

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for water and wastewater  
service in Duval, Baker, and Nassau Counties,  
by First Coast Regional Utilities, Inc.

DOCKET NO. 20190168-WS  
ORDER NO. PSC-2022-0045-PHO-WS  
ISSUED: January 28, 2022

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on January 26, 2022, in Tallahassee, Florida, before Commissioner Art Graham, as Prehearing Officer.

APPEARANCES:

JOHN L. WHARTON, MARTIN S. FRIEDMAN, AND JORDANE P. WONG, ESQUIRE, Dean Mead and Dunbar, 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301 and WILLIAM E. SUNDSTROM and ROBERT C. BRANNAN, ESQUIRES, Sundstrom & Mindlin, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301.

On behalf of First Coast Regional Utilities, Inc.

THOMAS CRABB, SUSAN CLARK, and CHRISTOPHER B. LUNNY, ESQUIRES, Radey Law Firm, 301 S. Bronough Street, Suite 200, Tallahassee, Florida 32301 and JODY L. BROOKS, ESQUIRE, 21 West Church Street, Jacksonville, Florida 32202.

On behalf of JEA (JEA).

BIANCA LHERISSON and JENNIFER CRAWFORD, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

Florida Public Service Commission General Counsel.

## **I. CASE BACKGROUND**

On August 27, 2019, pursuant to Sections 367.031 and 367.045, Florida Statutes (F.S.), and Rule 25-30.033, Florida Administrative Code (F.A.C.), First Coast Regional Utilities, Inc. (First Coast or FCRU) filed an application for original certificate of authorization and initial rates and charges for water and wastewater service in Duval, Baker, and Nassau Counties. On December 26, 2019, JEA filed an objection to First Coast's application. Pursuant to Order No. PSC-2020-0112-PCO-WS, issued April 17, 2020, the hearing for First Coast's application is scheduled on February 1 through February 3, 2022.

## **II. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

## **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 367, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

## **IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

Information for which proprietary confidential business information status is requested pursuant to Section 367.156, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 367.156, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information

highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### **V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES**

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to three minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

**VI. ORDER OF WITNESSES**

Each witness whose name is preceded by an asterisk (\*) has been stipulated to by the parties and are excused from the hearing.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Bevin A. Beaudet	FCRU	2, 4, 6, 7, 9, 12-16, 22
Deborah D. Swain	FCRU	1, 6, 9, 10-16
Robert Kennelly	FCRU	1-6, 8, 9, 22
Julia Crawford	JEA	9
Joseph E. Orfano	JEA	4, 9, 22
Robert Zammataro	JEA	4, 7, 9, 18-22
Susan West	JEA	3, 4, 9, 22
<u>Rebuttal</u>		
Bevin A. Beaudet	FCRU	2, 4, 6, 7, 9, 12-16, 22
Deborah D. Swain	FCRU	1, 6, 9, 10-16
Robert Kennelly	FCRU	1-6, 8, 9, 22
*Paul Gandy	FCRU	6-7
Scott D. Kelly	FCRU	3, 4, 6, 7, 9, 18-22

**VII. BASIC POSITIONS**

**FCRU:** First Coast seeks to provide water, wastewater and reuse/irrigation utility services within the proposed service territory. There is a significant need for this service and no other utilities currently serve or are planned to serve the proposed territory. First Coast has the financial and technical ability to provide the necessary utility services. Consequently, it is in the public interest to grant First Coast's Certificate Application. 301 Capital Partners, LLC, (301) the owner of First Coast, either owns or has exclusive rights to 10,000 acres of contiguous property located in Duval, Nassau and Baker Counties. An additional 1,800 acre property located in

Baker County and included in the Application, is owned by the Chemours Company FC, LLC. The Duval property is fully entitled for significant development as noted below. The current development order, Jacksonville Ordinance 2021-693, requires that 301 shall provide a site to serve the needs of this PUD for potable water, wastewater and reuse water. The Ordinance does not require that the facilities be dedicated to or operated by JEA.

**JEA:** JEA is the City of Jacksonville's municipal utility, providing water and wastewater service as part of the City's public works under chapter 180, F.S. The service territory sought by FCRU in Duval and Nassau counties is entirely within the service territory of JEA pursuant to exclusive franchises from the City of Jacksonville and Nassau County issued to JEA as a municipal utility.

Accordingly, the certification of FCRU would result in the creation of a utility which will be in competition with, and duplication of, JEA's system. Moreover, the franchise rights of municipal utilities are coequal to the franchise rights of investor-owned utilities that can be granted by the Commission. Neither set of rights is superior to the other. Instead, between the municipal and private utility, first in time is first in right provided there is the ability to serve. JEA has preexisting exclusive franchise rights as a municipal utility to the service territory sought by FCRU in Duval and Nassau counties, and JEA has the ability to provide service to this development. Accordingly, the Commission has no authority to certificate FCRU for the territory it seeks in Duval and Nassau counties and displace JEA from its territory held as a municipal provider.

In addition to the jurisdictional bases discussed above, the Commission must deny FCRU's Application because FCRU fails to satisfy the substantive elements necessary for certification. Any need for service in the portion of the requested territory in Baker and Nassau counties is a decade away or longer. FCRU lacks the financial ability, technical ability, and plant capacity needed to serve the requested territory. FCRU has neither the cash nor the financing commitments necessary to build and operate a system. To the extent their identities are known, FCRU's officers have no utility experience. FCRU proposes a plant that is undersized even if the development never progresses to Baker and Nassau counties. Certification of FCRU is not in the public interest and its application must be denied.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

**VIII. ISSUES AND POSITIONS**

**ISSUE 1:**     **Has First Coast met the filing and noticing requirements pursuant to Rules 25-30.030 and 25-30.033, Florida Administrative Code?**

*Proposed stipulation – See Section X.*

**ISSUE 2:**     **Is there a need for service in First Coast’s proposed service territory and, if so, when will service be required?**

**FCRU:**         Yes. The land which is the subject of the Application consists of approximately 11,800 acres of contiguous property located in Duval, Nassau and Baker Counties. The development will begin in Duval County and will expand based on the economy and housing demand in the area. In Duval County, Ordinance 2010-874-E, as revised and amended by Ordinance 2021-693, permits the construction of: 11,250 single family units; 3,750 multi-family units; 750,000 square feet of commercial space; 300,000 square feet of industrial use and 300,000 square feet of office space. The properties in Baker County are in the planning stage and the properties in Nassau County are currently zoned for commercial and industrial use. Service is needed for the property now. In fact, 301 has already lost the opportunity to develop and sell several thousand lots during the pendency of this case, due to lack of water and wastewater service to the area. (Kennelly)

**JEA:**         No. Any need for service in Nassau and Baker counties, and within the City of Jacksonville beyond Phase 1 of the development, is purely speculative. There are no customers currently being served in the territory and no customers that have requested service. There has been no local government approval of the development in Nassau or Baker counties. The City of Jacksonville planned unit development ordinance 2010-874-E, attached as Exhibit B to the Application, has been superseded by City of Jacksonville ordinance 2021-692-E, which was enacted on November 23, 2021. First Coast has not amended its Application to reflect the revised ordinance. Application Exhibit D includes a letter from Chemours requesting to be included in the service area. Chemours does not request service. It says mining operations will be completed “in the not too distant future” but offers no timeline on when or how that property may be redeveloped. When and the extent to which Chemours may need service is purely speculative.

**STAFF:**       No position at this time.

**ISSUE 3:**     **Is First Coast’s application inconsistent with Duval County’s, Nassau County’s, or Baker County’s comprehensive plans?**

**FCRU:** No. Baker and Nassau Counties have both filed letters in this docket in support of First Coast and its Application. (Kennelly and Kelly)

**JEA:** Yes, it is inconsistent with the City of Jacksonville's comprehensive plan. The City's comprehensive plan calls for JEA alone to be the provider of water and wastewater service and for water and wastewater facilities to be regional, not small, development-specific plants. Non-regional facilities, like the one proposed by First Coast in its application, are to be phased-out. (West)

**STAFF:** No position at this time.

**ISSUE 4:** **Will the certification of First Coast result in the creation of a utility which will be in competition with, or duplication of, any other system?**

**FCRU:** No. There are no utility systems in Duval, Baker or Nassau Counties currently serving or planned to serve the proposed territory. (Kennelly & Beaudet)

**JEA:** Yes. JEA has exclusive service franchises from the City of Jacksonville and Nassau County for the proposed service area, and is ready, willing, and able to provide service. Accordingly, FCRU would be in competition with, and duplication of, JEA. (Orfano, West, Zammataro)

**STAFF:** No position at this time.

**ISSUE 5:** **Does First Coast have the financial ability to serve the requested territory?**

**FCRU:** Yes. (Kennelly)

**JEA:** No. First Coast has established no financial ability. There is nothing in the Application about First Coast's financial ability, apart from its parent. The developer 301 Capital Partners, LLC (First Coast's parent) has not explained either the manner or amount of any funding it intends to provide to First Coast. Application Exhibit G states the developer has \$137 million in land (and \$128 million in "total equity") based upon unaudited "fair market value" financial statements with no supporting appraisals. Even according to these unaudited unsupported financial statements that are not based on original cost, the developer has shown no money for construction or operation of a water and wastewater utility, nor has the developer secured any outside funding commitments.

**STAFF:** No position at this time.

**ISSUE 6: Does First Coast have the technical ability to serve the requested territory?**

**FCRU:** Yes. (Kennelly, Kelly, Beaudet & Swain)

**JEA:** No. First Coast's officers, to the extent they are disclosed in the Application, have no experience in the water or wastewater industry.

**STAFF:** No position at this time.

**ISSUE 7: Does First Coast have sufficient plant capacity to serve the requested territory?**

**FCRU:** Yes. First Coast will construct necessary capacity in phases to meet the expected demand as the properties comprising the requested territory are developed. (Beaudet)

**JEA:** No. The proposed 2 MGD plant is insufficient for the site plan, which would support 10,000 ERCs at 200 gpd. The developer proposes 11,250 single family homes, 3,750 multi-family ERCs, and 1,050,000 square feet of commercial space, just in the City of Jacksonville portion of the development. (Zammataro)

**STAFF:** No position at this time.

**ISSUE 8: Has First Coast provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located?**

*Proposed stipulation – See Section X.*

**ISSUE 9: Is it in the public interest for First Coast to be granted water and wastewater certificates for the territory proposed in its application?**

**FCRU:** Yes. (Kennelly & Beaudet)

**JEA:** No. First Coast has not shown a need for service for the territory requested, nor does it have the financial ability or technical ability to serve the territory, or adequate plant capacity. The rates and charges proposed by First Coast are approximately double those of JEA. The public interest is served by compliance with the local franchise agreements, comprehensive plans, and planned unit development ordinance, all of which would be violated by FCRU becoming certificated. Customers would be denied access to JEA's system, resources and economies of scale. (West, Orfano, Zammataro, Crawford)



**STAFF:** No position at this time.

**ISSUE 10: What is the appropriate return on equity for First Coast?**

*Proposed stipulation – See Section X.*

**ISSUE 11: What are the appropriate rates and rate structures for the water and wastewater systems for First Coast?**

**FCRU:** See below. (Swain).

**Water (Monthly)**

**Requested Rates - Residential**

Base Facility Charge	\$	<b>41.05</b>
Gallorage Charge		
First 3,000 gls	\$	<b>1.55</b>
Over 3,000 gls - 10,000 gls	\$	<b>2.33</b>
Over 10,000 gls	\$	<b>4.66</b>

**Requested Rates - General Service**

5/8" x 3/4"	\$	<b>41.05</b>
3/4"		<b>61.58</b>
1"		<b>102.63</b>
1-1/2" Turbine		<b>205.25</b>
2" Turbine		<b>328.40</b>
3" Turbine		<b>718.38</b>
Charge per 1,000 gallons	\$	<b>2.01</b>

**Wastewater (Monthly)**

**Requested Rates - Residential**

Base Facility Charge	\$	<b>112.17</b>
Gallorage Charge, 10,000 gallons cap	\$	<b>6.67</b>

**Requested Rates - General Service**

5/8" x 3/4"	\$	<b>112.17</b>
3/4"		<b>168.26</b>
1"		<b>280.43</b>
1-1/2" Turbine		<b>560.85</b>
2" Turbine		<b>897.36</b>
3" Turbine		<b>1,962.98</b>
Charge per 1,000 gallons	\$	<b>8.00</b>
<b>Reclaimed Water (Charge per 1000 gallons)</b>	\$	<b>.50</b>

**JEA:** No position.

**STAFF:** No position at this time.

**ISSUE 12:** What are the appropriate miscellaneous service charges for First Coast?

*Proposed stipulation – See Section X.*

**ISSUE 13:** What is the appropriate late payment charge for First Coast?

*Proposed stipulation – See Section X.*

**ISSUE 14:** What are the appropriate Non-Sufficient Funds (NSF) charges for First Coast?

*Proposed stipulation – See Section X.*

**ISSUE 15:** What are the appropriate service availability charges for First Coast?

**FCRU:** See below (Swain).

	<b>Plant Capacity</b>	<b>Main Capacity</b>
<b>WATER</b>		
Requested Service Availability Charge Per ERC	<u>\$ 752.00</u>	<u>\$ 3,158.00</u>
Requested Service Availability Charge Gallon Per Day	<u>\$ 2.79</u>	<u>\$ 1.70</u>
	<b>Plant Capacity</b>	<b>Main Capacity</b>
<b>WASTEWATER</b>		
Requested Service Availability Charge Per ERC	<u>\$ 1,250.00</u>	<u>\$ 4,833.00</u>
Requested Service Availability Charge Gallon Per Day	<u>\$ 5.79</u>	<u>\$ 22.38</u>

**JEA:** No position.

**STAFF:** No position at this time.

**ISSUE 16: What are the appropriate initial customer deposits for First Coast?**

*Proposed stipulation – See Section X.*

**ISSUE 17: Should this docket be closed?**

**FCRU:** Yes.

**JEA:** No position.

**STAFF:** No position at this time.

**IX. EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Robert Kennelly	FCRU	RK-1	Application
Deborah D. Swain	FCRU	DDS-1	Accounting Information
Deborah D. Swain	FCRU	DDS-2	Water Tariff
Deborah D. Swain	FCRU	DDS-3	Wastewater Tariff
Bevin A. Beaudet, PE	FCRU	BAB-2	Feasibility Assessment
Bevin A. Beaudet, PE	FCRU	BAB-3	Service Area Maps
Robert Zammataro	JEA	RJZ-1	CV
Robert Zammataro	JEA	RJZ-2	Private Utility Systems Acquired by JEA
Robert Zammataro	JEA	RJZ-3	JEA Honors and Awards
Robert Zammataro	JEA	RJZ-4	City of Jacksonville-JEA Franchise Agreement
Robert Zammataro	JEA	RJZ-5	Nassau County-JEA Franchise Agreement
Susan West	JEA	SRW-1	CV

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Susan West	JEA	SRW-2	City of Jacksonville Ordinance 2010-874 (“PUD Ordinance”)
Susan West	JEA	SRW-3	Report of the Planning and Development Department for Application for Rezoning 2010 to Planned Unit Development
Susan West	JEA	SRW-4	City of Jacksonville Comprehensive Plan Infrastructure Element
Susan West	JEA	SRW-5	August 9, 2019 JEA Proposal to 301 Partners
Julia Crawford	JEA	JEC-1	CV
Julia Crawford	JEA	JEC-2	Table Comparing Proposed Rates and Charges of Applicant to those of JEA
Julia Crawford	JEA	JEC-3	JEA Water and Sewer Rate Document
Julia Crawford	JEA	JEC-4	Chart of JEA and Other Municipal Water and Sewer Rates in Florida Compared to FCRU’s Proposed Rates

Rebuttal

Bevin A. Beaudet, PE	FCRU	BAB-4	Photos of AMUC facilities
Bevin A. Beaudet, PE	FCRU	BAB-5	JEA Management Presentation
Bevin A. Beaudet, PE	FCRU	BAB-6	Preliminary Cost Estimate
Bevin A. Beaudet, PE	FCRU	BAB-7	Life Cycle Cost Analysis
B. Paul Gandy, PE	FCRU	BPG-1	Resume of Bernard Paul Gandy

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
B. Paul Gandy, PE	FCRU	BPG-2	Globaltech Images
Scott D. Kelly, PE	FCRU	SDK-1 & 2	Maps
Robert Kennelly	FCRU	RK 2	Maps
Deborah D. Swain	FCRU	DDS-4	Resume
Deborah D. Swain	FCRU	DDS-5	Moody's Investor Services
Deborah D. Swain	FCRU	DDS-6	Cash Flow Statements
Deborah D. Swain	FCRU	DDS-7	2021 Budget Snapshot
Deborah D. Swain	FCRU	DDS-8	Preliminary Finance Terms
Deborah D. Swain	FCRU	DDS-9	Revised Accounting Schedules

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

#### **X. PROPOSED STIPULATIONS**

There are proposed Type 2 stipulations<sup>1</sup> on a number of issues, as stated below.

**ISSUE 1: Has First Coast met the filing and noticing requirements pursuant to Rules 25-30.030 and 25-30.033, Florida Administrative Code?**

Stipulation: Yes, First Coast has met the filing and noticing requirements pursuant to Rules 25-30.030 and 25-30.033, Florida Administrative Code.

**ISSUE 8: Has First Coast provided evidence that it has continued use of the land upon which the utility treatment facilities are or will be located?**

Stipulation: Yes, First Coast provided a copy of the unrecorded Specialty Warranty Deed, between First Coast and 301 Capital Partners, LLC, the current land owners, as evidence that it will have continued use of the land upon which utility treatment facilities will be located. If the certificate is granted, First Coast should provide a copy of the recorded instrument within 60 days of the Commission's vote.

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<sup>1</sup> A Type 2 stipulation occurs on an issue when the utility and the staff, or the utility and at least one party adversarial to the utility, agree on the resolution of the issue and the remaining parties and staff do not object to the Commission relying on the agreed language to resolve that issue in a final order.

**ISSUE 10: What is the appropriate return on equity for First Coast?**

Stipulation: The appropriate return on equity is 8.12 percent with a range of plus or minus 100 basis points.

**ISSUE 12: What are the appropriate miscellaneous service charges for First Coast?**

Stipulation: Pursuant to Rule 25-30.460, Florida Administrative Code, the appropriate miscellaneous service charges for First Coast should be a premise visit charge of \$30, and violation reconnection charge at actual cost.

**ISSUE 13: What is the appropriate late payment charge for First Coast?**

Stipulation: The appropriate late payment charge for First Coast should be \$7.50.

**ISSUE 14: What are the appropriate Non-Sufficient Funds (NSF) charges for First Coast?**

Stipulation: The non-sufficient funds charge for First Coast should be prescribed as in Section 68.065 (2), Florida Statutes.

**ISSUE 16: What are the appropriate initial customer deposits for First Coast?**

Stipulation: The appropriate customer deposits for First Coast should reflect an average of two months service for residential customers with a 5/8" x 3/4" meter and two times the average customer bill for all other meter sizes.

**XI. PENDING MOTIONS**

On January 27, 2022, JEA filed a Request for Official Recognition of five documents.

**XII. PENDING CONFIDENTIALITY MATTERS**

There are no pending confidentiality matters at this time.

**XIII. POST-HEARING PROCEDURES**

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

#### **XIV. RULINGS**

1. Opening statements, if any, shall not exceed five minutes per party.
2. On January 24, 2022, JEA filed a Motion for Leave to Serve One Additional Production Request to Applicant and Request for Expedited Response. On January 26, 2022, at the Prehearing Conference, First Coast provided its oral response in opposition to JEA's motion. Upon consideration of the parties' arguments, the information requested pursuant to JEA's motion appears reasonably calculated to lead to the discovery of admissible evidence, and its production does not appear to be unduly onerous or prejudicial to First Coast. First Coast was directed to provide this information to JEA by January 27, 2022, by email from staff.
3. On January 24, 2022, JEA filed a Motion to Strike Portions of Rebuttal Testimony of Scott Kelly. On January 26, 2022, at the Prehearing Conference, First Coast provided its oral response in opposition to JEA's motion. In ruling on JEA's motion to strike, there are several important statutory requirements to consider. In this administrative proceeding held under Sections 120.569 and 120.57(1), F.S., all parties must be given an opportunity to respond, to present evidence and argument on all issues involved, and to conduct cross-examination and submit rebuttal evidence. Section 120.57(1)(b), F.S. Irrelevant, immaterial, or unduly repetitious evidence must be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in Florida courts. Section 120.569(2)(g), F.S. The Commission has the expertise to independently evaluate all evidence entered into the record and to give that evidence the weight it deserves under the circumstances. Thus, at the appropriate time, the Commission will evaluate the rebuttal testimony at issue here and give it the weight it deserves. Should the objected to portions prove immaterial, the Commission is fully capable of placing the challenged testimony in context and assessing its probative value, if any. Upon consideration of the parties' argument, the Motion to Strike Portions of Rebuttal Testimony of Scott Kelly is denied.
4. On January 24, 2022, JEA filed a Motion to Strike Testimony of Robert Kennelly. On January 26, 2022, at the Prehearing Conference, First Coast provided its oral Response in Opposition to JEA's Motion to Strike. Applying the rationale above and upon consideration of the parties' argument, the Motion to Strike Testimony of Robert Kennelly is denied.
5. On January 24, 2022, JEA filed a Motion to Strike Testimony of Deborah D. Swain. On January 26, 2022, at the Prehearing Conference, First Coast provided its oral Response in

Opposition to JEA's Motion to Strike. Applying the rationale above and upon consideration of the parties' argument, the Motion to Strike Testimony of Deborah D. Swain is denied

6. On January 19, 2022, First Coast filed a Notice of Intent to Use Depositions for depositions called by JEA of five of First Coast's witnesses. On January 24, 2022, JEA filed its Objection to First Coast's Notice of Intent to Use Depositions. Arguments were presented at the Prehearing Conference for and against allowing First Coast's use of the depositions. JEA argued that use of the depositions would allow First Coast to supplement its case, which counsel for First Coast conceded. Although counsel for First Coast correctly stated the applicable provisions of Rule 1.330, Fla.R.Civ.P., I note that the language in the rule is discretionary ("may") and not mandatory. Further, the rule does not account for the Commission's use of prefiled testimony, rather than presenting witnesses' testimony live before the tribunal. There are a number of provisions in Order Establishing Procedure No. PSC-2020-0112-PCO-WS, and in this Order, designed to ensure the fairness and efficient administration of Commission hearings.<sup>2</sup> Under the circumstances of this case, and considering the fundamental fairness of this proceeding, and having considered JEA's objections, First Coast's request to use the depositions at hearing is denied.
7. In its prehearing statement, JEA proposed a number of issues for inclusion in this proceeding. Having considered the parties' arguments, I find the following with respect to these issues:
  - (a) *Issue 18: Does the JEA have an exclusive franchise from the City of Jacksonville to provide water and wastewater service to customers within the City limits?* This issue is stricken; arguments for this issue may be raised under Issue 4.
  - (b) *Issue 19: Is the portion of First Coast's proposed service territory in Duval County located in the City of Jacksonville?* This issue is stricken; arguments for this issue may be raised under Issue 4.
  - (c) *Issue 20: Does JEA have an exclusive franchise from Nassau County to provide water and wastewater service to certain areas of Nassau County?* This issue is stricken; arguments for this issue may be raised under Issues 2 or 4.
  - (d) *Issue 21: Is the portion of First Coast's proposed service territory in Nassau County located in an area of Nassau County for which JEA has an exclusive franchise from Nassau County to provide water and wastewater service?* This issue is stricken; arguments for this issue may be raised under Issues 2 or 4.

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<sup>2</sup> For example, the requirement that testimony and exhibits be prefiled, so as to permit parties' the opportunity to conduct discovery on the matters asserted therein, and prohibitions against friendly cross-examination.



- (e) *Issue 22: Does JEA have the ability to provide water and wastewater service to First Coast's proposed service territory?* This issue is stricken; arguments for this issue may be raised under Issues 2, 4, or 9, as appropriate.
- (f) *Issue 23: Given JEA's existing franchises and ability to provide water and wastewater service to the portions of the service territory in the City of Jacksonville and Nassau County, does the Commission have jurisdiction to issue a certificate of authorization for those portions of the service territory?* This issue is stricken.

It is therefore,

ORDERED by Commissioner Art Graham, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 28<sup>th</sup> day of January, 2022.



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ART GRAHAM  
Commissioner and Prehearing Officer  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

BYL

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.