilities (IOUs) (Table 3), and a table (Table 4) of FMPA's All-Requirements Project (ARP) rates in different years from 2006 through 2015. FMPA has several comments regarding the information presented, particularly Table 3 and Table 4.

FMPA questions why retail rate comparisons are appropriate in an operational audit of a wholesale power provider, like FMPA. A more appropriate rate comparison would be FMPA's wholesale rates compared to comparable wholesale rates of other utilities. As the P&T Report states in the Background section, "There are multiple factors that impact FMPA ARP members' residential rates, some of which are not attributable to FMPA" The report lists three examples of city decisions affecting retail rates that have nothing to do with FMPA's wholesale costs. FMPA agrees with these examples. FMPA provides wholesale power to some municipal utilities that sell at retail rates comparable with the lowest cost retail provider in Florida, while other cities that FMPA serves have higher retail rates.

The P&T Report Background section confirms FMPA's ARP Member average retail rates are competitive with IOU average retail rates, and based on the data presented in Table 3, the rates are almost identical. A footnote to Table 3 states that the IOU rates exclude franchise fees and certain other taxes that are billed as a separate line item. The actual costs that customers pay include franchise fees and those fees should be included in the IOU rates in order to make an appropriate comparison to the municipal residential rates. Franchise fees are paid by IOUs to local governments for granting the IOU the right to utilize local government rights-of-way and other property to serve the electric customers within the local government area. Municipal rates include a transfer to the general fund, as described in the Auditor General's P&T Report in the third bullet on the bottom of page four, which is used to help fund the operation of the local government in a similar fashion as the franchise fee. To make an "apples-to-apples" comparison, the \$115 per 1,000 kilowatt hour (kWh) average IOU residential retail reported in Table 3 should be increased by an average 6% franchise fee (taken from the document entitled "Comparison of Residential Electric Rates Compiled by the Florida Municipal Electric Association dated December 2013) which would equal \$122 per 1,000 kWh. This comparable IOU average rate is essentially equal to the \$122 per 1,000 kWh FMPA ARP average rate reported in Table 3.

The time period can also make a difference in a rate comparison. For example, the more recent December 2014 comparison shows the ARP average residential rate is about \$124 per 1,000 kWh whereas the average IOU residential rate is about \$125 per 1,000 kWh³ (includes an average 6% franchise fee).

³ Source: Florida Municipal Electric Association rate comparison for 2014. <http://publicpower.com/2015/fmea-releases-december-2014-rate-comparison-report/>

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MANAGEMENT’S RESPONSE**

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The P&T Report Background section also presents data that, if presented in a way that shows over-all rates to FMPA’s ARP participants, shows that FMPA’s rates have declined from 2006 through 2014. Table 4 presents a summary of FMPA ARP rates. The table presents how FMPA demand and energy rates have changed over time, but, does not present how FMPA’s overall rates have changed over time. Note that Table 4 presents budgeted rates for 2015. Unlike other utilities, FMPA adjusts its rates monthly to match its actual costs plus 60 days of working capital and as such, FMPA’s budgeted rates cannot be presumed to be the actual rates experienced by FMPA members. Also note that FMPA’s actual rates have been significantly lower than budget since 2010 because of falling fuel prices. As such, FMPA offers a replacement Table 4 that presents FMPA’s average overall rates and removes the budget projections for 2015.

**FMPA Proposed Replacement to Table 4
Rates Based on Actual ARP Billed Revenues and Load**

| Fiscal Year | Demand Charge (\$/kW-month) | Energy Charge (\$/MWh) | Average Overall Rate¹ (\$/MWh) | Transmission Charge (\$/kW-month) |
|--------------------|------------------------------------|-------------------------------|--|--|
| 2014 | 21.98 | 30.80 | 75.50 | 2.25 |
| 2013 | 20.98 | 32.53 | 79.27 | 2.00 |
| 2012 | 19.92 | 29.59 | 73.69 | 1.79 |
| 2011 | 17.86 | 39.44 | 76.84 | 1.85 |
| 2010 | 18.16 | 52.04 | 89.05 | 1.39 |
| 2009 | 16.08 | 64.48 | 98.67 | 1.82 |
| 2008 | 13.08 | 65.49 | 92.94 | 1.24 |
| 2007 | 11.12 | 55.56 | 78.90 | 1.25 |
| 2006 | 10.81 | 54.82 | 76.70 | 1.37 |

¹ Excluding transmission and losses. Each ARP participant’s monthly bill varies due to participant load factor and other considerations.

The offered replacement to Table 4 shows that from 2006 to 2014 Demand Charges increased by 103% and Energy Charges decreased by 44%. This is because FMPA invested in efficient, clean, new gas-fired combined cycle generation that, while increasing FMPA ARP’s demand charge, decreased FMPA ARP’s energy charge such that the overall rate *decreased* from 2006 (\$77 per MWh) to 2014 (\$76 per MWh).

The Great Recession with subsequent demand reduction caused most utilities in Florida to have surplus generation. A surplus in generation causes an increase in demand rates since the fixed costs of the generation is spread over lower demand. As the economy recovers and FMPA ARP’s demand grows into its surplus, FMPA ARP’s demand rate will be reduced because those fixed costs will be spread over a larger demand.

At the same time FPL was planning on building its proposed Glades Power Park coal plant, FMPA was planning on investing in partial ownership in the proposed Taylor Energy Center coal plant. Due to changes in state government, both projects were cancelled at about the same time and both utilities decided to instead invest in clean, efficient natural gas-fired combined cycle

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plants. Consequently, FMPA is now better-positioned, as is FPL, for a possible regulation of greenhouse gas emissions.

In summary:

1. The average of FMPA ARP Participants' retail rates is equal to the average IOU retail rates (December 2013 both averaged \$122 per MWh).
2. FMPA invested in clean, efficient natural gas-fired plants that reduced FMPA ARP wholesale rates from 2006 to 2014 and positioned FMPA for likely greenhouse gas regulation.

B. Findings and Recommendations

FINDING 1: Fuel Hedging

Finding: Fuel hedging practices were not consistent with industry practices utilized by other comparable joint action agencies.

Recommendation: The FMPA should consider amending its fuel hedging policies to focus on offsetting changes in the cost of natural gas rather than the benefit from upward and downward price volatility. In doing so, the policy should provide for hedging using only derivative instruments necessary to achieve a simple effective fuel hedge at current natural gas prices rather than at present trigger amounts.

FMPA Response: FMPA did follow common industry practice and continues to do so with its hedging programs. FMPA's old hedge-and-hold program is common industry practice and is a practice used by JAAs within the Auditor General's sample. FMPA's use of derivatives such as options and swaps is common practice as is identified in the summary of GASB Statement No. 53 on which the finding relies.⁴ And, FMPA's new cash-flow-at-risk hedge program (FST) is also common industry practice.

More than 95% of the natural gas hedging premium above market price occurred due to decisions made in early 2008 and as a result of the dramatic price paradigm shift that began in summer 2008 when natural gas prices plunged from approximately \$13 per million British thermal unit (MM Btu), ultimately falling near \$2 per MM Btu and remaining far below FMPA's then existing hedge contract prices (see chart of natural gas prices below). Note that many utilities had comparable results to FMPA; while FMPA lost \$245 MM mark-to-market from 2003 to 2013 as a result of its hedge-and-hold program, FPL lost \$3.6 billion during the same time frame (see table below), and all of

⁴ "Common types of derivative instruments used by governments include interest rate and commodity swaps, interest rate locks, options (caps, floors, and collars), swaptions, forward contracts, and futures contracts" (<http://www.gasb.org/st/summary/gstsm53.html>).

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the IOUs in Florida except Florida Public Utilities Company experienced mark-to-market losses in the tens to hundreds of millions of dollars in 2007 alone.⁵

**Florida Power and Light Gains/Losses Due to Natural Gas Hedging Program
(from FPSC data)⁵**

| Year | Gain /
(Loss)
(\$MM) |
|-------|----------------------------|
| 2003 | \$6 |
| 2004 | \$247 |
| 2005 | \$610 |
| 2006 | (\$463) |
| 2007 | (\$856) |
| 2008 | \$101 |
| 2009 | (\$1,661) |
| 2010 | (\$509) |
| 2011 | (\$404) |
| 2012 | (\$672) |
| 2013 | \$18 |
| Total | (\$3,583) |

From the perspective of the FPSC policymakers, reduction in volatility of rates to customers is more important than mark-to-market losses. At the December 18, 2014 FPSC Conference, Commissioner Balbis stated: “... but this is something that we needed to look at because the hedging activities that the companies engaged in, that this commission encouraged, that this commission approved, actually resulted in billions of dollars lost to customers. And it was a heated discussion and a thorough discussion of that. And this commission decided that that reduction in volatility was worth that on a much larger issue.”⁶

As a result of this dramatic reset in market prices, further natural gas hedging was suspended by FMPA’s current General Manager and CEO. Later, the Executive Committee took official action to stop the original hedging program as natural gas prices and forecasts of future prices remained at acceptable price levels. The Executive Committee has continued to have extensive discussions about fuel hedging. FMPA has worked its way out of all of those hedges with the last few positions having expired in October 2013. Natural gas hedging, of the sort and magnitude referenced in the P&T Report, is no longer impacting electricity rates. At this time, the current hedging policy

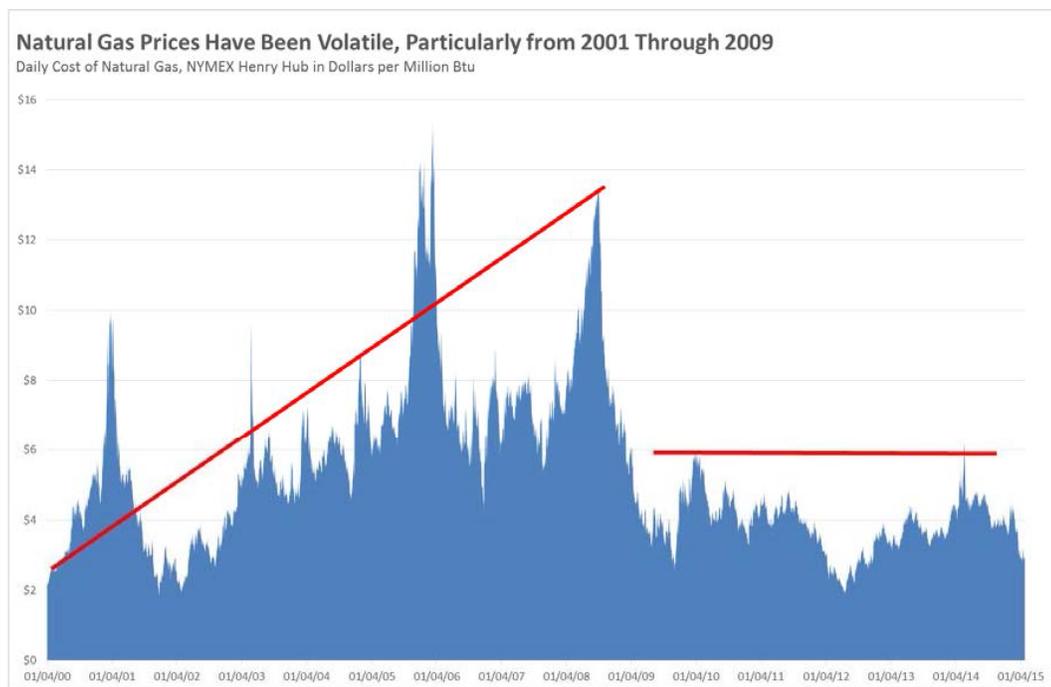
⁵ See Fuel Procurement Hedging Practices of Florida’s Investor Owned Electric Utilities (<http://www.psc.state.fl.us/publications/reports.aspx>); and FPSC Dockets 080001, 090001, 100001, 110001, 120001 and 130001 (<http://www.floridapsc.com>)

⁶ Transcript of December 18, 2014 Florida Public Service Commission Conference, pgs. 47-48 (docket no. 140001-EI, document no. 06823-14, available at the PSC website (<http://www.floridapsc.com>)).

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has very conservative limits, as explained in the Auditor General’s narrative, to better match the hedge program mechanics and focus on the current and anticipated natural gas price environment, as well as to significantly limit the dollar size of any out-of-market price differences between hedge positions and current market prices. The Executive Committee will consider the Auditor General’s recommendations. A review of fuel hedging policies will be included in the Executive Committee’s proposed scope of work for an independent management consulting firm.



Other Clarifications: FMPA’s total natural gas expense from fiscal 2003 through fiscal 2014 was approximately \$4 billion,⁷ so the premium above market was 6%.

FMPA had a long history of providing the most competitive wholesale power until the price of natural gas became more volatile in 2001 and dramatically increasing fuel prices put pressure on ARP’s wholesale rate. The chart above shows the dramatic cost swings in natural gas over the timeframe of FMPA’s hedging program.

In 2002, FMPA hired an experienced gas hedging and risk management trader as it began efforts to implement a gas hedging program. In 2003, FMPA developed its first Energy Risk Management Policy (ERM), allowing FMPA to enter into financial transactions to hedge the price of natural gas. FMPA hired Deloitte & Touché to review and make recommendations on the ERM. Starting in 2004, The Energy Authority, Inc. (TEA) advised FMPA on hedging strategies and the continued development of the ERM. TEA

⁷ Total natural gas expense during the 12 fiscal years shown in Table 7 of the Auditor General’s P&T Report.

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remained in this advisory role until September 30, 2009. Additional hedging program staff were added by FMPA to create mid-office and front-office functions.

In September 2007, the price of natural gas began steadily increasing. Through this increase, staff kept the hedged levels at the minimums required in the ERM. However, in May 2008—when natural gas was priced at about \$11 per million Btu and there was more than \$100 million of cumulative benefit in the hedging program to date—the hedge levels were raised to mitigate rate increases from increasingly high natural gas prices. A new three-way option structure for hedging was implemented, as permitted by the ERM, through July 2008. During this period, FMPA hedged much of its natural gas needs through October 2013 at an average NYMEX hedge position of \$9.50 per MM Btu.

In July 2008, the price of natural gas began steadily falling. At the direction of FMPA's new General Manager and CEO, no new hedges were put in place after September 2008.

In March 2009, the Executive Committee approved a new ERM which, among other changes, limited future hedges to no more than 24 months. As previously noted, no new hedges were put in place after July 2008. In August 2009, the Executive Committee officially suspended the hedging program. After months of review, workshops and debate, a much narrower hedging program was approved in September 2010. In February 2011, the hedging program was further modified, and in August 2013 it was again suspended. Today, FMPA has a limited, short-term hedging program (limited to no more than four months and no more than 50% of the ARP's expected natural gas needs), which is only triggered if prices rise above \$7 per million Btu.

A municipally-owned utility, Colorado Springs Utilities (CSU), experienced similar losses (\$200 MM) in its hedge-and-hold program during the same time frame as FMPA, FPL and other utilities. Similar to FMPA, CSU was audited by the City Auditor of the City of Colorado Springs.⁸ Similar to FMPA's audit, the City Auditor hired a consultant to assist with the audit. That audit report found that the hedge-and-hold program *"and the corresponding result, was not unusual for utility companies at the time and of similar size to Colorado Springs Utilities."*

The consultant to the City Auditor went on to opine on industry norms for hedging: *"Industry Norms: There is no broadly recognized GAAP-like standard for how to establish a hedge strategy or why to make hedge decisions. There is no bright line as to what constitutes a prudent structure. There are standards as to program controls, but hedge decisions are intrinsically tied to the hedging entity's objectives and those are dependent on a host of factors which can vary dramatically from one entity to another."*

The consultant to the City Auditor then opines on different categories of hedging. One of those categories: *"hedging in response to explicitly quantified and monitored risk*

⁸ The City Council's Office of the City Auditor of the city of Colorado Springs audit report can be found at http://coloradosprings.gov/sites/default/files/city_clerk/city_auditor/13-12_natural_gas_hedging_program_audit_report.pdf

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metrics” is described by that consultant as “*typically pursued by large entities with a naturally high risk profile and the scale to support more comprehensive programs, or those who have experienced heightened stakeholder sensitivity to past results. These programs deploy quantitative finance principles to measure and monitor risk, and then respond to specific circumstances in a pre-planned manner.*” This category describes FMPA’s current cash-flow-at-risk (FST) hedging program. FMPA has a high-risk factor and sensitivity to the price of natural gas because FMPA generates 80% of its energy from natural gas and 60% of FMPA’s generating capacity is base-load natural gas combined cycle generation. FMPA has heightened stakeholder sensitivity due to past results.

The City Auditor recommended to CSU that they consider this category of hedging: “*the Office of the City Auditor recommends that Colorado Springs Utilities research and consider implementing enhanced quantitative financial methods, or similar metrics and tolerance levels, to assist with decision making regarding the gas hedging program.*” FMPA has already transitioned to this recommended hedging program through its cash-flow-at-risk hedging program.

As FMPA understands the Auditor General’s recommendations (with the additional material provided to FMPA during the first two weeks of March concerning the hedging programs employed by the sample JAAs used as a comparison with FMPA), it is the same “hedge and hold” approach as FMPA’s original hedging policy. Such an approach may reduce or eliminate price volatility but at the expense of exposing the ARP to being out of the market on natural gas costs (and resultant rates). FMPA’s current hedging approach avoids this situation while protecting against ever-rising prices.

The Auditor General’s P&T Report states in a few places (first appearing in this section) that FMPA’s practices were compared with eight or sometimes 17 other JAAs. These comparative groups, within a small segment of the utility industry, lead the Auditor General to make conclusions about what are standard industry practices. In the United States, there are more than 75 JAAs and more than 3,000 electric utilities of all types (more than 2,800 of which are self-regulated). FMPA has been provided the sample used by the Auditor General in making these observations and FMPA finds that the sample is not comparable to FMPA. The guideline used by the Auditor General to select the sample appears in footnotes stating, “Comparability to the FMPA was based on reported peak MW load, wholesale electric revenues, the number of member municipalities, total number of retail customers served, and the generation fuel types employed.” The sample of eight JAAs used for gas hedging observations and findings; however, does not meet this guideline (see Table A).

FMPA has a high-risk profile and sensitivity to the price of natural gas because FMPA generates 80% of its energy from natural gas and 60% of its capacity is efficient base-load natural gas combined cycle generation. Three (3) of the eight (8) JAAs used in the sample do not have base-load gas-fired combined cycle generation, and all eight (8) JAAs within the sample have 35% or less of their generating capacity in base-load natural gas

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fired generation, representing a risk exposure of half, or less than half, of FMFA's risk exposure to the price of natural gas.

In addition, Table 6 and the discussion of Table 6 within the P&T Report is inconsistent with Finding 1. Finding 1 and GASB Statement No. 53 state that the purpose of hedging is to manage the change in the cost of fuel to the entity and change in cash flow to that entity over time. Table 6 does not measure the change in cost of fuel to an entity, nor the change in cash flow to that entity, but only the difference between the price of fuel at which the entity hedged (mark) to the spot-market price (market). To draw an analogy, a fixed rate loan of 6% would keep cash flow and cost of the loan constant and would therefore be a successful hedge in accordance with Finding 1 and GASB Statement 53. Comparing costs of a 6% fixed rate loan (mark) to a 3% variable rate loan (market) would result in a loss. That is essentially what Table 6 measures, which is an inconsistent metric to the Finding and GASB Statement.

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Table A: FMPA Generation Fuel Types Compared to Finding 1 Sample of JAA Generation Fuel Types Capacity in megawatts (MW), Source: company website data

| | Base Load NGCC (1) | Inter-mediate NGCC (2) | Coal | Nuclear | Hydro | Dispatchable Renewables (3) | Intermittent Renewables (4) | Peaking (gas or oil fired) | Energy Storage (5) | Percent of Capacity Base Load NGCC (6) |
|---|--------------------|------------------------|------|---------|-------|-----------------------------|-----------------------------|----------------------------|--------------------|--|
| FMPA | 962 | 109 | 178 | 0 | 0 | 0 | 0 | 382 | 0 | 59% |
| Sample used to compare with FMPA | | | | | | | | | | |
| SCPPA | 310 | 0 | 204 | 230 | 103 | 30 | 700 | 200 | 63 | 29% |
| PRPA | 0 | 0 | 434 | 0 | 90 | 0 | 78 | 388 | 0 | 0% |
| MEAG | 500 | 0 | 750 | 800 | 0 | 0 | 0 | 0 | 0 | 24% |
| IMPA | 0 | 0 | 518 | 0 | NA | 0 | 0 | 419 | 0 | 0% |
| MPPA | 26 | 0 | 274 | 0 | 0 | NA | 0 | 50 | 0 | 7% |
| AMP | 450 | 0 | 372 | 0 | 189 | 51 | 7 | 215 | 0 | 35% |
| GRDA | 443 | 0 | 1010 | 0 | 234 | 0 | 0 | 0 | 260 | 26% |
| UAMPS | 0 | 140 | 352 | 0 | NA | 0 | 56 | 0 | 0 | 0% |

NGCC Natural Gas fired Combined Cycle

NA Not available, but the missing information does not change the percent of capacity of base load NGCC for that JAA

- (1) Base Load NGCC generally are 50% or more efficient (for comparison, a typical car engine is less than 25% efficient), and typically consists of F-Class gas turbines or higher (G, H, J) combined with a heat recovery steam generator (HRSG). These base load NGCCs will typically have capacity factors greater than 50%.
- (2) Intermediate NGCC are generally older and, in the case of both FMPA and UAMPS, consists of a less efficient combination of an E-Class gas turbine combined with a HRSG. These intermediate NGCC's will typically have efficiencies of 40% or less, significantly less efficient than base load NGCC. As a result, the capacity factors of these units are typically less than 25%.
- (3) Dispatchable renewables include landfill gas generation and geothermal generation
- (4) Intermittent renewable generation includes wind and solar
- (5) Energy storage consists of pumped hydro and ice storage
- (6) Percent capacity of NGCC excludes intermittent renewables and energy storage in the calculation

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FINDING 2: Natural Gas Supply Agency Participation

Finding: Investment in natural gas exploration and drilling were not consistent with industry practices utilized by other comparable joint action agencies and were more complex and involved more risk than alternative forms of hedging commonly practiced.

Recommendation: The FMPA should establish written policies regarding future gas production investments. These policies should state the circumstances under which the FMPA may consider participation in further PGP projects or other gas production investments, and the circumstances under which the FMPA may consider exiting its PGP participation. Additionally, these policies should identify the categories of risk that must be considered by the FMPA when deciding on new or increased gas production investments and place an appropriate value on risk.

FMPA Response: FMPA's investment in fuel production is common industry practice. It is common industry practice for generating utilities to employ vertical integration strategies into fuel exploration, production and transportation, as is evidenced by FPL's investments in natural gas exploration and production in Oklahoma, and similar investments by other IOUs in Florida. Sixty percent (60%), or 3 of 5 IOUs in Florida, have invested in fuel production.

The last time FMPA's Executive Committee made a decision to participate in a Public Gas Partners (PGP) project was October 2005 when natural gas prices were experiencing great volatility and beginning to surge to unprecedented levels. Since then, FMPA declined participation in another PGP project and has been monitoring its existing investments with frequent updates and reports to the FMPA Executive Committee. The Executive Committee has considered exit options, but those are not currently viable. New PGP project participation is doubtful at this time. However, FMPA's investment in PGP is not unusual for a natural gas reliant utility company. The Florida Public Service Commission (FPSC) approved on December 18, 2014, a request from FPL to recover the cost of investments in natural gas drilling projects. From news accounts, FPL plans to invest \$191 million in drilling projects in southeastern Oklahoma and recover the investment through its fuel cost recovery clause. The FPSC delayed until March 2015 a decision on FPL's request to set guidelines for future production projects, which might cost up to \$750 million annually. The Executive Committee will consider the Auditor General's recommendations for establishing written policies. An assessment of fuel production investments will be included in the Executive Committee's proposed scope of work for an independent management consulting firm.

Other Clarifications: PGP is a long-term investment. The value of this investment fluctuates with the price of oil and natural gas. The prices for these commodities currently are at historically low levels. If prices rise or production volumes increase, the value of this investment will improve. This investment represents less than 10% of the annual natural gas demand for FMPA's All-Requirements Project, so it is part of a diversified portfolio and not a materially significant investment to the ARP's total assets of \$1.5 billion as of September 30, 2014.

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Over the same fiscal year period that produced the PGP cash flow deficit of \$14.6 million, the ARP billed 53.9 million MWh; therefore, the average rate impact of PGP is 27 cents per MWh. This is equivalent in impact to a price movement in natural gas of 5.4 cents. On the lowest average, all-in ARP billed rate of \$80.34 (fiscal 2012) for this same time period, the 27 cents per MWh represents a rate impact of one-third of one percent.

As also discussed in FMPA's response to Finding 1, FMPA believes that the sample used by the Auditor General to develop Finding 2 consists of JAAs that are not comparable to FMPA. In addition, a sample of one small segment of the electric utility industry consisting of more than 3,000 utilities is insufficient to reliably opine on common industry practices. FMPA's research demonstrates that generating utilities use vertical integration strategies for fuel production and transportation is a common industry practice, as is evidenced by FPL's investments in gas production. Sixty percent (60%) of the Florida IOUs have engaged in vertical integration strategies and invested in fuel production facilities.

In addition, of the four (4) JAAs within the sample that have more than 20% of their generating capacity in base-load natural gas fired combined cycle generation, one (SCPPA) has made significant investments, well in excess of FMPA's PGP investments, in natural gas production.

FINDING 3: Interest Rate Swaps

Finding: Certain interest rate swaps were not employed consistent with industry practices utilized by other comparable joint action agencies, which resulted in significant termination fees likely to be incurred.

Recommendation: The FMPA should refrain from employing interest rate swaps in the future without concurrently issuing debt to bring its interest rate hedging practices more in line with industry standard risk tolerance. Further, such activities should not be undertaken before required approvals for projects are obtained from regulatory bodies. In addition, the Executive Committee should consider, without regard to prior unrealized losses incurred, developing and executing an exit strategy for the Taylor swaps that removes the ongoing risk to the ARP members.

FMPA Response: FMPA's Executive Committee will consider updating FMPA's existing Debt Policy, taking the Auditor General's recommendations under consideration. Regarding the final comment about an exit strategy, FMPA's Executive Committee has such a plan. For more than two years, FMPA's Executive Committee has had extensive discussions and a number of workshops about the different termination alternatives. The members have agreed on an exit strategy, and FMPA plans to execute that strategy no later than September 30, 2015. A review of the Debt Policy and exit strategy will be included in the Executive Committee's proposed scope of work for an independent management consulting firm.

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Other Clarifications: Interest-rate swaps and to a lesser degree forward-starting swaps are used industry-wide when interest rate certainty is desired on an anticipated project or capital financing, as it was with the Taylor coal plant project. Locking in an interest rate and thus interest cost can be and was a key factor in creating some certainty for the favorable rate economics for FMPA's \$740 million investment share in this power generation project.

The Taylor project came to an abrupt halt when newly elected Governor Charlie Crist terminated the project's permitting activities, reversing previous Governor Jeb Bush's political directive to build coal generation in Florida. This surprise decision was the initial reason for not utilizing the forward interest rate swap commitments, although projected growth in electricity consumption indicated that FMPA still needed to construct additional power generation to serve the projected growth in electric demand. The second seismic shift came when the economy in Florida, the nation and the world started a now six-year decline, during which interest rates tumbled and financial liquidity dried up.

FMPA disagrees with the Auditor General's negative characterization of excessive risk-taking with regard to FMPA's previous action to use forward starting interest rate swaps to hedge its significant interest rate risk. As a regular issuer of debt to fund its capital projects, FMPA ultimately faces the judgment of the national credit rating agencies who apply, perhaps, the strictest of standards of review in developing their rating evaluation – one that takes into account a broad view of "industry" practice. FMPA's ratings record is consistently positive and reflects on all of its major decisions. In 2006, one of those major decisions was to participate in the building a coal fired power plant, the Taylor Energy Center, whose total cost would approach \$2 billion before being curtailed by action of the Florida Governor's Office. While the cost estimate grew over the time the project was in development, interest rates were still attractive, even as the Federal Reserve had just made its 17th increase in the Federal Funds rate. FMPA was concerned whether interest rates would remain within a range to support the then positive economics of this needed project. After considerable discussion and analysis, FMPA decided to use forward starting swap agreements to hedge this risk of future increases in interest costs.

To the point the Auditor General makes about comparability, excessive risk taking and industry practices, consider the opinion of one of our toughest critics: Moody's Investor Service. After FMPA's presentation to Moody's of its plan to hedge the interest rate risk associated with the financing of the Taylor County Coal Plant, Moody's issued a ratings update (October 2006) affirming the ARP's rating of A1 and its stable outlook. Included in this rating affirmation, Moody's stated:

"FMPA utilizes interest rate swaps in managing its debt. FMPA has a reasonable swap policy accepted by its board; has clear authorization to enter into swaps; and includes an assessment detailing risk exposures and policy oversight in its financial statements. FMPA intends to enter into qualified swaps permitted under its bond resolution in connection with the financing of FMPA's share of the Taylor Energy Center. The intent is to lock in interest rates now as a hedge

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against increasing rates as the new coal fired power plant is constructed. FMPA has the authorization in place to issue the bonds that will finance its share of the Taylor Energy Center.

The swaps will include a diverse group of counterparties with no counterparty representing more than 9% of total project. FMPA has a \$100 million line of credit and can access the rate process without external regulation to meet unforeseen interest cost exposure."

As also discussed in FMPA's response to Findings 1 and 2, FMPA believes that the sample used by the Auditor General to develop Finding 3 consists of JAAs that are not comparable to FMPA.

FINDING 4: Investment Policy

Finding: The FMPA's investment policy needed to be enhanced to clarify requirements regarding allowable investment credit ratings and to establish geographic diversification requirements for investments.

Recommendation: The FMPA should enhance its investment policy to clarify the application of credit ratings. Additionally, the FMPA should enhance its investment policy to clarify that the investment diversification requirements are to be applied at the individual project level and to establish requirements for geographical diversification.

FMPA Response: FMPA's governing boards will consider updating FMPA's existing Investment Policy consistent with the recommendations as soon as practical.

Other Clarifications: FMPA staff regularly monitors and reports on its investment portfolio to its governing boards. FMPA staff performed extensive research in 2014 on the St. Lucie Forward Sale Agreement investments in capital appreciation bonds (CABs). The next update is planned no later than May 2015 to FMPA's Audit and Risk Oversight Committee (AROC). Based on AROC input, an update will then be presented at a future meeting of FMPA's Board of Directors. Of note, the CABs held for FMPA have always had credit ratings of investment grade or higher.

FINDING 5: Employee Benefits

Finding: Compensated absences increased by 75 percent in four years, and the cost of future postretirement benefits for certain employees may result in payouts that negatively impact future rates.

Recommendation: The FMPA should periodically evaluate the impact of projected increases in benefit package costs provided to employees.

FMPA Response: FMPA's post-employment benefits are disclosed annually in FMPA's audited financial statements. FMPA's Board of Directors will address how to periodically

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evaluate the projected costs of employee benefits, specifically post-retirement healthcare and annual leave, as soon as practical.

Other Clarifications: In FMPA's 2013 audit report, footnote XII B. Post-Employment Benefits other than Retirement, FMPA reported a net obligation at September 30, 2013, of \$2.039 million, which is less than 0.1% of total assets and deferred outflows. The actual cost of such expenditures for eight retirees in fiscal 2013 was \$43,518, which is less than 0.3% of the Agency's 2013 budget of \$13.3 million and 0.007% of the Agency and Project's fiscal 2013 total operating revenues of \$623.7 million. The number of employees who can participate in this benefit is capped by current policy. As of February 2015, only 25 active employees have the potential to meet the qualifications.

FMPA's analysis of compensated absence liability shows the largest percentage of the increase is due to the fact that more employees are qualified upon resignation or retirement in good standing to be paid for accumulated sick leave benefits and more people are qualified at a higher payout rate based on their increased years of service to FMPA, in accordance with FMPA's Policy and Employee Manual. For example, 30 people qualified for sick leave payout in 2010 compared to 52 people in 2014.

FINDING 6: General Counsel Contract

Finding: The Board of Directors (Board) set the compensation package for the General Counsel through a series of actions over several years rather than through the use of a written employment agreement and FMPA was unable to provide documentation for one of the benefits provided by Board action.

Recommendation: The FMPA should enter into a contract with the General Counsel encompassing all Board-approved compensation arrangements cumulatively provided to the General Counsel and implement any further compensation changes as contract amendments.

FMPA Response: FMPA's current General Manager and CEO was the first executive employee at FMPA to have a contract when it was originally signed in 2009. At that time, the Board of Directors discussed creating a contract for the General Counsel, and they decided against it. FMPA's Board of Directors will again consider its employment arrangements with the General Counsel and consider how to document it as soon as practical. All current salary and benefits information for the General Counsel are documented in his personnel file.

Other Clarifications: Note that the benefits described in the finding are in lieu of salary increases. The CEO has not received any salary increase since he joined FMPA in 2009. The General Counsel's last salary increase was in 2008.

FMPA had documentation for all except one benefit provided by Board action, the original decision to remove the vacation cap, though subsequent Board of Directors minutes confirmed this action.

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FINDING 7: Severance Pay and Benefits

Finding: The Chief Executive Officer's employment contract provides for severance pay and postretirement benefits for life if he is terminated for cause.

Recommendation: The FMPA should consider amending the CEO's contract to remove any severance compensation and postretirement benefits associated with termination for cause.

FMPA Response: FMPA's Board of Directors will discuss and review this matter with its General Manager and CEO as soon as practical.

FINDING 8: Questioned Expenditures

Findings: FMPA records did not always evidence the public purpose served for purchases of goods and services.

Recommendation: The FMPA should strengthen its procedures to require documentation that expenditures serve an authorized public purpose and retain such documentation in its records prior to payment.

FMPA Response: FMPA's governing boards will discuss how to more fully document the authorized public purpose as soon as practical. The Attorney General of Florida, relying on Florida Supreme Court decisions, has concluded that such expenses meet a public purpose test if approved as a public purpose by a government's legislative body. *See Op. Att'y Gen. Fla. 83-5 (1985)*. In conformity with this, FMPA's governing bodies will closely scrutinize and specifically provide a public purpose finding for expenditures. In the meantime, FMPA will discontinue, as soon as contract commitments allow, expenditures for Orlando Magic tickets, an indoor plant service and a Christmas tree.

Other Clarifications: The P&T Report states, "The FMPA charged and coded \$12,030 to 'flowers.'" The charges coded to this account need clarification. First, FMPA contracts with a service provider to maintain live plants in FMPA's office. The service provider is contracted to visit FMPA's office twice per month to water, trim and maintain the plants. During the 20-month audit period, FMPA paid approximately \$7,300 for this service, which was charged to this account. Second, FMPA rents a Christmas tree for its office lobby from Thanksgiving to New Years. The vendor delivers the artificial tree, sets it up, decorates it, and removes the tree at the end of the holiday season.⁹ During the 20-month audit period, two holiday seasons occurred, and FMPA paid a total of \$3,034 for this service, which was charged to this account. Finally, FMPA sent flowers arrangements to governing board members or staff for occasions such as bereavement and hospitalization. During the 20-month audit period, FMPA spent \$1,735 on flowers or donations in lieu of flowers. FMPA's governing bodies will review the budget again for these expenditures during this year's budget process, which commences with the first meetings of the Business Planning and Budget Committee in April 2015.

⁹ It is a common practice for governments around the country to celebrate the season.

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The P&T Report states, "The FMPA charged and coded \$106,850 to 'meetings.'" This is the largest expenditure cited in this finding where the Auditor General questioned the public purpose of some expenses. The vast majority of these meetings are with FMPA's member city owners. The meetings with members include governing board and committee meetings, such as the Board of Directors, Executive Committee, Business Planning and Budget Committee, Policy Makers Liaisons Committee and others. In addition, the meetings with members include topics such as member services, training programs, plant operations, NERC compliance, cyber security, safety training, round table groups and others. As a joint action agency, FMPA hosts a large number of meetings and training sessions to coordinate joint action on a myriad of topics that are a service and benefit to its member city owners. The in-office meeting costs during the 20-month period include food, coffee, soft drinks and associated supplies (i.e., paper plates, plastic wear, napkins, cups, table cloths, serving utensils, etc.).

FINDING 9: Competitive Selection

Finding: The FMPA did not always follow its purchasing policies regarding competitive selection.

Recommendation: The FMPA should ensure that goods and services purchased through contractors are competitively procured in accordance with established policies and procedures.

FMPA Response: FMPA will strengthen internal controls to ensure that purchases are made in accordance with the existing Procurement Policy and other policies related to competitive selection as soon as practical.

Other Clarifications: FMPA's financial auditors were initially selected through a competitive process. The firm was selected based on its extensive auditing experience with electric utilities and local governments, as well as its competitive price as evidenced in the competitive selection process. In 2014, after deliberations by FMPA's Board of Directors and Executive Committee, the audit contract was extended based on high quality of past performance and after negotiating a fee decrease from the existing 2013 audit fee of \$110,000 to the new 2014 fee of \$107,500. FMPA believes that its processes have led to procure an industry-leading financial auditing firm at a competitive price.

The P&T Report states that for purchases above \$1,000 and below \$5,001, FMPA records did not evidence that three quotes were obtained for "an ice machine purchase." FMPA's nine-year-old ice machine was not working properly, so a service call was placed. The service provider gave FMPA three options: (1) replace the malfunctioning part for \$2,284.78, (2) purchase a replacement ice-maker component for \$3,787.83, or (3) lease a unit for eight years at a cost of \$12,960. FMPA evaluated the alternatives and decided the best overall choice was replacing the ice-maker component.

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FINDING 10: Selection of Bond Professionals

Finding: The FMPA had not recently used a competitive selection process when selecting financial advisors and bond counsel for bond issues, potentially increasing costs associated with bond issues.

Recommendation: To ensure that qualified financial and professional services are acquired at the lowest possible cost consistent with the size, nature, and complexity of the bond issue, the FMPA should select financial advisors and bond counsel using a competitive selection process whereby RFPs or RFQs are solicited from a reasonable number of professionals.

FMPA Response: FMPA previously utilized a competitive selection process in selecting its current bond counsel and financial advisor. FMPA's governing boards will review its Debt Policy and consider the modifications of its current language to address the Auditor General's recommendation for a competitive selection process of qualified financial services in the future to include but not be limited to financial advisors and bond counsel as soon as practical.

FINDING 11: Credit Cards

Finding: The FMPA did not always follow its policies regarding credit card issuance and purchases, and did not employ procedures for monitoring credit limits for reasonableness.

Recommendation: The FMPA should enhance its procedures to ensure compliance with its policies regarding credit card user agreements. The FMPA should also enhance its existing policies to clarify responsibilities regarding notification of credit card user termination and associated card cancelation, including notification requirements of member municipalities; require all credit card users to sign the monthly credit card activity reports; and require periodic reviews of credit card user credit limits for reasonableness.

FMPA Response: FMPA will enhance its policies, procedures and documentation for credit cards consistent with the Auditor General's recommendations as soon as practical.

FINDING 12: Travel Expenditures

Finding: The FMPA did not always follow its travel policies or ensure that travel-related receipts were submitted by contractors. Additionally, the FMPA's travel policies could be enhanced.

Recommendation: The FMPA should consider amending its Travel Policy to include a cap on per-meal costs. The FMPA should also enhance its procedures to ensure compliance with its policies regarding family member travel expenses and most economical cost of air travel, and to require supporting receipts for out-of-pocket expenses incurred by contractors. In addition, the FMPA should discontinue providing mileage reimbursements to employees who also receive vehicle allowances.

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FMPA Response: FMPA's Board of Directors will consider updating FMPA's existing Travel Expense Policy, taking the Auditor General's recommendations into consideration as soon as practical. In the meantime, FMPA will stop hosting a dinner during the annual legislative rally in Washington, D.C., which will eliminate this meal cost and the rare occasion where alcoholic beverages were provided. As part of updating FMPA's Travel Policy, FMPA will expressly prohibit reimbursement for alcohol, although FMPA has had a practice of "no alcohol" for many years.

Other Clarifications: The audit finding referenced as "Family Travel Expenses" was an error on FMPA's part. As soon as the matter was brought to FMPA's attention, it was researched by FMPA staff, as directed by the CEO and General Counsel, beyond the Auditor General's audit period. The expense has been repaid to FMPA, appropriate taxes paid to the State of Florida and an enhanced travel expense approval procedure has been implemented to prevent reoccurrence.

FINDING 13: Peak Shaving

Finding: The ARP power supply project contracts did not address peak shaving and, although the Executive Committee agreed to curtail peak-shaving activities, the agreement appears primarily voluntary in nature, relies on self-reporting, and contains no consequences for noncompliance.

Recommendation: If the FMPA desires to affirmatively eliminate peak shaving activities of its members, the FMPA should consider amending the power supply project contracts to prohibit such activities and establish consequences for noncompliance.

FMPA Response: The issues identified by the Auditor General concerning the value of peak shaving and monitoring compliance with contract/policy were considered by FMPA's Executive Committee when the policy was approved in 2014. FMPA currently has some capability to verify compliance and options to address any non-compliance. FMPA's Executive Committee decided to approve the policy because amending the contract requires approval from a number of internal and external stakeholders. The contract states that it cannot be "amended, modified, or otherwise altered in any manner that will adversely affect the security for the Bonds." Any proposed amendments must be certified as having no adverse effect by a consulting engineer and bond counsel. The proposed amendments must also be approved by trustees on behalf of bondholders, then credit rating agencies must agree that the amendments will not affect the credit rating, then the amendments must be approved by bond insurers, if any, then unanimous consent must be received from the governing boards of every project participant (i.e., city council, city commission or utility board), and finally, the amendments must be approved by FMPA's Executive Committee. As should be evident, amending the contract is a lengthy process and is not within FMPA's sole discretion. A review of the peak shaving policy and enforcement options will be included in the Executive Committee's proposed scope of work for an independent management consulting firm.

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FINDING 14: ARP Termination Provisions

Finding: Certain ARP power supply project contract provisions relating to withdrawing members are ambiguous, used a fixed discount rate rather than one associated with current capital costs, and did not provide for independent verification by the withdrawing member.

Recommendation: Since ARP revenue requirements are calculated using monthly coincident peak demands, the FMPA should consider using a 12-month average of coincident peak to more accurately estimate the withdrawing member's share of fixed costs. Also, the FMPA should consider amending the power supply project contracts to clarify how withdrawal payments are to be calculated, define "additional benefits" and "excess amounts," establish a variable withdrawal payment discount rate that fluctuates with the actual cost of debt, and remove the 90 percent cap of an ARP member's withdrawal payment. Additionally, since the withdrawal payment can be used to temporarily correct deficiencies in other operating funds and for "excess amounts" to be deposited in the "General Reserve Fund," it should be determined how this ability to use these funds is recognized in the monthly revenue requirement calculation for remaining ARP participants.

FMPA Response: FMPA's Executive Committee will discuss the Auditor General's comments. Recommendations that require an amendment of the contract must complete an approval process involving a number of internal and external stakeholders. The contract states that it cannot be "amended, modified, or otherwise altered in any manner that will adversely affect the security for the Bonds." Any proposed amendments must be certified as having no adverse effect by a consulting engineer and bond counsel. The proposed amendments must also be approved by trustees on behalf of bondholders, then credit rating agencies must agree that the amendments will not affect the credit rating, then the amendments must be approved by bond insurers, if any, then unanimous consent must be received from the governing boards of every project participant (i.e., city council, city commission or utility board), and finally, the amendments must be approved by FMPA's Executive Committee. As should be evident, amending the contract is a lengthy process and is not within FMPA's sole discretion. A review of the Auditor General's recommendations will be included in the Executive Committee's proposed scope of work for an independent management consulting firm.

Other Clarifications: When an All-Requirements Project (ARP) participant elects to withdraw from ARP under section 29, it must make two payments under section 29(c)(1) and (c)(2). Generally, the payment made under 29(c)(1) is meant to cover the withdrawing participant's share of ARP debt to protect the remaining participants from incurring higher debt burden because a participant decided to withdraw. FMPA is required to plan and serve the annual coincident peak demand of the ARP. This peak demand is what drives FMPA's planning since FMPA must plan for and have resources sufficient to meet the annual coincident peak. Section 29(c)(1) matches this reality. Therefore, to use a 12-month average of coincident peaks would detach the withdrawal payment from the reality of FMPA's obligation and could put the non-withdrawing participants at risk of bearing higher debt service just because of the choice made by the withdrawing participant.

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Since this audit came about, fundamentally, due to a dispute over the reasonableness of FMPA's power supply contract provisions, FMPA notes that the Auditor General reviewed the ARP contract and commented in three areas:

1. Whether the general contract terms were typical of other joint action agencies (JAAs),
2. Whether the ARP exit provisions are typical of JAAs, and
3. Whether FMPA calculated the exit cost to Vero Beach consistent with the contracts and consistent with FMPA's calculations for other FMPA members.

As to the first item, the Auditor General found that FMPA's bond resolutions and power supply project contracts "are typical of other JAAs."

As to the second item, the Auditor General found that FMPA's exit options are more lenient than most joint action agencies.

Finally, regarding FMPA's calculation of the exit costs for Vero Beach and another FMPA city, the Auditor General determined FMPA's estimates "appear to be reasonable." The Auditor General stated, "The FMPA calculations of the withdrawal payments in these instances followed the respective ARP power supply power contracts' withdrawal provisions."

FINDING 15: Disaster Recovery Plan

Finding: The FMPA's disaster recovery plan could be enhanced.

Recommendation: The FMPA should enter into a written agreement to procure an alternate processing site that is sufficiently geographically distant to minimize the risk of being unable to continue critical operations in the event of a hurricane or other geographically large disaster.

FMPA Response: FMPA will investigate an alternate data processing facility, consistent with the Auditor General's recommendations as soon as practical.

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4. CONCLUSION

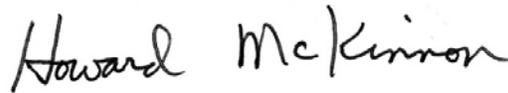
FMPA takes seriously its responsibility to meet its members' needs and expectations. This audit will further FMPA's ability to do that. On behalf of the Board of Directors and Executive Committee, we thank the Auditor General for handling this important task with professionalism. We are certain that FMPA will become a better organization as a result.

If you require additional information about the details of this response, please contact Nicholas P. Guarriello, FMPA's General Manager and CEO, at 407-355-7767 or nick.guarriello@fmpa.com.

Sincerely,



Bill Conrad
Chairman
Board of Directors



Howard McKinnon
Chairman
Executive Committee

cc: Board of Directors
Executive Committee
Nicholas P. Guarriello, FMPA
Frederick M. Bryant, FMPA
Jody Lamar Finklea, FMPA