

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 FOR LEAVE TO SERVE
ONE ADDITIONAL PRODUCTION REQUEST TO APPLICANT
AND REQUEST FOR EXPEDITED RESPONSE

Pursuant to rule 28-106.204, Florida Administrative Code, JEA requests leave to file one additional request for production on the Applicant First Coast Regional Utilities, Inc., (the “Applicant”). In this case, JEA asks the Applicant to provide, on an expedited basis, a valuation of its parent entity, 301 Capital Partners, LLC (“301”), which was performed in the last two months for the purpose of a partner buy-out in 301. The document came to light, for the first time, during a discovery deposition of Applicant’s President (Robert Kennelly) on January 19, 2022. Because this valuation shows a significantly different net value than any information the Applicant has previously provided to the Commission, the valuation is discoverable, admissible and highly relevant to the Commission’s inquiry here. JEA should accordingly be provided leave to serve one (1) additional request for production in order to receive the undisclosed valuation on an expedited basis prior to hearing. In further support, JEA states:

1. On October 19, 2021, the Commission issued its Second Order Modifying Order Establishing Procedure (“Second Order”).
2. The Second Order established a discovery deadline of January 19, 2022.
3. On January 19, 2022, JEA counsel took the deposition of Robert Kennelly, the President of the Applicant and a material witness in this proceeding.

4. During the deposition, JEA counsel asked Mr. Kennelly about whether the Applicant had the necessary financial ability to provide service, given that the Applicant in this case is entirely relying upon assets of its parent entity, 301. *See Application*, p. 8 (“... 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. Evidence that such funding will be available is shown by attached Exhibit “G” . . .”).

5. In Exhibit “G,” the Applicant provided a Fair Market Balance Sheet of Total Liabilities and Equity for 301 (the Developer) in the amount of \$137,618,253.27 and dated May 18, 2019. *See attached Exhibit A.*

6. During Mr. Kennelly’s deposition, Mr. Kennelly was asked how many more fair market valuations of 301 had been performed since May 18, 2019. Mr. Kennelly indicated that another valuation was performed on December 31, 2021.

7. At this point, JEA counsel asked:

Q: So between December 31, 2021 and May 18th of 2019, in that time span, were there any other fair market value balance sheets prepared for 301 Capital Partners, LLC?

A: **There might have been, yes.**

See attached Exhibit B, Excerpt from Discovery Deposition of Robert Kennelly, p. 29, line 23 through p. 30, line 2 (emphasis added).

8. In the ensuing questioning, Mr. Kennelly finally disclosed information, for the first time, about a buy-out valuation for a former partner (Florida Frakens, LLC) wherein 301 was valued at \$71 million “probably in the last two months” - - a fact which should have been readily recalled by the Applicant’s President. *See Exhibit B*, p. 30, lines 11-12.

9. In this proceeding, the Commission is called upon to evaluate the Applicant, including its financial ability and technical ability, to operate the requested utility. Given that there are no independent third-party valuations of the Applicant and given that the Applicant's own valuations have apparently swung between \$71 million and \$137 million (or more), JEA and the Commission are entitled to see the recently revealed valuation that 301 performed in order for one of its partners' interests to be purchased.

10. The document is readily available to the Applicant given that Mr. Kennelly was able, during the actual deposition, to retrieve the document on his computer and testify about the \$71 million valuation when JEA counsel asked additional questions.

11. JEA counsel requested that the court reporter expedite Mr. Kennelly's discovery deposition. JEA counsel received the Deposition of Robert Kennelly the morning of January 24, 2022 and, as a result, this motion is timely.

I. JEA Must Be Given Leave To Serve One (1) Additional Production Request.

JEA asks leave to serve one additional discovery request upon the Applicant, a copy of which is attached hereto as *Exhibit C*. Given the importance of this issue to the heart of application issues (and the fact that the information was not previously provided by the Applicant at any stage in this proceeding), the information is incredibly important to the Commission's evaluation of this Applicant, not the least of which includes the Applicant's candor with respect to its financial resources. In this context, JEA should be afforded leave to serve its additional request and the Applicant should be ordered to provide a response within three (3) days, given that the material is readily available and the disclosure occurred on the eve of hearing. *See Kotchman v. State Farm Mut. Auto. Ins. Co.*, 2017 WL 164356 (M.D. Fla. 2017) (allowing for reopening of discovery where the Plaintiff disclosed a new witness only three days before the close of discovery effectively

precluding Defendant from propounding discovery regarding the new disclosures); *Vernon Village, Inc., v. Gottier*, 755 F.Supp. 1142, 1156 (D. Conn. 1990) (allowing for reopening of discovery to investigate evidence which came to light *after* initial discovery deadline had passed).

WHEREFORE, JEA requests it be afforded leave to serve one additional discovery request upon the Applicant and that the Applicant be ordered to produce responsive documents within three (3) days.

Respectfully submitted this 24th day of January, 2022.

/s/ Thomas A. Crabb
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Susan F. Clark, FBN 179580
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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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/s/ Thomas A. Crabb

EXHIBIT A

301 Capital Partners LLC
Fair Market Value Balance Sheet
May 18, 2019

	FMV
ASSETS	
Current Assets	
Total Checking/Savings	108,419.41
Total Current Assets	108,419.41
Other Assets	
Total 13000 · Land	122,623,556.05
13400 · Rights to Baker County Land	13,184,100.00
13500 · Timber	1,702,177.81
Total Other Assets	137,509,833.86
TOTAL ASSETS	137,618,253.27
LIABILITIES & EQUITY	
Liabilities	
Total Long Term Liabilities	8,721,684.60
Total Liabilities	8,721,684.60
Equity	
Total Equity	128,896,568.67
TOTAL LIABILITIES & EQUITY	137,618,253.27

EXHIBIT B

1 Q So this sheet on exhibit -- we'll call it
2 Exhibit 1, you recognize the application as Exhibit 1,
3 right, that we dropped in the chat box before the depo?

4 A I'm actually looking at that exhibit.

5 Q So the fair market value balance sheet is
6 dated May 18, 2019; right?

7 A Um-hum.

8 Q I'm going to say that's a yes, because you
9 know we can't do the uh-huhs.

10 A Yes, sir.

11 Q How often do you prepare these kind of balance
12 sheets in your role for 301 Management Company, LLC?

13 A Rarely.

14 Q Has there been one prepared since May 18th of
15 2019?

16 A Yes.

17 Q That's the one that was recently produced,
18 like yesterday?

19 A Yes.

20 Q So between the one that was produced yesterday
21 and that's -- that was dated year end of 2021; right?

22 A It was.

23 Q So between December 31st of 2021 and May 18th
24 of 2019, in that time span, were there any other fair
25 market value balance sheets prepared for 301 Capital

1 **Partners, LLC?**

2 A There might have been, yes.

3 **Q How many would you say there have been?**

4 A We did a fair market value calculation as part
5 of a partner buyout process, and so I assume that there
6 was one produced in that process.

7 **Q Who was the partner that was bought out?**

8 A Florida Frakens, LLC.

9 **Q What date was that, ballpark, 2017, '18, '19,**
10 **'20 --**

11 A It just occurred, probably in the past two
12 months.

13 **Q So at the time the application was filed, that**
14 **entity was a member in 301 Capital Partners, LLC?**

15 A It was.

16 **Q Is there any other entity that was a member of**
17 **301 Capital Partners, LLC at the time of the application**
18 **that is no longer a member to your knowledge other than**
19 **this entity, Florida whatever you say?**

20 A Florida Frakens, F-R-A-K-E-N-S, LLC.

21 **Q Again my question is: Is there any other**
22 **entity other than Florida Frakens that was holding an**
23 **interest in 301 Capital Partners, LLC, but then is -- at**
24 **the time of the application but is no longer?**

25 A No other entities.

1 Q So there would have been a balance sheet
2 prepared with the application that was submitted as
3 May 18, then you think there would have been a recent
4 balance sheet prepared when Florida Frakens was exiting
5 that entity, and you said that was recent, and then we
6 have a balance sheet prepared on December 31 of 2021.

7 Are there any others to your knowledge?

8 A Not to my knowledge.

9 Q Do you know the delta between the total assets
10 and liabilities listed on the balance sheet that was
11 handed to Florida Frakens versus the one that was done
12 at year end?

13 A It was a different valuation approach. The
14 valuation approach for Florida Frakens was to get some
15 idea of discounted present value of his interest of
16 that -- sorry, that interest.

17 That valuation approach was looking at
18 potential development of the property over a 10-year
19 period and then present value in those revenue streams
20 back to a current value applying a discount rate.

21 Q So I asked the delta between the total
22 liabilities and equities that was shown on the one that
23 was just produced dated December 31, 2021, which is
24 \$190,762,202.81, and the one that was provided to
25 Florida Frakens at the buyout.

1 A I'd have to look that up.

2 Q Can you give -- can you give the Commission a
3 **sense of what the total liabilities and equities were**
4 **that on -- on the balance sheet that was prepared for**
5 **that buyout?**

6 A I'm looking for something. Sorry. When I'm
7 looking back at this, I don't believe I used a balance
8 sheet. But when I looked at a total value calculation
9 before I discounted it back based upon the different
10 types of entitlements we have on the property, including
11 residential, industrial, commercial, raw lands,
12 (technical interference), I came up with a number of
13 about \$300 million.

14 Q Once you were done discounting it, what did
15 **that come down to?**

16 A The discounted values came down -- well,
17 the -- I don't have that right here. Give me a minute,
18 maybe I can find it.

19 That number looks to be about \$71 million.

20 Q Would it be fair to say in basic terms that at
21 **the point that the Florida Frakens entity had its**
22 **interest acquired back by 301 Capital Partners, or by**
23 **whomever acquired it, the value of 301 Capital Partners,**
24 **LLC, for purposes of the calculation that you just**
25 **described, was set at 71 million?**

1 A Yes.

2 MR. LUNNY: We've been going one hour. If
3 it's okay with everybody, I'd like to take a brief
4 break.

5 If that's okay, Mr. Kennelly.

6 THE WITNESS: That works.

7 (Recessed at 10:02 a.m. to 10:11 a.m.)

8 MR. WHARTON: I am going to instruct this
9 witness that it is not incumbent upon him to
10 research on his computer, which probably has the
11 entirety of all of his business dealings on it,
12 answers to questions that he does not know.

13 Any more than 20 years ago, it would have been
14 incumbent upon him to go search in the warehouse if
15 he happened to be in the same building and look in
16 a file and find an answer to a question he doesn't
17 know.

18 I don't think that there's any need for us to
19 go through the silly exercise of telling him to buy
20 a new computer and do (technical interference).

21 Now, I want him to be cooperative and if he
22 wants to look something up on the computer, fine.
23 But if he doesn't know the answer, I just want to
24 make sure the witness understands he does not have
25 to go pull up files on his computer and search for

1 them.

2 You may disagree with that, I understand, but
3 I wanted to say on the record and I did not want to
4 -- I thought about calling him on the break and I
5 thought, no, even though we wouldn't be discussing
6 the testimony, which I would never do in a
7 deposition, it wouldn't be proper. So I decided to
8 do it this way.

9 MR. LUNNY: I don't think there's any point in
10 us engaging in an argument about it. I would -- I
11 didn't ask him to look. I asked him a question.
12 He needed to refresh his recollection, so be it, but
13 I get your instruction. I understand it.

14 And, Mr. Kennelly, it probably is your intent
15 to follow that instruction from here forward;
16 right?

17 THE WITNESS: Yes.

18 MR. WHARTON: I absolutely, Chris, was not
19 trying to cast aspersions on you and I'm sorry if
20 it came across like that.

21 MR. LUNNY: Ms. Clark is very capable of
22 casting aspersions on me here, so don't worry.

23 BY MR. LUNNY:

24 **Q I've got one question to ask, which I don't**
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**JEA’S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS
TO FIRST COAST REGIONAL UTILITIES, INC. (REQUEST 28)**

Pursuant to rule 1.350, Florida Rules of Civil Procedure, JEA submits the following requests for production to Applicant First Coast Regional Utilities, Inc., (the “Applicant”).

DEFINITIONS

Unless the context indicates otherwise, the following words and phrases are defined as follows:

1. “Person” means any individual, firm, partnership, corporation, association, proprietorship, joint venture, governmental agency, or other organization or legal or business entity.
2. The term “relating to” means containing, showing, relating to or referring in any way, directly or indirectly, to and is meant to include, among other things, matters that are or were underlying, supporting or connected.
3. “You” or “your” refers to Applicant First Coast Regional Utilities, Inc. and its affiliates, agents, servants, employees and attorneys.
4. “Kennelly Discovery Deposition” means the Deposition of Robert Kennelly taken on January 19, 2022.

REQUEST FOR PRODUCTION

28. The recent fair market valuation of Applicant’s parent entity, 301 Capital Partners, LLC, including all supporting schedules, which was prepared as part of a partner buy-out for Florida Frankens, LLC, as testified to in the attached pages 30-34 of the Kennelly Discovery Deposition. *See* attached Ex. A.

Respectfully submitted this ____ day of January, 2022.

/s/ _____
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