



Issuance of Electric Revenue Bonds Series 2018A Item #1

November 13, 2018



Agenda

- Purpose for Issuing Bonds
- Background
- Due Diligence
- Terms of Recommended Bond Issuance
- Disclosure Responsibilities Under the Federal Securities Laws
 - Dave Angelo Sanchez, Senior Counsel
- Recommendation



Purpose for Issuing Bonds

- Raise funds that support long-life, high-cost capital projects for the Electric Utility
- Realize debt service savings with current low interest rates in the municipal bond market
- Reduce risks by a fixed-rate refunding of the Series 2008B Bonds and terminating the swap agreement



Background

- In 2008, variable rate bonds series 2008B issued
 - Supported by a Letter of Credit (LOC) with MUFG Bank
 - LOC is extended to January 29, 2019
 - Fees for the LOC are rising
- Also entered into a Interest Rate Swap Agreement to create a synthetic fixed rate structure
 - Swaps variable rate payments for fixed rate payments
 - The Swap counterparty is JPMorgan Chase & Co.
 - Using a LIBOR proxy for variable rate payments



Due Diligence

- Issued RFP to select underwriter
 - Goldman Sachs
- Committed to abide by the Dodd-Frank federal law
 - Regarding swap activities via multi-step protocols
- Rating Agencies updated issuer ratings
 - Fitch Rating affirmed SVP's AA- rating with a stable outlook
 - Standard & Poor's affirmed SVP's A+ rating with a stable outlook
- Worked with JP Morgan on mutually beneficial termination agreement



Terms of Electric Revenue Refunding Bonds 2018A

- Up to \$65 M fixed rate revenue bonds
 - Backed by Council's commitment to set rates sufficient to pay
- Refund \$54.6 M variable rate 2008B Bonds
 - Fund termination of the Interest Rate Swap Agreement
 - Pay cost of issuance
- Financial Impact
 - Near breakeven Net Present Value
 - Dependent on market at time of pricing



Disclosure Responsibilities Under the Federal Securities Laws

- Dave Sanchez, Senior Counsel, Norton Rose Fulbright US LLP
 - Will review related Council responsibilities

Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare

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City of Santa Clara: Disclosure Responsibilities Under the Federal Securities Laws

November 13, 2018
Dave Angelo Sanchez, Senior Counsel

Who Has Primary Responsibility for Disclosure

- **The Securities and Exchange Commission (SEC) repeatedly emphasizes that an issuer such as the City has primary responsibility for the content of disclosure documents** because City officials and staff are in best position to know material facts about the City.

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Governing Board Responsibility

- SEC report on Orange County, California:
 - public officials cannot authorize disclosure known to be false or in reckless disregard of the facts (City Council is aware of the sources of repayment for the bonds and is aware of certain facts that can affect those sources of repayment)
 - public officials approving disclosure cannot rely on its professional advisors for information within its knowledge, for example, budget information; unless it specifically seeks advice about the information and acts on that advice
 - City Council may appropriately delegate authority to staff but is still charged with knowledge of “big picture” factors; particularly of the types of facts that require City Council approval (major contracts; litigation)
 - When approving disclosure documents important to ask about information within your knowledge and whether it has been disclosed or why it was not disclosed

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SEC Enforcement Actions – Lessons for Issuers

- In SEC's view, prior use of "cease and desist" orders did not send strong enough message to issuers and issuer officials and staff.
- SEC continues to impose civil penalties against municipal officials.
 - City of Harvey, Illinois: \$10,000 penalty against sitting mayor and \$30,000 (plus disgorgement and interest) against former comptroller.
 - City of Allen Park, Michigan: \$10,000 penalty against former mayor.
 - Westlands Water District: \$50,000 penalty against general manager/general counsel. \$20,000 penalty against former assistant general manager.
 - Rhode Island Economic Development Commission: \$25,000 penalty against former executive director. \$25,000 penalty against former deputy director.
- However, legal fees, adverse publicity and potentially increased borrowing costs end up being the actual biggest costs of an SEC Enforcement action.

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Summary

- Complete and transparent disclosure with respect to the specific security being sold is essential
- Remember antifraud violations can arise from negligence and not an intent to deceive.
- SEC looks to see if you have considered disclosure issues but generally will not second-guess a reasoned decision about disclosure.
- Officials participating in the disclosure process must include everyone at the City in a position to know material information with respect to that security (i.e., "the right people must be in the room")
- Your hired professionals can only help if they know this material information – generally the counsel and advisors you hire do not have to do an independent investigation of facts about the City – they assist you based on the facts that you communicate to them.

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Recommendation

- Approve Resolution authorizing and approving:
 - Issuance of the revenue bonds
 - The bond indenture
 - The official statement
 - The escrow agreement
 - The swap termination
 - The continuing disclosure agreement
 - Selection of Goldman Sachs as the underwriter
 - Additional actions as required