

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for Original Certificate of Authorization and Initial Rates and Charges for Water and Wastewater Service in Duval, Baker and Nassau Counties, Florida by FIRST COAST REGIONAL UTILITIES, INC.

DOCKET NO. 20190168-WS

FILED: February 17, 2021

**APPLICANT FIRST COAST REGIONAL UTILITIES, INC.'S  
MOTION TO COMPEL DISCOVERY**

Applicant, FIRST COAST REGIONAL UTILITIES, INC. (hereinafter, "First Coast"), by and through its undersigned attorneys, pursuant to the Uniform Rules of Procedure, hereby moves to compel JEA to fully respond to First Coast Regional Utilities, Inc.'s Second Interrogatories to JEA, First Coast Regional Utilities, Inc.'s Second Request for Production of Documents to JEA, First Coast Regional Utilities, Inc.'s Third Interrogatories to JEA, First Coast Regional Utilities, Inc.'s Third Request for Production of Documents to JEA, and First Coast Regional Utilities, Inc.'s Third Request for Admissions to JEA, and in support thereof states:

**I. Discovery**

1. On August 31, 2020, First Coast propounded First Coast Regional Utilities, Inc.'s Second Interrogatories to JEA (hereinafter, "Second Interrogatories") via Email. By Rule, JEA's response was due by Wednesday, September 30, 2020. Rules 1.090 and 1.340, Fla. R. Civ. P.<sup>1</sup>

2. On August 31, 2020, First Coast propounded First Coast Regional Utilities, Inc.'s Second Request for Production of Documents to JEA (hereafter "Second Request for

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<sup>1</sup> The Uniform Rules provide that parties in administrative proceedings may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Fla. R. Civ. P.

Production”), via Email. By Rule, JEA’s response was due by Wednesday, September 30, 2020. Rules 1.090 and 1.340, Fla. R. Civ. P.

3. On or about September 30, 2020, JEA filed JEA’s Answers to First Coast Regional Utilities, Inc.’s Second Interrogatories to JEA, (hereinafter “Answers to Second Interrogatories”). JEA, for Interrogatories #18-#48, answered with the following: “Objection. JEA objects to this request as exceeding the scope of permissible discovery as not reasonably calculated to lead to the discovery of admissible evidence on any issue material to this proceeding.”

4. On or about September 30, 2020, JEA filed JEA’s Responses to First Coast Regional Utilities, Inc.’s Second Request for Production of Documents to JEA (Requests #16-#25) (hereinafter “Response to Second Request for Production of Documents”). JEA’s responses to Requests #21-#23 stated: “Objection. JEA objects to this request as exceeding the scope of permissible discovery as not reasonably calculated to lead to the discovery of admissible evidence on any issue material to this proceeding.”

5. On December 14, 2020, First Coast propounded First Coast Regional Utilities, Inc.’s Third Interrogatories to JEA (Interrogatories #53-113) (hereafter “Third Interrogatories”), via Email. By Rule, JEA’s response was due by Wednesday, January 13, 2021. Rules 1.090 and 1.340, Fla. R. Civ. P.

6. On December 14, 2020, First Coast propounded First Coast Regional Utilities, Inc.’s Third Request for Production of Documents to JEA (hereafter “Third Request for Production”), via Email. By Rule, JEA’s response was due by Wednesday, January 13, 2021. Rules 1.090 and 1.340, Fla. R. Civ. P.

7. On or about January 13, 2021, JEA filed JEA’s Response to First Coast

Regional Utilities, Inc.'s Third Request for Production of Documents to JEA (hereinafter "Response to Third Request for Production"). JEA, for Responses #33-#41, #43, #47-#50, and #56, responded with the following: "Objection. JEA objects to this request as exceeding the scope of permissible discovery as not reasonably calculated to lead to the discovery of admissible evidence on any issue material to this proceeding."

8. On or about January 13, 2021, JEA filed JEA's Answers to First Coast Regional Utilities, Inc.'s Third Interrogatories to JEA, (hereinafter "Answers to Third Interrogatories"). JEA, for Interrogatories #55-#57, #61-#62, #64-#65, #85-#100, #106-#109, answered with the following: "Objection. JEA objects to this request as exceeding the scope of permissible discovery as not reasonably calculated to lead to the discovery of admissible evidence on any issue material to this proceeding."

9. On December 23, 2020, First Coast propounded First Coast Regional Utilities, Inc.'s Third Request for Admissions to JEA (Requests #20-#25) (hereafter "Third Admissions"), via Email. By Rule, JEA's response was due by Friday, January 22, 2021. Rules 1.090 and 1.340, Fla. R. Civ. P.

10. On or about January 22, 2021, JEA filed JEA's Response to First Coast Regional Utilities, Inc.'s Third Request for Admissions to JEA, (hereinafter "Response to Third Admissions"). JEA, for Responses #21-#24, responded with the following: "Objection. JEA objects to this request as exceeding the scope of permissible discovery as not reasonably calculated to lead to the discovery of admissible evidence on any issue material to this proceeding."

## II. Discovery Requests<sup>2</sup>

### Franchise

**JEA has made its “Exclusive Franchise” a cornerstone of its objection to FCRU’s Application<sup>3</sup>. Consequently, any and all aspects of, or details relating to, the Franchise are discoverable to ascertain the validity and/or legality and applicability of the Franchise. Additionally, as there are franchise fees required by said Franchise, JEA must comport with certain legal requirements for calculating and establishing said fees. All information relating to those calculations and their establishment are discoverable.**

11. Interrogatory 18 states: Please advise as to the amount of the franchise fee collected from JEA water customers for the years 2017, 2018, and 2019.

12. Interrogatory 19 states: Please advise as to the amount of the franchise fee collected annually from JEA wastewater customers for the years 2017, 2018, and 2019.

13. Interrogatory 20 states: Please advise as to the amount of the franchise fee collected from JEA irrigation or reuse water customers for the years 2017, 2018, and 2019.

14. Interrogatory 21 states: Please advise as to the amount of the franchise fee collected annually from JEA electric customers for the years 2017, 2018, and 2019.

15. Interrogatory 23 states: There is an item on the current JEA bill entitled “Gross Receipts Tax”. Please identify what items the gross receipts tax is applicable to, the amount thereof, the statutory basis thereof, and to whom it is paid.

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<sup>2</sup> For brevity, rather than refer to each of the Requests for Production or Interrogatories, First Coast will refer to the requests, whether for production of documents, interrogatories, or admissions, by the request’s number as contained in each of the discovery documents.

<sup>3</sup> JEA’s Objection to First Coast Regional Utilities, Inc.’s Application for Original Certificate of Authorization and Initial Rates and Charges for Water and Wastewater Service, page 2, paragraph 4a, page 3, paragraphs 6b & c, page 5, paragraph 7c.

16. Interrogatory 24 states: There is an item on the current JEA bill entitled “Public Service Tax”. Please identify what items the public service tax is applicable to, the amount thereof, the statutory basis thereof and to whom it is paid.

17. Interrogatory 25 states: There is an item on the current JEA bill entitled “Florida State Sales Tax”. Please identify the percentage amount thereof.

18. Interrogatory 26 states: Relative to Interrogatory #24 above, please identify as to whether or not the stated Florida State Sales Tax is calculated upon the City of Jacksonville Franchise Fee in addition to the provision of utility services.

19. Interrogatory 27 states: Relative to the subject Interlocal Agreement Regarding Franchise Fees, please identify any study, report, or analysis prepared prior to the imposition of the franchise fee on the provision of electric utility services.

20. Interrogatory 28 states: Relative to the subject Interlocal Agreement Regarding Franchise fees, please identify any study, report, or analysis prepared prior to the imposition of the franchise fee on the provision of water utility services.

21. Interrogatory 29 states: Relative to the subject Interlocal Agreement Regarding Franchise Fees, any study [sic], please identify any report, or analysis prepared prior to the imposition of the franchise fee on the provision of sewer utility services.

22. Interrogatory 30 states: Relative to the subject Interlocal Agreement Regarding Franchise Fees, please identify any study, report, or analysis prepared prior to the imposition of the franchise fee on the provision of irrigation or reuse services.

23. Interrogatory 31 states: Relative to Interrogatory #23 above, please identify as to whether or not the stated Public Service Tax is calculated upon the City of Jacksonville Franchise Fee, in addition to the provision of utility services.

24. Interrogatory 32 states: Relative to Interrogatory #22 above, please identify as to whether or not the stated Gross Receipt Tax is calculated upon the City of Jacksonville Franchise Fee in addition to the provision of utility services.

25. Interrogatory 33 states: Relative to Interrogatory #23 above, please identify as to whether or not the stated Public Service Tax is calculated upon the City of Jacksonville Franchise Fee in addition to the provision of utility services.

26. Interrogatory 61 states: Please identify the feasibility report, study or other document, by whatever name known, which was utilized to determine the amount of the franchise fee to be paid by the JEA to the City of Jacksonville.

27. Request for Production 49 seeks: Copies of any feasibility report, study or other document, by whatever name known, which was utilized to determine the amount of the franchise fees to be paid by the JEA to the City of Jacksonville.

### **Financial ability**

**Throughout this proceeding, JEA has made an issue of its financial strength and vast financial reserves. However, over the past few years, numerous press releases related to JEA's need to sell its utility assets painted a very different picture. Applicant and the Commission are entitled to know which of the representations are accurate. As such, the makeup of JEA's finances, its stability, its obligations, and how JEA's finances would be impacted if the Franchise and/or the Franchise Fee were deemed to be invalid or illegal, are all discoverable.**

28. Interrogatory 34 states: Has the City of Jacksonville entered into a revenue sharing agreement with the State of Florida or any agencies thereof, that rely upon the

Franchise Fee referenced in Interrogatory #23 above?

29. Interrogatory 35 states: Has the City of Jacksonville entered into a revenue sharing agreement with the State of Florida or any agencies thereof, that rely upon the Gross Receipts Tax referenced in Interrogatory 22 above?

30. Interrogatory 36 states: Has the City of Jacksonville entered into a revenue sharing agreement with the State of Florida or any agencies thereof, that rely upon the Public Service Tax referenced in Interrogatory #23 above?

31. Interrogatory 37 states: Has the City of Jacksonville entered into a revenue sharing agreement with the State of Florida or any agencies thereof, that rely upon the Florida State Sales Tax referenced in Interrogatory #24 above?

32. Interrogatory 38 states: Has the City of Jacksonville issued any bonds, notes, certificates of indebtedness or similar borrowing instruments wherein the Franchise Fee referenced hereinabove has been pledged as revenue source, collateral or security?

33. Interrogatory 39 states: If the answer to Interrogatory #37 is yes, please identify each such instrument, including the obligor, obligee, trustee and date of issuance.

34. Interrogatory 40 states: Has the City of Jacksonville issued any bonds, notes, certificates of indebtedness or similar borrowing instruments wherein the Gross Receipts Tax referenced hereinabove has been pledged as revenue source, collateral or security?

35. Interrogatory 41 states: If the answer to Interrogatory #39 is yes, please identify each such instrument, including the obligor, obligee, trustee and date of issuance.

36. Interrogatory 42 states: Has the City of Jacksonville issued any bonds, notes, certificates of indebtedness or similar borrowing instruments wherein the Public Service Tax referenced hereinabove has been pledged as revenue source, collateral or security?

37. Interrogatory 43 states: If the answer to Interrogatory #41 is yes, please identify each such instrument, including the obligor, obligee, trustee and date of issuance.

38. Interrogatory 44 states: Please advise as to the percentage amount of the franchise fee being imposed on JEA customers in St. Johns County.

39. Interrogatory 45 states: Please advise as to the percentage amount of the franchise fee being imposed on JEA customers in Nassau County.

40. Interrogatory 46 states: Please advise as to the percentage amount of the public service tax being imposed on JEA customers in St. Johns County.

41. Interrogatory 47 states: Please advise as to the percentage amount of the public service tax being imposed on JEA customers in Nassau County.

42. Request for Production 21 seeks: Any and all documents, exhibits, or other items of tangible evidence which outlines, discloses or explains the "public service tax" and/or the statutory basis thereof.

43. Request for Production 22 seeks: Any and all documents, exhibits, or other items of tangible evidence that discusses or explains any revenue sharing agreement between the City of Jacksonville and the State of Florida or any agencies thereof that rely upon the franchise fees and/or gross receipts tax and/or public service tax paid to the City of Jacksonville by JEA.

44. Request 23 for Production seeks: Any and all documents, exhibits, or other items of tangible evidence that discusses, explains or justifies use of franchise fees, public service tax, or gross receipts tax as pledges of revenue or collateral or security in any bonds, notes or certificates of indebtedness from the City of Jacksonville or JEA.

45. Request for Production 24 seeks: Any and all documents, exhibits, or other



items of tangible evidence that establishes or discusses a nexus between the franchise fees paid by JEA to the City of Jacksonville and a reasonable rental charge for the rental value for rights of way granted to JEA under any franchise agreement with the City of Jacksonville.

46. Request for Production 50 seeks: Copies of any presentations, including memoranda, PowerPoints, and written materials, presented by the JEA to Moody's, Fitch, and/or Standard & Poor's rating agencies relative to the stabilization of JEA management.

**Ability to Serve**

**JEA has consistently stated that it is ready and willing to serve the proposed service area. As such, JEA has placed its decision-making process and any changes to its plans to provide service as an issue material to this proceeding and, therefore, discoverable. Additionally, the PUD Ordinance only requires the developer to construct treatment facilities on-site and have JEA enter into an operations contract for those facilities. There is no requirement in the PUD Ordinance for the developer to provide raw water, reuse water, or apply for water use permits. Accordingly, information regarding JEA's ability to provide water service or reuse service to and from its treatment facilities, and its available raw water capacity is material in evaluating JEA's ability to service the territory and is discoverable.**

47. Interrogatory 57 states: Has JEA recently restated its plans to provide wastewater service in and around Jacksonville International Airport? If so, in what way?

48. Interrogatory 67 states: Is it the intention of JEA to provide reclaimed water service, under pressure to proposed First Coast service area?

49. Interrogatory 68 states: If the answer to Interrogatory 67 is yes, please state, with specificity, how the JEA would go about providing such reclaimed water service to the proposed First Coast area, and at what specific pressure, expressed in pounds per square inch, that such reclaimed water would be delivered.

**JEA's Rates and Facilities**

**JEA has made its facilities and rates material issues in this proceeding. On page 2 of its Objection, JEA contends that “If the Application is granted, residents within the proposed service area, and the surrounding region, may be precluded from obtaining water and wastewater services of better quality at a lower cost through JEA, with its available economies of scale. Because customer rates are a function, among other things, of the cost of operation and maintenance, the cost of capital improvements and expansions, the cost of capital projects required to comply with regulatory and environmental laws and policies, any and all issues contributing to, affecting or concerning JEA’s facilities, economies of scale and/or rates, whether now or in the foreseeable future, are discoverable.**

50. Interrogatory 64 states: Please identify each and every wastewater treatment plant (“WWTP”) construction or expansion project of 1.0 mgd or greater undertaken by the JEA over the last 20 years.

51. Interrogatory 65 states: As to Interrogatory number 64 above, please provide, as to each such WWTP Project: (i) the name of the Project, (ii) the size of the Project, (iii) the cost of the Project, (iv) the timing from Project consideration to approval, (v) the timing from submission to capital plan and budget approval to financing of the

Project, and (vi) and the overall timing from project consideration to placing that Project into service.

52. Interrogatory 85 states: What is the status of JEA's Southwest WWTP expansion schedule?

53. Interrogatory 86 states: Has JEA filed any status report or other documents with the FDEP within the last three years relative to its schedule for its Southwest WWTP expansion?

54. Interrogatory 87 states: Is it true that JEA has recently proposed to reduce the size of the next increment of the expansion of its Southwest WWTP?

55. Interrogatory 88 states: Is it true that JEA provides reclaimed water service to less than 50% of its service area?

56. Interrogatory 89 states: If the answer to Interrogatory 88 above is no, to what percentage of its wastewater service area does JEA provide water service?

57. Interrogatory 90 states: What is the existing proposed cost for JEA to provide alternative water facilities and nontraditional capacity within its service area as referenced in Item 48 of WUP?

58. Interrogatory 106 states: What is the estimated capital cost for the JEA to comply with the conditions for renewal or expansion of its WUP?

59. Request for Production 33 seeks: A copy of JEA's septic tank phase out program.

60. Request for Production 34 states: Recent newspaper articles have discussed JEA's need to eliminate wastewater effluent discharge into the St. Johns River, including water bodies adjacent thereto. Please provide all notes, minutes, memoranda, and other

documents of a similar or analogous nature regarding any internal or external JEA staff meeting concerning phase out of discharge into the river or tributaries prepared over the last 36 months.

61. Admission Request 21 states: Admit that JEA discharges treated wastewater into the St. Johns River and/or its tributaries (“River”).

62. Admission Request 22 states: Admit that there is legislation being considered by the Florida legislature that would no longer allow JEA to discharge treated wastewater into the River.

63. Admission Request 23 states: Admit that for JEA to discontinue discharging treated wastewater into the River would require substantial expense and significant changes to how JEA currently disposes of treated wastewater.

64. Admission Request 24 states: Admit that changing the manner in which JEA currently disposes of treated wastewater will likely result in further increases in rates to its customers.

65. Request for Production 43 seeks: Any and all estimates of capital cost of compliance with the current JEA WUP conditions.<sup>4</sup>

66. Request for Production 56 seeks: Copies of any and all reports or other documents submitted by the JEA to the FDEP relative to its Southwest WWTP.

### **JEA’s Standard Operating Procedures and Development Procedures**

**In its Objection, JEA stated that FCRU’s proposal to finance, construct and eventually sell the facilities to JEA was incongruent with JEA’s operational and underwriting standards. JEA also stated that its proposals to**

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<sup>4</sup> This Request also addresses the JEA’s ability to provide raw water to the potable water treatment capacity plants it seeks to operate.

**FCRU were consistent with JEA's standard operating procedures and development procedures. JEA appears, however, to have employed a myriad of different operating and development procedures throughout Duval, Nassau and St. Johns County, depending on the project at hand. Consequently, in an effort to discover the basis for JEA's objections and its operating and development procedures, information regarding these standards and procedures is discoverable.**

67. Interrogatory 48 states: Relative to the Nocatee development project (Project) in St. Johns County, please identify when the JEA agreed to provide water, wastewater and reuse to that Project and please identify all such developer agreements, service agreements, or contracts of such nature between the developer(s) of all or any portion of such Project.

68. Interrogatory 91 states: Did the JEA or its predecessor, the City of Jacksonville, build a water plant on a site provided by others and at no cost for the Mayo Clinic?

69. Interrogatory 92 states: What was the percentage of the project cost paid for by the Mayo Clinic to extend wastewater service to Mayo Clinic?

70. Interrogatory 93 states: What was the source of the funding for JEA's extension of water and wastewater service to the Mayo Clinic?

71. Interrogatory 94 states: Did the JEA agree to provide water and/or wastewater service to that portion of Nocatee development located in Duval County at less than full recovery of its cost to do so?

72. Interrogatory 95 states: Did the JEA purchase the Nocatee utility system in

St. John's County?

73. Interrogatory 96 states: What was the funding source of JEA's purchase of the Nocatee system in St. John's County?

74. Interrogatory 97 states: Did the JEA extend water and wastewater service lines and treatment plant capacity to the Nocatee project in St. John's County at less than full recovery cost to do so?

75. Interrogatory 98 states: What was the funding source of the JEA's extension of water and wastewater service lines and treatment capacity to the Nocatee development in St. John's County?

76. Interrogatory 99 states: Did the JEA pay for any of the water and wastewater facilities utilized to provide service in the Cecil Commerce Center area?

77. Interrogatory 100 states: Did the JEA or City of Jacksonville act as the "developer" for the water and wastewater facilities at the Cecil Commerce Center?

78. Request for Production 25 seeks: Any and all documents, exhibits, or other items of tangible evidence that establishes or discusses the relationship between JEA and the Nocatee development in St. Johns County relative to when the JEA agreed to provide water, wastewater and reuse to that Project and please identify and produce all such developer agreements, service agreements, or contracts of such nature between the developer(s) of all or any portion of such Project.

79. Request for Production 35 seeks: Any and all memoranda, studies or documents of a similar or analogous nature relative to the provision of water and/or wastewater service to the Mayo Clinic.

80. Request for Production 36 seeks: Any and all memoranda, studies or

documents of a similar or analogous nature relative to the provision of water and/or wastewater service to the Cecil Commerce Center area.

81. Request for Production 37 seeks: Any and all memoranda, studies or documents of a similar or analogous nature relative to the provision of water and/or wastewater service to the Crawford Diamond Project in Nassau County.

82. Request for Production 38 seeks: Any and all memoranda, studies or documents of a similar or analogous nature, relating to the provision of water and/or wastewater service to the expansion of the Jacksonville International Airport.

83. Request for Production 39 seeks: Copies of all new developer agreements entered into over the last three years for service within three miles of the perimeter of the Jacksonville International Airport.

84. Request for Production 41 seeks: Copies of any and all memoranda, Memorandum of Intent, emails, or related documents, over the last three years between JEA staff and/or consultants with developers, whereby the developers would donate 100 acres or more to the JEA for the construction of a new wastewater treatment plant.

85. Request for Production 47 seeks: Any written developer agreement or other agreement by whatever name known to provide water and wastewater service to the Crawford Diamond Development in Nassau County.

86. Request for Production 48 seeks: Any written developer agreement or other agreement by whatever name known to provide water and wastewater service to the new development in and around the Jacksonville International Airport.

87. With the exception of Request 25, each and every Interrogatory and Request listed above was responded to by JEA with the following boilerplate objection: "Objection.

JEA objects to this request as exceeding the scope of permissible discovery as not reasonably calculated to lead to the discovery of admissible evidence on any issue material to this proceeding.” No specific grounds were stated as the basis for these objections.

88. JEA’s response to Request 25 merely parroted the following boilerplate objection: “Objection. JEA objects to this request as vague, overbroad and exceeding the scope of permissible discovery as not reasonably calculated to lead to the discovery of admissible evidence on any issue material to this proceeding.” As with its other objections, JEA failed to state with specificity why this Request was vague, overbroad, and was not calculated to lead to the discovery of admissible evidence in this proceeding, or respond with any documentation responsive to this Request.

89. JEA’s objections, and refusal to answer specific interrogatories, admissions or requests for documents, were in response to discovery requests concerning JEA’s alleged exclusive franchise and related issues, JEA’s finances, JEA’s rates, JEA’s provision of services, and JEA’s standard operating procedures and development procedures all of which JEA has specifically maintained are issues material to this proceeding. Such discovery is requesting information to determine JEA’s ability and cost to provide service to the proposed First Coast service area which is a key issue under the provisions of the PSC Statutes and rules.

**90. First Coast seeks this information to determine whether the franchise itself is illegal, either in whole or in part, and thus unenforceable. That determination could adversely affect the underpinnings of JEA’s financings, and its ability to continue serving its existing customers without instituting massive rate increases, and for that matter attempting to serve**



**First Coast at all.**

91. JEA's petition in this case (ne "Objection") graphically demonstrates that this discovery is reasonably calculated to lead to the discovery of admissible information. JEA's petition alleges that a) if the application is granted, residents within the proposed service area may be precluded from obtaining water and wastewater services "of better quality at a lower cost" through JEA; b) that JEA is ready, willing, and able to serve the water and wastewater needs of the proposed service area; and c) that certification of the area to First Coast is not in the public interest. While responding to discovery in a litigation which it initiated may represent an inconvenience to JEA, First Coast has every right under the applicable rules of discovery to delve into the foundation for, and the defenses against, these allegations. The First Coast discovery that JEA has effectively and *de facto* refused to respond to is, at a minimum, reasonably calculated to address those broad issues as framed within the petition.

**III. JEA has failed to adequately respond to the above-referenced Interrogatories, Admissions and Requests for Production**

92. Permissible discovery at the pretrial stage is not fettered with the rules of admissibility that apply at trial, and utmost freedom is allowed. *Jones v. Seaboard Coast Railroad Co.*, 297 So.2d 861, 863 (Fla. 2d DCA 1974).

93. Boilerplate approaches are inconsistent with rules and can result in the waiver of all objections and even sanctions. Accordingly, responses to discovery must be thoughtful, case-specific, and factually supported. *See e.g.*, Fla. R. Civ. P. 1.350(b) ("the reasons for the objection shall be stated"); the Florida Bar Guidelines for Professional

Conduct, Section H.2 (all grounds for an objection must be stated with specificity); *Deutsche Bank Nat'l Trust Co. v. Baker*, 199 So.3d 967, n.2 (Fla. 4<sup>th</sup> DCA 2016).

94. Objections and responses to discovery requests are subject to Section 57.105, Fla. Stat., which authorizes the award of sanctions against parties who raise claims and defenses not supported by material facts. Specifically, sanctions have been awarded when a party filed a motion to dismiss, and the same party objects to discovery requests, the subject of which was directed to the issues raised in the motion to dismiss. *Pronman v. Styles*, 163 So.3d 535 (Fla. 4<sup>th</sup> DCA 2015). Such conduct has been found to constitute discovery abuse and improper delaying tactics. *See, Healthcare Corp. v. Hamilton*, 740 So.2d 1189, 1193 n.2 (Fla. 4<sup>th</sup> DCA 1999).

95. In the instant case, JEA's boilerplate approach to its objections to the Interrogatories, Admissions or the Requests for Production listed above is inconsistent with the rules. Moreover, the subject matter of the requests was raised by JEA in its Objection, which sought relief based thereon, thus constituting a formal motion to dismiss.

96. JEA has made its franchise, its financial strength, its rates, its standard operating procedures and development procedures, and its ability to serve, cornerstones of its objection to First Coast's Application. As such, JEA has propounded these issues as material to the current proceedings. First Coast is entitled to seek information concerning these issues, whether ultimately admissible at hearing or not.

97. JEA's objections, therefore, are inconsistent with the rules, constitute discovery abuses, and are subject to sanctions.

#### **IV. Attorneys' fees**

98. Rule 1.380(4) Florida Rules of Civil Procedure, provides that if a motion to

compel is granted "the court shall require the party . . . whose conduct necessitated the motion . . . to pay to the moving party the reasonable expenses incurred in obtaining the order . . ."

**V. Conclusion**

99. JEA was under an unquestionable obligation to respond fully and truthfully to the Interrogatories, Admissions and Requests for Production listed above but, for whatever reason, it has elected to disregard its responsibilities under applicable law and ignore both. JEA has failed to support any of its objections with material facts, instead opting for mere boilerplate objections as an improper delaying tactic. First Coast has attempted to resolve this matter without Commission intervention, but counsel for JEA has rebuffed those efforts. It is clear under applicable law that as a result of JEA's refusal to fully and truthfully respond to the Interrogatories, Admissions and Requests for Production, or support its objections with specificity and material facts, it has abused the discovery process and is subject to sanctions.

100. Consequently, First Coast respectfully submits that this Commission should enter an order compelling JEA to fully respond to the Interrogatories, Admissions and Requests for Production listed herein without asserting any objections. Alternatively, should JEA maintain its position that its franchise, finances, facilities, procedures and provision of services are not material issues to this proceeding, the Commission should disregard those issues in its review of First Coast's Application.

**VI. Rule 28-106.204, F.A.C.**

101. First Coast contacted counsel for the JEA with a request that this matter be resolved without need for a motion. JEA's counsel stated that JEA will not voluntarily

produce the requested information.

**WHEREFORE**, First Coast respectfully requests the Commission to enter an Order:

(a) Compelling JEA to fully respond to the Interrogatories, Admissions and Requests for Production contained herein without asserting any objections;

(b) Alternatively, declaring that JEA has waived its ability to assert any reference to its alleged “exclusive franchise”, its financial strength, its facilities, its operating or development procedures, or its ability or costs to provide service in these proceedings;

(c) Awarding reasonable attorneys’ fees and costs incurred in obtaining an Order on the instant Motion to Compel; and

(d) Awarding any other relief which the Commission deems appropriate.

Respectfully submitted this 17th day of February, 2021.

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/s/ Robert C. Brannan  
Attorneys for First Coast Regional Utilities, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail to the following this 17th day of February, 2021:

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