

**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

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**FIRST COAST REGIONAL UTILITIES, INC.'S  
RESPONSE TO JEA'S UPDATE IN RESPONSE TO THE  
COMMISSION'S JULY 28, 2020 STAY ORDER**

First Coast Regional Utilities, Inc. ("First Coast") by and through undersigned counsel, hereby responds to JEA's "Update in Response to the Commission's July 28, 2020 Stay Order" and states:

1. The Commission's Order granting First Coast's Motion for Stay of Proceedings, issued July 28, 2020, required the parties to report to the Commission (by September 28th) as to the status of the docket, any settlement negotiations, and the "need, if any, to continue or cease this Stay of Proceedings."

2. JEA's "Update in Response to the Commission July 28, 2020 Stay Order" filed on September 25th, is much more than a status report. It is effectively a motion asking for: (i) a dismissal of the First Coast petition; (ii) or, an indefinite stay pending the filing and completion of a Circuit Court Declaratory Judgment action as to the legality of the "dedication language" of a Planned Unit Development ("PUD") Ordinance over much, but not all, of the lands that First Coast seeks to serve; (iii) or, the City of Jacksonville revising the PUD Ordinance to said lands. Because JEA's "update" seeks relief, it is effectively a motion, therefore consistent with the Uniform Rules First Coast files this reply.

3. JEA's "update" offers several ostensible "facts" in support thereof. Despite JEA's unsworn and unsupported suggestions to the contrary, First Coast will prove that there is a need for the utility services First Coast proposes to provide in the area envisioned; that the area envisioned is in three separate counties; and that JEA is in no position to provide such needed services to any portion of the service area absent the developer building such facilities and dedicating them to the JEA.

4. JEA has taken no affirmative steps to provide services to the area in question notwithstanding that the City of Jacksonville/Duval County portions of such lands are fully vested for the construction of well in excess of 15,000 residential and commercial units. Indeed, JEA has announced it will not serve the area absent developer's financing of 100% of the utilities on its behalf. JEA has not offered any option-which requires its own participation, choosing instead to block every other alternative.

5. The underlying PUD order requires the developer to build the needed water and wastewater facilities within the PUD area. In response to the developer's approach to JEA in this regard, JEA actually requested that the First Coast developer build substantial portions of the subject facilities offsite so that JEA could address the service need outside of the PUD area at the expense of the owners of First Coast. JEA would have First Coast build the facilities outside of the PUD in violation of the PUD ordinance, in an area where JEA is prohibited from building such facilities on its own by virtue of the Jacksonville 2030 Comprehensive Plan.

6. First Coast, however, can easily comply with the PUD Order by building water and wastewater treatment plants onsite or in Baker County, and contracting with JEA to take on some operational responsibilities, in some form or fashion, of the pipes, pumps, collection and

distribution systems located within the City of Jacksonville as a contract operator, if that is ultimately found necessary.

7. First Coast is entitled to the applied-for certificates as it will design, finance, permit, build, and make all of the extension decisions as to service throughout its service area without any input from JEA. There is no need for JEA's services beyond potential contract operations, which would be limited and whose scope would be a matter of contract, of a part of, but not all of, First Coast's facilities and, in any case, JEA will not be involved in First Coast's control, management, financing, permitting, construction, billing, collection, and related activities.

8. It is in the public interest for this Commission to review and approve First Coast's operation and maintenance expenses, including the terms of any limited operations contract that it may enter into with JEA. It would be disingenuous for JEA to dispute that proposition. Even if, hypothetically, JEA had some limited operational responsibilities over a portion of the system, certification would still be appropriate.

9. It is in total harmony with the referenced City of Jacksonville/JEA "Franchise" for First Coast to own, manage, and control its own utility facilities within the City of Jacksonville notwithstanding that JEA might potentially have some (as yet unspecified) operational responsibilities for certain (as yet undetermined) facilities on First Coast's behalf. This is further consistent with the Jacksonville City Charter, Section 21.02 (a) referenced in the Franchise Fee Agreement mentioned several times in JEA's pleadings in this docket, and provisions of the Jacksonville 2030 Comprehensive Plan.

10. Ultimately, the "facts" will show that JEA is a utility in disarray, and has been so during the entire pendency of this docket. It is facing, literally, billions of dollars in mandatory capital expenditures for required upgrades to its water and wastewater systems, it is reneging on

promises made to others for extension of water and wastewater services, and its management is, at present, unstable and unreliable.<sup>1</sup>

11. JEA's "update" as referenced above bares naked its desire to avoid having this case heard as it knows that it is asking this Commission to turn utility law on its head; in short, it seeks to overthrow the long-held principle of utility law that a utility system, whether public or private, may not claim territorial rights and not serve that territory in the face of another utility system that desires to do so. In the past, when faced with territorial issues, JEA has, properly, advanced substantial funds in order to maintain its service area claims. See, for example, JEA's history relative to Nocatee or its dispute with the Clay County Utility Authority.

12. Thus, First Coast requests the Commission to deny JEA's "motion" to either dismiss First Coast's Application, or for an indefinite stay pending the filing and completion of a Circuit Court Declaratory Judgment action as to the "dedication language" in the PUD Ordinance, and enter an updated Order Establishing Procedure, confirming dates for completion of discovery and prehearing, and set this matter for hearing as expeditiously as possible. The only suggestion in JEA's "update" that First Coast agrees with is that the pending motions of the Commission's jurisdiction should be heard as soon as possible. This matter is ripe for a decision and First Coast

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<sup>1</sup> The JEA Board is currently in the process of selecting a new Executive Director. First Coast will oppose any efforts by JEA to seek further delay of this case based upon another management change in JEA.

is entitled under the facts and law to proceed accordingly.

Respectfully submitted this 2nd day of October, 2020, by:

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email on this 2nd day of October, 2020 to:

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