

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Original Certificate of) DOCKET NO. 20190168-WS
Authorization and Initial Rates and Charges)
for Water and Wastewater Service in Duval,) FILED: January 24, 2022
Baker and Nassau Counties, Florida by)
FIRST COAST REGIONAL UTILITIES,)
INC.)
_____)

JEA’s MOTION TO STRIKE TESTIMONY OF DEBORAH D. SWAIN

Pursuant to rule 28-106.204, Florida Administrative Code, JEA moves to strike certain portions of the Rebuttal Testimony of Deborah D. Swain filed by the Applicant First Coast Regional Utilities, Inc. (“Applicant” or “FCRU”). In support, JEA states:

1. On July 31, 2020, FCRU filed the Rebuttal Testimony of Deborah D. Swain.
2. Page 8, line 20, beginning with the word “Because,” through page 9, line 24 of the Rebuttal Testimony, should be stricken as improper supplemental direct testimony. Likewise, Exhibit DDS-9 referenced in the testimony should be stricken.
3. “While a presiding officer has significant discretion in allowing testimony, the party filing testimony has an obligation to show that the testimony it has presented is legally proper upon a challenge by another party to the case.” *In re TDS Telecom*, Docket No. 050125-TP, Order No. PSC-06-0261-PCO-TP (Fla. P.S.C. Mar. 28, 2006).
4. With respect to rebuttal testimony, it “should be limited . . . to issues brought out by the opposing party’s direct case.” *Id.* “It is not the purpose of rebuttal testimony to add additional facts to those submitted by the plaintiff in his case-in-chief unless such facts are required by the new matter developed by the defendant.” *Id.*
5. In *In re TDS Telecom*, the Commission determined that some of the witness’s rebuttal testimony was “clearly direct” and therefore was stricken. Similarly, in *In re Aloha*

Utilities, Docket No. 991643-SU, Order No. PSC-00-1779-PCO-SU (Fla. P.S.C. Sept. 29, 2000), the Commission granted a motion to strike rebuttal testimony finding that it was testimony that “could have or should have” been filed in direct testimony.

6. The referenced Rebuttal Testimony is similar to that which was stricken in *In re TDS Telecom* and *In re Aloha Utilities*. Specifically, it references testimony provided by Julie Crawford, a witness for JEA. In Ms. Crawford’s testimony, filed on June 26, 2020, she provides a comparison of JEA’s rates and charges for water and wastewater service to FCRU’s proposed rates.

7. In Ms. Swain’s Rebuttal Testimony, she acknowledges Ms. Crawford’s rate calculations are correct (page 5, line 16), and that the rates FCRU is proposing are comparatively high (the first sentence on page 8, line 20). Ms. Swain offers no testimony that rebuts the rate calculation or the comparison of rates done by Ms. Crawford.

8. Instead, Ms. Swain offers what amounts to supplemental direct testimony on an alternative financing scheme to reduce FCRU’s revenue requirements. The testimony could have and should have been filed in direct testimony. It clearly adds additional facts to those submitted in FCRU’s direct case and impermissibly exceeds the scope of Ms. Crawford’s testimony.

WHEREFORE, JEA requests that Page 8, line 20 beginning with the word “Because” through page 9, line 24 of Deborah D. Swain’s Rebuttal Testimony and Exhibit DDS-9 be struck as improper supplemental direct testimony.

Respectfully submitted this 24th day of January, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail to the following this 24th day of January, 2022.

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