August 13, 2012

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: Draft Amendment to MSRB Rule G-11

Dear Mr. Smith:

I am the Senior Vice President, Chief Financial Officer of the Municipal Electric Authority of Georgia ("MEAG Power") and I appreciate this opportunity to comment on the proposed amendment to Rule G-11 of the Municipal Securities Rulemaking Board (the "MSRB").

MEAG Power was created by the State of Georgia in 1975 as a "joint action agency" for the purpose of owning and operating electric generation and transmission facilities to supply bulk electric power to participating political subdivisions of the State of Georgia. MEAG Power currently owns and operates nine separate "projects" that have been financed under nine separate senior and subordinate lien bond resolutions, each of which is "open-ended" (that is, it permits the issuance of future series of parity bonds, subject only to the satisfaction of the conditions to such issuance set forth therein). As of December 31, 2011, MEAG Power had issued bonds in an aggregate principal amount of approximately $17.1 billion, of which approximately $6.5 billion remain outstanding.

MEAG Power adopted its first bond resolution in 1976 and its most recent ones in 2008. All of MEAG Power's bond resolutions contain provisions (including, particularly, operational and financial covenants) that were, we believe, in conformity with customs and practices in the municipal securities market at the respective times of their adoption. Of course, over the past three and a half decades, such customs and practices have evolved and, in certain cases, have become more liberal and issuer-friendly.

Each of MEAG Power's bond resolutions contains provisions for the making of amendments thereto. Except in the case of certain enumerated types of amendments (a) that may be made either (i) without the consent of either the holders of the bonds outstanding thereunder or the trustee for such holders or (ii) with the written consent of such trustee and (b) for which unanimous consent is required, each of MEAG Power's bond resolutions permits amendments

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thereto only with the consent of the holders of a super-majority or a simple majority in principal amount of the bonds outstanding thereunder (in the case of MEAG Power's earliest bond resolutions, the consent of the holders of two-thirds in principal amount of all bonds outstanding thereunder is required; and, in the case of MEAG Power's most recent bond resolutions, the consent of the holders of a majority in principal amount of the bonds outstanding thereunder that are affected by such amendment is required).

Given that none of MEAG Power's bond resolutions requires the unanimous consent of the holders of the bonds outstanding thereunder for the making of any amendment thereto, MEAG Power believes that bondholders must understand that, under certain circumstances, amendments to the bond resolution may be made without obtaining their individual consents thereto.

As was noted in several of the comment letters filed in response to the MSRB's Notice 2012-04 (February 7, 2012), entitled "*Request for Comment on Draft Interpretive Notice Concerning the Application of MSRB Rule G-17 to Bondholder Consents by Underwriters of Municipal Securities*" (the "February 2012 Draft Interpretive Notice"),[1] MEAG Power believes that it has been a long-standing and common practice in the municipal securities market for underwriters (as the initial holders of newly-issued bonds under open-ended bond authorizing documents) to consent to amendments to those documents, particularly in the case of amendments made for the purpose of "modernizing" the provisions of those documents.

As also was noted in several of the comment letters filed in response to the February 2012 Draft Interpretive Notice,[2] MEAG Power believes that the procedure for effecting an amendment to a bond authorizing document is a matter of both relevant state law and the terms of the bond authorizing document itself, which is a contract between the municipal issuer and the holders of the bonds issued thereunder. As such, MEAG Power believes that the effect of the proposed amendment to Rule G-11 is to impose an additional limitation on the contracts between municipal issuers and their bondholders that does not presently exist, namely, a requirement that amendments that are consented to by underwriters also be consented to by ***all*** of the owners of previously issued and outstanding bonds.

In December 2011, MEAG Power adopted "springing" amendments to its two earliest bond resolutions, for the purpose of modernizing, among other things, certain of the provisions thereof relating to the structuring of debt service and certain of the financial and operational covenants contained therein. While certain of those amendments could, in the abstract, be considered to reduce the security for existing bondholders, MEAG Power believes that the effect of those amendments, taken as a whole, will increase MEAG Power's financial and operational

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[1] *See, e.g.*, the letter, dated March 6, 2012, from the Indianapolis Airport Authority; and the letter, dated March 8, 2012, from the National Association of Bond Lawyers (hereinafter, the "NABL Letter").

[2] *See, e.g.*, the NABL Letter.

flexibility with respect to the projects financed thereunder and, as a result, actually will strengthen the credits of those projects.

In connection with the issuance of two issues of bonds under those resolutions in December 2011 and January 2012, MEAG Power obtained consents to those amendments from the underwriters of those bonds. Based upon MEAG Power's planned issuances of bonds over the coming years, MEAG Power estimated that, if it is able to continue to obtain consents to those amendments from the underwriters of those bonds, it will obtain the consents of the holders of the requisite percentages (two-thirds) of the bonds to be outstanding under those bond resolutions by 2016. If, however, MEAG Power is not permitted to obtain such consents from the underwriters, unless MEAG Power undertakes a general consent solicitation process with respect to its outstanding bonds (which, as described below, is arduous, time-consuming and expensive), those amendments will not become effective until 2026, when all of the bonds outstanding under the relevant bond resolutions as of the date of adoption of the amendments mature and are paid. Accordingly, the adoption of the proposed amendment to Rule G-11 potentially will delay, by approximately 10 years, the effectiveness of amendments that we believe actually will strengthen the credits of the projects financed under those bond resolutions.

Several of the commentators to the February 2012 Draft Interpretive Notice noted that because of the widespread use of the book-entry system of registration of The Depository Trust Company ("DTC"), the obtaining of consents from underwriters to amendments to bond authorizing documents is the only reasonable and cost-effective alternative available to municipal issuers.[3] Based upon its own experience in this area, MEAG Power concurs with that conclusion.

In 1998, when a restructuring of the electric utility industry that would have led to increased competition among wholesale and retail suppliers of electricity (such as MEAG Power and its local municipal retail electric distribution system participants, respectively) appeared imminent, MEAG embarked upon a program to reduce its costs and otherwise improve its competitive position and the competitive position of its participants. An integral part of that program consisted of the making of certain amendments to certain of MEAG Power's bond resolutions, in order to improve MEAG Power's financial and operational flexibility thereunder. However, because MEAG Power did not expect to issue a significant amount of additional bonds under those bond resolutions in the near-term, MEAG Power concluded that the use of underwriters to provide consents to the proposed amendments was not practical and would not result in the effectiveness of the proposed amendments in a timely manner. As a result, MEAG Power was forced to undertake a consent solicitation process in order to obtain the consents of the holders of the requisite percentages of its outstanding bonds. Because of the time and effort that is required to identify and communicate with beneficial holders of bonds that are held in

[3] *See, e.g.*, the NABL Letter; and the letter, dated March 9, 2012, from the Government Finance Officers Association.

book-entry-only form through DTC, the consent solicitation process was arduous, time-consuming and expensive, and MEAG was required to engage a "solicitation agent" to manage the process of identifying and communicating with the beneficial holders of its bonds. While MEAG Power ultimately was able to cause the proposed amendments to become effective and, it believes, strengthen its credit and the credit of its participants, the process took approximately fourteen months and cost MEAG Power approximately $1.05 million.

For the reasons set forth above, MEAG Power respectfully requests that the MSRB not adopt the proposed amendment to Rule G-11, since to do so would (a) put an end to a long-standing and common practice in the municipal securities market, at a time when there is no other reasonable and cost-effective alternative, (b) impose additional restrictions on the contracts between issuers and bondholders that were not bargained for by the bondholders and that do not currently exist and (c) in the case of MEAG Power, potentially delay, by approximately 10 years, the effectiveness of amendments that we believe actually will strengthen the credits of the projects financed under the bond resolutions being amended.

In making the request set forth above, we note (as was mentioned in the NABL Letter) that the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act changed the mandate of the MSRB, so that the MSRB's authority now encompasses, among other things, the protection of municipal issuers and obligated persons. As a result, while MEAG Power generally is supportive of proposals that would improve the transparency and efficiency of the municipal securities market, we think that careful balancing needs to be done in connection with any rule change that eliminates a long-standing and common practice in that market and affects the contractual relationship between municipal issuers and investors.

While MEAG Power is opposed to the adoption of the proposed amendment to Rule G-11, in the event that the MSRB does decide to adopt the amendment, we urge you to reconsider the language of clause (iii) thereof. As we read the proposed language, that clause would permit underwriters to consent to amendments with respect to a new issue of parity bonds issued under an open-ended bond authorizing document, but only if the owners of ***all*** bonds outstanding under the bond authorizing document also consent to the amendments. As was discussed above, all of MEAG Power's bond resolutions (and, we believe, the overwhelming majority of bond authorizing documents used in the municipal securities market) generally permit amendments with the consent of the holders of a majority in principal amount of the bonds outstanding thereunder (or, in certain cases, of the holders of a super-majority of such bonds). The language of clause (iii) therefore goes above and beyond the requirements of such bond authorizing documents in requiring the consent to such amendments of the holders of ***all*** of the outstanding bonds. So, we request that the language of clause (iii) be revised to permit underwriter consents to amendments in cases where consents also are obtained from the holders of the requisite percentage (as specified in the relevant bond authorizing document), rather than all, of the outstanding parity bonds. In addition, based upon MEAG Power's previous experience with the process of soliciting consents to amendments to a bond authorizing

document from the holders of outstanding bonds as described above, we think that it would be difficult in many cases for an issuer to complete a consent solicitation process with the holders of its outstanding bonds prior to the offering of a new issue of parity bonds under that bond authorizing document, so we request that the effectiveness of an underwriter's consent to amendments, rather than the ability of the underwriter to execute such a consent, be conditioned upon the receipt of consents of the holders of the requisite percentage of the bonds outstanding immediately prior to the issuance with respect to which the underwriter is providing consent.

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Set forth below are MEAG Power's comments on the specific matters requested by the MSRB in Notice 2012-36 (July 5, 2012):

- *The MSRB recognizes that dealers, acting in a capacity other than as underwriter or remarketing agent, may be permitted to consent to changes to bond authorizing documents that may affect bondholders. Should dealers acting in such other capacities (for example, auction agents for auction rate securities) be permitted to consent to changes under the exceptions set forth in the Draft Rule G-11 Amendment, or should the Draft Rule G-11 Amendment explicitly prohibit dealers acting in other capacities, such as auction agents, from providing consents to changes to the authorizing documents?*

  In MEAG Power's experience, the role of an auction agent for auction rate securities is ministerial in nature (*i.e.*, the actual physical processing of the auction procedures) and generally is performed by the corporate trust departments of commercial banks. However, the solicitation of investors to participate in auctions usually is performed by investment banking firms in their role as a "broker-dealer." Subject to MEAG Power's more general reservations to the Draft Rule G-11 amendment expressed herein, we believe that dealers acting in the capacity of a broker-dealer for auction rate securities serve a similar role to dealers acting in the capacity of a remarketing agent for variable rate demand obligations, so we believe that exceptions similar to those that apply to remarketing agents should apply to broker-dealers for auction rate securities.

- *Would the Draft Rule G-11 Amendment help to protect investors, and are there other benefits that would be realized from adopting the Draft Rule G-11 Amendment?*

  For the reasons stated herein, MEAG Power believes that the Draft Rule G-11 Amendment, while it would limit the circumstances under which amendments to bond authorizing documents are imposed upon investors in outstanding bonds, impermissibly modifies the contracts between municipal issuers and investors in a manner that could preclude investors from realizing benefits that

could be derived from certain types of amendments to the bond authorizing documents and, therefore, harms rather than protects investors.

- *Would the Draft Rule G-11 Amendment have any negative effects on issuers, investors or other market participants? If so, please describe in detail.*

  MEAG Power believes that the Draft Rule G-11 Amendment may have negative effects on both issuers and investors. In the case of issuers, it would eliminate a long-standing and common practice in the municipal securities market, at a time when there is no other reasonable and cost-effective alternative. In that regard, the Draft Rule G-11 Amendment could force issuers desirous of making amendments to their bond authorizing documents to have to undertake uneconomical refundings in order to make such amendments. In the case of investors, as was stated above, it could preclude investors from realizing benefits that could be derived from certain types of amendments to the bond authorizing documents.

- *Are issuers able to obtain consents from beneficial holders of bonds effectively and efficiently through existing mechanisms? The MSRB welcomes comments and suggestions for streamlining and improving methods of identifying and obtaining consents from bondholders, including those available through DTC and otherwise.*

  As MEAG Power learned in connection with the consent solicitation process that it undertook in 1998 as described above, the very nature of DTC's book-entry-only system (with multiple layers of beneficial ownership) makes it difficult and prohibitively expensive to identify and communicate with the beneficial owners of outstanding bonds. As a result, we are not aware of any methods that are available to streamline and improve the process for identifying and obtaining consents from bondholders.

- *What would be the burdens on issuers or other market participants of adopting a rule that limits obtaining bondholder consents in the manner contemplated by the Draft Rule G-11 Amendment?*

  As was stated above, MEAG Power believes that the Draft Rule G-11 Amendment would eliminate a long-standing and common practice in the municipal securities market, at a time when there is no other reasonable and cost-effective alternative. In the case of MEAG Power in particular, we spent a considerable amount of money establishing a process for obtaining underwriter consents to certain proposed amendments to certain of our bond resolutions prior to the issuance of the February 2012 Draft Interpretive Notice, and the adoption of the Draft Rule G-11 Amendment would cause us no longer to be able to obtain those underwriter consents, the effect of which

likely would delay our ability to cause the proposed amendments to become effective by approximately 10 years.

- *Are there alternative methods the MSRB should consider to providing the protections sought under the Draft Rule G-11 Amendment that would be more effective and/or less burdensome, resulting in an appropriate balance between the need for a cost effective and efficient manner of obtaining consents and the duty of dealers under Rule G-17 to deal fairly with all persons?*

  MEAG Power is not aware of any alternative methods that the MSRB should consider that would be more effective and/or less burdensome than the Draft Rule G-11 Amendment. As was stated above, MEAG Power does believe that careful balancing needs to be done in connection with any rule change that eliminates a long-standing and common practice in the municipal securities market and affects the contractual relationship between municipal issuers and investors. In order to minimize the burden on issuers, MEAG Power believes that, at a minimum, the Draft Rule G-11 Amendment should be prospective in its application (*i.e.*, for bonds issued after the adoption of the amendment, an underwriter would be permitted to provide consent to amendments to a bond authorizing document only if the official statements or other disclosure documents for the bonds issued under that bond authorizing document following the adoption of the amendment specifically disclose the ability of the issuer to obtain consents from underwriters.

  MEAG Power notes that several of the commentators to the February 2012 Draft Interpretive Notice discussed situations where investors in new issues of parity bonds issued under an open-ended bond authorizing document may be deemed, by virtue of their purchase of such bonds, to have consented to amendments to the bond authorizing document.[4] Based upon the advice of its bond counsel, MEAG Power believes that such deemed consents are not permitted under its earliest bond resolutions (including the two bond resolutions for which "springing" amendments already have been adopted, as described above). As a result, MEAG Power believes that any alternative that relies upon such deemed consents would not be more effective and/or less burdensome than the Draft Rule G-11 Amendment.

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[4] *See, e.g.*, the NABL Letter; and the letter, dated March 6, 2012, from Squire Sanders (US) LLP.

If you have any questions regarding the foregoing, please do not hesitate to telephone me at (770) 563-0522.

Very truly yours,

James E. Fuller

James E. Fuller
Senior Vice President,
Chief Financial Officer