

**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:  
Baker and Nassau Counties, Florida by )  
FIRST COAST REGIONAL UTILITIES, )  
INC. )  
\_\_\_\_\_ )

**JEA’S MOTION TO COMPEL DISCOVERY FROM FIRST COAST**

JEA, pursuant to Rule 28-106.204, Florida Administrative Code, and Rule 1.380, Florida Rules of Civil Procedure, moves to compel discovery from the Applicant First Coast Regional Utilities, LLC (“First Coast”) on JEA interrogatories 2, 21, 96-100, and 102 as well as JEA’s requests for production 7 and 27.

This docket is an application submitted by First Coast pursuant to sections 367.031 and 367.045, Florida Statutes, and Rule 25-30.033, Florida Administrative Code, for an original certificate of authorization to operate a water and wastewater utility in Duval, Baker, and Nassau counties. In the subject discovery responses, First Coast either fails to answer or provides meritless objections to JEA discovery requests that are directly relevant to the issues in this docket. Each is discussed in turn below.

**JEA’s INTERROGATORIES TO FIRST COAST**

**JEA Interrogatory 2 to First Coast**

JEA Interrogatory 2 states:

Identify all persons that own a five (5) percent or greater interest in the Applicant, either through a direct ownership interest in the Applicant or through an ownership interest in an entity (such as 301 Capital Partners, LLC) that in turn has an ownership interest in the Applicant, and for each such person provide their ownership percentage.

First Coast responded as follows:

301 Capital Partners, LLC owns 100% of the Applicant. To the extent that this request seeks the identities owning 5% or more of 301 Capital Partners, LLC, or the members/shareholders of those entities or the entities further up the corporate chain, Applicant objects pending the Commission entering a confidentiality order regarding such disclosures.

This response is deficient because it leaves the identities of the ultimate owners of the Applicant First Coast completely unknown to the Commission. Rule 25-30.033(1)(e), F.A.C. requires each applicant to provide to the Commission the “name(s), address(es), and percentage of ownership of each entity or person that owns or will own more than 5 percent interest in the utility.” (emphasis added).

First Coast stated in its response only that 301 Capital Partners, LLC owns 100% of the Applicant. It never moved for a “confidentiality order regarding such disclosures.” By not disclosing the identities of the 5% or greater owners of 301 Capital Partners, LLC, the Commission is left with no information on the individuals who actually own (and therefore control) the Applicant. The ultimate owners of 301 Capital Partners, LLC, could be anyone. They seek to own and operate a regulated utility in Florida but have yet to even identify themselves to the Commission. As required by the above rule, First Coast should be compelled to identify those individuals who own a 5% or greater stake in it, either directly or through other entities.

**JEA Interrogatory 21 to First Coast**

JEA Interrogatory 21 states:

Please describe the proposed timeframes for each phase of the development proposed by 301 Capital Partners in Duval, Nassau and Baker Counties.

First Coast responded as follows:

The proposed timeframes are dependent on the provision of utilities to the site and the resolution of the current matter pending before the Commission.

Rule 25-30.033(1)(k), F.A.C., states that, among other things, in order to demonstrate the need for service the applicant must provide “[t]he number of customers currently being served and proposed to be served” and under 25-30.033(1)(l) must provide “[t]he date applicant began or plans to begin serving customers.” Timeframes are required for the Commission to evaluate need for service across the entire proposed service territory.

First Coast is requesting a certificate to serve 15,000 ERCs in the City of Jacksonville, the only portion of the proposed service territory currently entitled for development (App., p. 5). Phase 1 of the development involves 2800 of these connections, over the next decade (App. Feasibility Report, p. 11). Put another way, more than 80% of the connections just within the City are more than a decade away and the timeframe for any connections in Nassau and Baker counties is completely unstated by First Coast. Any supposed need for service in those counties could be decades away at least. First Coast should be required to provide timeframes for each phase of the development so that need for service across the entire proposed service territory can be evaluated.

#### **JEA Interrogatories 96-100 and 102 to First Coast**

JEA Interrogatories 96-100 and 102 to First Coast all address the “Fair Market Value Balance Sheet” submitted by First Coast in its Application (Application Exh. G). To show its financial strength, First Coast relies on the financial condition of its parent, 301 Capital Partners, LLC, which in their “Fair Market Value Balance Sheet” is shown as shown as ostensibly having a current net worth of **\$128.9 million**, virtually all of which deriving from the land.

The JEA interrogatories addressing the “Fair Market Value Balance Sheet” are as follows:

96. Do any of the assets and liabilities identified on the Fair Market Value Balance Sheet pertain to any properties other than the Development referenced in First Coast's Application? If so, please specify which portion(s) relate to other properties.

97. When did 301 Capital Partners, LLC purchase the Development from ICI Villages, LLC and what was the total purchase price?

98. On the Fair Market Value Balance Sheet, the line marked as "Total 13000 – Land" shows a fair market value of \$122,623,556.05. Identify all individual assets that comprise this "total," and for each individual asset state the cost, date acquired, asserted fair market value, and all information supporting the fair market value calculation.

99. On the Fair Market Value Balance Sheet, the line marked as "Total 13400 – Rights to Baker County Land" shows a fair market value of \$13,184,100.00. Describe this "right," the amount paid, date acquired, and all information supporting your fair market value calculation.

100. On the Fair Market Value Balance Sheet, total long term liabilities are shown as \$8,721,684.60. Identify and describe the individual liability comprising this total and state whether any such liability is secured by a mortgage or other pledge of Development property.

102. State the net worth (total assets less total liabilities) of 301 Capital Partners, LLC effective May 18, 2019 with assets valued at cost instead of at the asserted "fair market value."

First Coast responded to all these interrogatories with the same objection:

Objection. First Coast objects to this request as exceeding the scope of permissible discovery as not calculated to lead to the discovery of admissible evidence on any issue material to this proceeding.

FCRU's objections are without merit and answers to JEA interrogatories 96-100 and 102 should be compelled because discovery directed to the financial strength, or lack thereof, of the applicant is directly relevant to this docket. Rule 25-30.033(1)(h), F.A.C. requires an applicant for a certificate of authorization to show its financial ability, making the referenced JEA interrogatories relevant. The Rule specifically requires the applicant to provide:

1. A detailed financial statement (balance sheet and income statement), audited if available, of the financial condition of the applicant, which shows all assets and liabilities of every kind and character. The financial statements shall be for the preceding calendar or fiscal year. The financial statement shall be prepared in accordance with Rule 25-

30.115, F.A.C. If available, a statement of the sources and uses of funds shall also be provided; and,

2. A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding. The list need not include any such person or entity holding less than 5 percent ownership interest in the utility. The applicant shall provide copies of any financial agreements between the listed entities and the utility and proof of the listed entities' ability to provide funding, such as financial statements. (emphasis added)

On page 8 of its Application, First Coast states that the developer, its parent company 301 Capital Partners, LLC, will provide the necessary financial support. The Developer “will provide necessary start-up funding as well as funds sufficient to cover operational shortfalls during the utility’s initial years of operation” and “[e]vidence that such funding will be available is shown by attached Exhibit ‘G’ . . . including a copy of the current balance sheet. . . .”

Contrary to rule 25-30.033(1)(h)1., F.A.C., no financial statements were provided in the Application relating to the Applicant, First Coast. Rule 25-30.033(1)(h)2., F.A.C., also requires “proof of the listed entities’ [i.e., 301 Capital Partners, LLC’s] ability to provide funding, such as financial statements.”

The “Fair Market Value Balance Sheet” submitted by First Coast in its Application (Application Exh. G) is unaudited, not based on cost<sup>1</sup>, and shows a net value for 301 Capital Partners, LLC (\$128.9 million) that is questionable on its face. In Duval County’s official records, there appear to be two recorded deeds from ICI Villages, LLC to 301 Capital Partners, LLC, both dated October 18, 2017. The first is in the official records of Duval County at Book

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<sup>1</sup> Financial statements for water and wastewater utilities have to be prepared on a cost basis, not a “fair market value” basis. Rule 25-30.033(1)(h), F.A.C. provides that the “financial statement shall be prepared in accordance with Rule 25-30.115, F.A.C.” Rule 25-30.115 requires accounts and records to be maintained “in conformity with the 1996 NARUC Uniform Systems of Accounts adopted by the National Association of Regulatory Utility Commissioners.” The 1996 NARUC Uniform Systems of Accounts requires assets to be valued on a cost basis.

18162, Page 1077 showing documentary tax stamps of \$128,192.40, which equates to a purchase price of \$18,313,200. The second is recorded at Book 18162, Page 1088, showing documentary tax stamps of \$62,097, which equates to a purchase price of \$8,871,000. The two add up to about \$27 million, less any mortgage loans against the property. The \$100 million plus difference between this number and the stated “fair market value” of \$128.9 million demands closer scrutiny of the finances of 301 Capital Partners, LLC, upon whom First Coast is relying for its financial support.<sup>2</sup>

The financial strength of the applicant is directly relevant to this docket. Because the applicant First Coast states that it relies on its parent 301 Capital Partners, LLC, for financial support, JEA interrogatories 96-100 and 102 are directly relevant and First Coast should be required to answer them.

### **JEA’s REQUESTS FOR PRODUCTION TO FIRST COAST**

#### **JEA Request for Production 7 to First Coast**

JEA Request for Production 7 seeks:

All documents that evidence that ownership interests in the Applicant of all persons who own five (5) percent or more of the Applicant either through a direct ownership interest in the Applicant or indirectly through an ownership interest in another person that has an ownership interest in the Applicant.

First Coast responded as follows:

301 Capital Partners, LLC owns 100% of the Applicant. If this request seeks information on the entities that hold interests in 301 Capital Partners, LLC Applicant objects subject to the Commission entering a confidentiality order regarding such information.

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<sup>2</sup> Of course, the unliquidated value of the development land, whatever the correct value of the land may be, does nothing to show that the Applicant First Coast has any liquid financial resources to construct, operate, and maintain adequate water, wastewater, and reuse treatment facilities.

As discussed above regarding JEA Interrogatory 2, rule 25-30.033(1)(e) requires the Applicant to identify all entities or persons that own or will own more than a five 5 percent interest in the utility. First Coast has failed to do identify its owners as required by the rule and should be compelled to produce documents that evidence those ownership interests.

**JEA Request for Production 27 to First Coast**

JEA Request for Production 27 provides as follows:

Exhibit G to your Application contains a letter from 301 Capital Partners, LLC to the Commission attaching “[a]s evidence of our financial capability . . . a copy of our recent balance sheet” followed by a page entitled “Fair Market Value Balance Sheet May 18, 2019.” Please produce all documents supporting each line item on the Fair Market Value Balance Sheet including without limitation all documents supporting the “fair market value” calculation of each asset of 301 Capital Partners, LLC.

First Coast responded as follows:

Objection. First Coast objects to this request as exceeding the scope of permissible discovery as not calculated to lead to the discovery of admissible evidence on any issue material to this proceeding.

As explained above, Exhibit G purports to establish the financial ability of 301 Capital Partners, LLC, who is supporting First Coast for purposes of its application. Accordingly, documents supporting the line items within the Fair Market Value Balance Sheet are directly relevant to this proceeding, specifically FCRU’s financial ability as required by Rule 25-30.033(1)(h). First Coast should be compelled to produce such documents.

WHEREFORE, JEA requests that this motion be granted and this Commission enter an Order compelling First Coast to answer JEA interrogatories 2, 21, 96-100, and 102 and produce all documents in their possession, custody or control responsive to JEA’s requests for production 7 and 27. JEA further requests the Commission require First Coast to pay JEA the reasonable expenses incurred in obtaining the order, including attorney’s fees, as provided by rule 1.380(a)(4), Fla. R. Civ. P.

In accordance with Rule 28-106.206, F.A.C., and Rule 1.380(a)(2), Fla. R. Civ. P., undersigned counsel for JEA conferred with counsel for First Coast in an attempt to obtain the subject discovery without the need for the Commission's intervention. First Coast maintains its objections to the discovery and objects to the granting of this motion.

Respectfully submitted this 16th day of February, 2021.

*/s/ Thomas A. Crabb*

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Thomas A. Crabb  
Florida Bar No. 25846  
Susan F. Clark  
Florida Bar No. 179580  
Radey Law Firm  
301 South Bronough Street, Suite 200  
Tallahassee, FL 32301  
(850) 425-6654  
tcrabb@radeylaw.com  
sclark@radeylaw.com

Attorneys for JEA



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail to the following this 16<sup>th</sup> day of February, 2021.

Melinda Watts  
Bianca Lherisson  
Jennifer Crawford  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
mwatts@psc.state.fl.us  
BLheriss@psc.state.fl.us  
jcrawfor@psc.state.fl.us

Office of Public Counsel  
J.R. Kelly  
Mireille Fall-Fry  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399  
fall-fry.mireille@leg.state.fl.us  
Kelly.jr@leg.state.fl.us

William E. Sundstrom  
Robert C. Brannan  
Sundstrom & Mindlin, LLP  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301  
wsundstrom@sflaw.com  
rbrannan@sflaw.com

John L. Wharton  
Dean Mead and Dunbar  
215 South Monroe Street, Suite 815  
Tallahassee, FL 32301  
jwharton@deanmead.com  
hschack@deanmead.com

*/s/ Thomas A. Crabb*

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