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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20190168-WS

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

\_\_\_\_\_ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS  
PARTICIPATING: COMMISSIONER ART GRAHAM  
PREHEARING OFFICER

DATE: Wednesday, January 26, 2022

TIME: Commenced: 1:00 p.m.  
Concluded: 2:33 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK  
Court Reporter

PREMIER REPORTING  
112 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
(850) 894-0828

1 APPEARANCES:

2 JOHN L. WHARTON and JORDANE WONG, ESQUIRES,  
3 Dean Mead & Dunbar, 106 E. College Avenue, Suite 1200,  
4 Tallahassee, Florida 32301; MARTIN S. FRIEDMAN, ESQUIRE,  
5 Dean Mead & Dunbar, 5300 S. Atlantic Avenue, Apt. 12605,  
6 New Smyrna Beach, Florida 32169; WILLIAM E. SUNDSTROM  
7 and ROBERT C. BRANNAN, ESQUIRES, Sundstrom & Mindlin,  
8 LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida  
9 32301, appearing on behalf of First Coast Regional  
10 Utilities (FCRU).

11 THOMAS CRABB, SUSAN CLARK and CHRISTOPHER B.  
12 LUNNY, ESQUIRES, Radey Law Firm, 301 S. Bronough Street,  
13 Suite 200, Tallahassee, Florida 32301, appearing on  
14 behalf of JEA (JEA).

15 BIANCA LHERISSON and JENNIFER CRAWFORD,  
16 ESQUIRES, FPSC General Counsel's Office, 2540 Shumard  
17 Oak Boulevard, Tallahassee, Florida 32399-0850,  
18 appearing on behalf of the Florida Public Service  
19 Commission (Staff).

20 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE  
21 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service  
22 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
23 Florida 32399-0850, Advisor to the Florida Public  
24 Service Commission.

25

1 P R O C E E D I N G S

2 COMMISSIONER GRAHAM: All right. Good  
3 afternoon, everybody. Let the record show it is  
4 one o'clock on my iPhone 11. As far as I am  
5 concerned that's gospel.

6 This is the prehearing for Docket 20190168-WS.  
7 We will call this meeting to order.

8 Staff, if you can read the notice, please.

9 MS. LHERISSON: By notice issued on January  
10 14th, 2022, this time and place has been set for a  
11 prehearing conference in Docket No. 20190168-WS.  
12 The purpose of the prehearing is set out more fully  
13 in the notice.

14 COMMISSIONER GRAHAM: Thank you.

15 Marty, what are you doing here? I don't see  
16 you on my list. Are you just here causing trouble?

17 MR. FRIEDMAN: I'm going to do my best.

18 COMMISSIONER GRAHAM: Okay. Let's take  
19 appearances.

20 First Coast.

21 MR. WHARTON: John Wharton. On my left is  
22 Marty Friedman. On my right is Jordane Wong, all  
23 of the firm Dean Mead representing the applicant,  
24 First Coast.

25 COMMISSIONER GRAHAM: OPC. OPC didn't send

1           anybody?

2           MS. LHERISSON: I guess not.

3           COMMISSIONER GRAHAM: Okay. JEA.

4           MR. CRABB: I will try that again.

5           Good afternoon. Tom Crabb of the Radey Law

6 Firm for JEA. With me is Christopher Lunny and

7 Susan Clark, also for JEA.

8           COMMISSIONER GRAHAM: Staff.

9           MS. LHERISSON: Bianca Lherisson on behalf of

10 Commission staff. I would also like to enter an

11 appearance for Jennifer Crawford.

12          MS. HELTON: And Mary Anne Helton is here as

13 your Advisor, along with your General Counsel,

14 Keith Hetrick.

15          COMMISSIONER GRAHAM: Okay. Staff,

16 preliminary matters that we need to address.

17          MS. LHERISSON: Yes. Staff is aware of no

18 preliminary matters at this time.

19          JEA has filed several motions on January 24th,

20 2022. There are three motions to strike prefiled

21 testimony, a motion for leave to file an additional

22 production of document request, and a notice of

23 intent to use depositions with an objection to the

24 notice, all of which staff recommends be addressed

25 in Section XI, pending motions.

1           COMMISSIONER GRAHAM: Okay. So we will take  
2 up those all in Section XI.

3           Are there any other preliminary matters that  
4 staff has not addressed so far?

5           Okay. Let's mush on.

6           We are going to go through this prehearing  
7 order, the proposed prehearing order pretty  
8 quickly, the different sections. So when I call  
9 your section, if there is something you want, you  
10 can raise your hand and get my attention and we  
11 will stop and address it at that time.

12          Staff, do you have anything else before we  
13 start going through these sections?

14          MS. LHERISSON: No.

15          COMMISSIONER GRAHAM: Okay. Section I.

16          Section II.

17          Section III.

18          Section IV.

19          Section V.

20          MS. LHERISSON: For witness summary testimony,  
21 staff suggests that the witness testimony summaries  
22 be no longer than three minutes.

23          COMMISSIONER GRAHAM: Well, definitely three  
24 minutes. I would love to eliminate them if I  
25 could, but I know you guys won't let me do that.

1           Okay. Cross-examine exhibits.

2           MS. LHERISSON: All cross-examination  
3 exhibits, including impeachment exhibits, whether  
4 confidential or nonconfidential, that a party  
5 intends to use at the hearing must be provided to  
6 the Commission Clerk by close of business on  
7 January 27th, 2022, in order to be processed and  
8 placed on the Commission website.

9           The parties have been provided instructions in  
10 Attachment A to the Draft Prehearing Order about  
11 how to electronically provide this material to the  
12 Clerk. If you have any questions, please contact  
13 me.

14           COMMISSIONER GRAHAM: When is close of  
15 business, specific time?

16           MS. LHERISSON: 5:00 p.m.

17           COMMISSIONER GRAHAM: Okay. All right.

18           MR. FRIEDMAN: Commissioner Graham --

19           COMMISSIONER GRAHAM: Yes.

20           MR. FRIEDMAN: -- could I address that --

21           COMMISSIONER GRAHAM: Sure.

22           MR. FRIEDMAN: -- that attachment, and that?  
23 First of all, I am unsure as to why we are  
24 using that methodology. I understand when we did  
25 in a case that we did virtually, and it went, I

1 thought, disastrously frankly, but virtually, I  
2 understand why we need to provide those documents  
3 sooner.

4 With an in-person hearing, I don't see the  
5 benefit do so, and plus it adds some constraints to  
6 people. It means basically that we have to have  
7 our whole case and all of our cross-examination  
8 determined by the 27th. That means we don't  
9 prepare between the 27th and the time of the  
10 hearing? Or what if we are preparing and we say,  
11 oh, here's something we should cross-examine on.

12 I would suggest that that requirement to do  
13 that is unnecessary, and it's not, I had a  
14 prehearing this morning and we don't have that type  
15 of requirement. We are using the traditional, you  
16 put the cover sheet on it, you make 20 copies, you  
17 bring it to the hearing and you distribute them.  
18 And I would respectfully request that we use that  
19 more traditional methodology instead of this  
20 virtual hearing methodology.

21 COMMISSIONER GRAHAM: What was the nightmare  
22 that you guys had during COVID?

23 MR. FRIEDMAN: I am sorry?

24 COMMISSIONER GRAHAM: What was the night --  
25 you said it was a nightmare.

1           MR. FRIEDMAN: It was UIF. It was UIF. Don't  
2 you remember? Utilities, Inc. of Florida trying to  
3 get documents and pull them up, and have the  
4 witness pulling up a document, and just it --

5           COMMISSIONER GRAHAM: That was a nightmare  
6 because we were doing it all virtually.

7           MR. FRIEDMAN: It was, but that's my point.  
8 Why are we putting the documents -- all these  
9 documents, cross-examination documents that parties  
10 may or may not use? They are asking us to decide  
11 what documents we are going to use and put them on  
12 some, you know, website for what purpose? What are  
13 we gaining by doing that versus the way we have  
14 done it for forever.

15           COMMISSIONER GRAHAM: Since I have been here.  
16 Staff?

17           MS. HELTON: I think JEA wanted to address  
18 this as well, so do you all want to say anything  
19 before I respond?

20           MR. CRABB: No, not particularly, other than  
21 we were planning on providing our cross exhibits  
22 tomorrow. We wanted clarification about whether we  
23 needed to provide only the -- only the cross  
24 exhibits that were not on the comprehensive exhibit  
25 list. Other than that, we have no objection to



1 producing them electronically.

2 COMMISSIONER GRAHAM: Do you need for him to  
3 repeat that? Okay.

4 Mary Anne.

5 MS. HELTON: From our perspective, handling  
6 cross-examinations digitally has not been a  
7 failure. It has been something that we think has  
8 made the process more efficient. That is where we  
9 see going in the future.

10 We are not doing anything differently than  
11 what happens at DOAH with respect to identifying  
12 cross-examination exhibits before the proceeding.  
13 The language that Ms. Lherisson read to you tracks  
14 a DOAH prehearing order with some words thrown in  
15 from a Supreme Court case, so we think we are being  
16 consistent there.

17 The reason why we did not have this process  
18 for the prehearing conference this morning in the  
19 EU hearing is because we do not have the same  
20 capabilities when we go to Venice. We don't have  
21 any assurances there that the virtual world will  
22 work for us with respect to the exhibits. And  
23 there is also some pro se participants, and we were  
24 a little bit concerned about that.

25 But we -- we are going down this road. We are

1           -- if I could indulge for one more minute. We are,  
2           right now, working with a vendor to have a system  
3           that will be maybe a little bit more user friendly,  
4           which will give you more control with respect to  
5           the timing of the exhibits that are provided and  
6           will not require you to give them, or put them in  
7           the virtual database like the process we are  
8           following now. We were hoping to have that all  
9           lined up for this hearing, but unfortunately we hit  
10          a snag. We are working through that snag. That is  
11          where we are going in the future, but until then,  
12          until we can get all of that worked out, this is  
13          the way that staff thinks it works best.

14                 MR. FRIEDMAN: And, you know, I preached  
15                 paperless in all your filings for, you know,  
16                 particularly with MFRs, for the last two times you  
17                 tried to change MFRs, so I am onboard with that.  
18                 My concern is that what do I do if I come up with a  
19                 document between now and hearing that I want to--  
20                 that I want to use? And, you know, all of us are  
21                 going to be preparing for this hearing. Y'all  
22                 will. We will. And you may come up with  
23                 something. We may come up with a document that we  
24                 say, you know, I need to ask so and so about this  
25                 document.

1           If we are going to have to file these on the  
2           27th, there should be some procedure in place so  
3           that we can supplement that as we continue our  
4           preparation for hearing, and if you do that, then  
5           you get rid of most of my objection.

6           MS. HELTON: I can't remember, Mr. Chairman,  
7           are you the presiding officer at the hearing?

8           COMMISSIONER GRAHAM: Actually, I am.

9           MS. HELTON: My recommendation to you would  
10          be, then, to give a little bit of leniency, but  
11          with the idea that you do a -- the best job  
12          possible providing your cross-examination exhibits  
13          by the date that Ms. Lherisson read.

14          If you come across an exhibit or two that you  
15          did not include, I have no issues with giving that  
16          to our clerk, or giving that to our -- our legis --  
17          our assistant and allowing them to do what they  
18          need to do to put it out there digitally, but there  
19          is -- there is a process that we have to go  
20          through. It can't be, as I understand it,  
21          instantaneous, so you just have to allow for that  
22          as well.

23          So I don't have a problem with, if you don't  
24          have a problem, Mr. Chairman, with an additional  
25          exhibit or two because you just didn't think of it

1 in the time needed to provide it to the Commission.

2 COMMISSIONER GRAHAM: So let's just go back to  
3 what you have here before me, with everything  
4 needing to be -- with everything having to be there  
5 by the close of business on the 27th --

6 MS. HELTON: I am sorry, my boss was -- had my  
7 ear and I did not hear what you just said.

8 COMMISSIONER GRAHAM: So according to what you  
9 have here, where everything has got to be in by the  
10 close of business by the 27th, then what happens  
11 the day of the hearing? Are we looking at the  
12 screen doing all this stuff virtually, or is  
13 somebody going to be here passing out these sheets  
14 in front of us like we have in the past?

15 MS. HELTON: The idea is, because they will  
16 have provided the information to us in a digital  
17 format by the 27th, there will be no passing of  
18 sheets. You will have that -- those exhibits ready  
19 and available on the T drive so that you can look  
20 at them during the hearing and we don't have to  
21 spend the time walking around the room passing them  
22 out.

23 COMMISSIONER GRAHAM: Well, see I see how you  
24 are doing this, because you know how I am about  
25 time and efficiency, but you also forget that I

1 rode my dinosaur here and I have to have paper in  
2 front of me all the time, so electronic won't work  
3 for me. I mean, so regardless if they send it in  
4 electronic or not, I still need for it to be in  
5 front of me so I can read them and write on them  
6 and tear them up.

7 I mean, so -- and this is more towards staff,  
8 not necessarily this specifically. So even if we  
9 do get to the point you are talking about, I do  
10 still need for somebody to give me a hard copy.

11 MS. HELTON: Can you hold on one minute and  
12 let me have a discussion with your General Counsel?

13 COMMISSIONER GRAHAM: Sure.

14 You guys forget, I used to be in the paper  
15 industry. We want more paper. Not less.

16 MS. HELTON: We will print out the exhibits  
17 for you, Commissioner.

18 COMMISSIONER GRAHAM: All right. So we will  
19 call this some sort of a hybrid. I get where staff  
20 is coming from. I get where the efficiency and all  
21 of that stuff comes from so --

22 MS. HELTON: And if I can add one thing too,  
23 one of the wonderful things about this process that  
24 we are going to is that you can use your iPad and  
25 take notes on the exhibit. You can -- you can

1 highlight on the exhibit without having the paper.  
2 So hopefully we will be able to convince you that  
3 you don't need paper during the proceeding because  
4 you have this awesome tool before you.

5 MR. LUNNY: Commissioner, can the JEA address  
6 one small issue on this?

7 COMMISSIONER GRAHAM: Sure.

8 MR. LUNNY: I mean, the JEA has proceeded in  
9 this case with an understanding that  
10 cross-examination exhibits would be provided by  
11 5:00 tomorrow, and I don't want to be hampered by  
12 that. If it's -- if that's not the hard deadline  
13 and the deadline is a day later or something, then  
14 we want the benefit of that as well. I mean, we  
15 are prepared right now to offer our  
16 cross-examination exhibits.

17 So I guess my question is, is it perhaps  
18 better to give them an additional day, and say 5:00  
19 p.m. the 28th, instead of having sort of this  
20 rolling loose deadline that it could be an  
21 additional, maybe two, maybe three? I am in favor  
22 of a hard deadline.

23 COMMISSIONER GRAHAM: Well, what I heard staff  
24 saying is we don't have -- we are not ready to go  
25 anyway even though we are trying to get there, I

1 mean, so I think, to appease staff, I would like to  
2 see you guys do as best as you can to get it in by  
3 the 27th, but if it comes down to the day of and  
4 you have sheets that you want to pass out, then we  
5 are going to allow that as well.

6 MR. LUNNY: Yes, sir.

7 MR. WHARTON: One additional point,  
8 Commissioner, and that -- and maybe this was  
9 already covered -- it's my understanding that the  
10 answer to Mr. Crabb's question with about whether  
11 this does not apply to the exhibits that are on the  
12 CEL that it does not apply. This is for documents  
13 that are already not an exhibit.

14 MS. HELTON: That is correct. These are for  
15 exhibits that are not listed on the CEL for which  
16 you want to conduct cross-examination or some kind  
17 of impeachment examination so --

18 MR. WHARTON: Understand.

19 MS. CRAWFORD: And if I may, so the first part  
20 of the CEL is the prefilled exhibits. Those are  
21 public documents. Everybody should have access to  
22 those, and you are going to be responsible for  
23 whatever version, paper or electronic, that you  
24 prefer. The staff exhibits that follow are  
25 essentially discovery responses staff would like to

1 see stipulated into the record. Did everybody  
2 stipulate to those?

3 Okay. So I am very happy for everybody to use  
4 the staff exhibits so we don't have multiple copies  
5 of the same discovery answer floating around. That  
6 gets very con confusing on the record. But it  
7 would be appreciated to know whether parties are  
8 willing to stipulate to the staff exhibits so we  
9 can move cleanly forward.

10 Any objection to the stipulation of the staff  
11 exhibits?

12 MR. CRABB: No objection from JEA. I just had  
13 a quick question about the list.

14 On some of the staff exhibits, it -- it refers  
15 to the discovery item and then says, including  
16 attachments. And there were a few of the items on  
17 the list that I think the discovery response had  
18 attachments, but the exhibit list does not refer to  
19 the attachments, and I can give you a few examples  
20 of those; like on 41 and 51 would be two examples.

21 MS. LHERISSON: Staff is continuing to work on  
22 the comprehensive exhibit list. There are some  
23 exhibits that have attachments included in the  
24 filing as one entire PDF document. In that  
25 particular instance, we wouldn't call the



1 attachments a separate document.

2 If the exhibit has a separate attachment,  
3 that's when we indicate, including attachments in  
4 parenthesis. But we will continue to finalize this  
5 CEL to make sure that all parties are aware of the  
6 correct exhibit.

7 MR. CRABB: Okay, so like for 41, for an  
8 example, where it's interrogatory responses, if  
9 there were exhibits to those responses that were  
10 part of the document, that would be part of the  
11 exhibit?

12 MS. LHERISSON: Correct.

13 MR. CRABB: Thank you.

14 COMMISSIONER GRAHAM: All right. So are we  
15 set when it comes to cross-examination exhibits?

16 Okay. Order of witnesses, are there any  
17 changes to the order of witnesses?

18 MS. LHERISSON: Staff is not aware of any  
19 changes at this time.

20 COMMISSIONER GRAHAM: Are there any witnesses  
21 that can be stipulated?

22 MR. CRABB: Commissioner Graham, two things.

23 First, on the order of witnesses, if possible,  
24 we would like to move Julia Crawford as a direct  
25 witness to be our first witness before Mr. Orfano.

1 COMMISSIONER GRAHAM: Staff.

2 MS. LHERISSON: We would have no objection.

3 MR. FRIEDMAN: No objection.

4 COMMISSIONER GRAHAM: Okay.

5 MR. CRABB: And then the other thing,  
6 Commissioner Graham, as far as stipulating to  
7 witnesses, we went through the list and we believe  
8 that we can stipulate to First Coast rebuttal  
9 witness Gandy, to his testimony so that he does not  
10 need to appear, he doesn't otherwise need to.

11 COMMISSIONER GRAHAM: Okay. Staff.

12 MR. WHARTON: That's fine with us.

13 MS. LHERISSON: That's fine with staff.

14 COMMISSIONER GRAHAM: Is that it for  
15 stipulated witnesses, additional?

16 MS. LHERISSON: Commissioner, since the  
17 parties have advised us that there are possible  
18 stipulations for witnesses in this docket, staff  
19 will confirm with each Commissioner that any  
20 identified witness can be excused. If  
21 Commissioners do not have any questions for these  
22 witnesses, then the witnesses may be excused from  
23 the hearing, and their testimony and exhibits  
24 entered into the record at the hearing as though  
25 read.

1           COMMISSIONER GRAHAM: All right. Let's go  
2 back to -- let's go to Section VII, positions.

3           Do any of the parties have any changes to  
4 their basic positions? If not, we will move  
5 then -- we will move on to the next issue.

6           Staff?

7           MS. LHERISSON: If there are any changes to  
8 the basic positions, please note that they should  
9 be submitted in writing by close of business  
10 tomorrow, so 5:00 p.m. January 27th.

11          COMMISSIONER GRAHAM: And that is a hard  
12 target.

13          Okay. Issues and positions. Staff, any  
14 comments before we start this issue?

15          MS. LHERISSON: Yes.

16          Staff will note that for a number of issues,  
17 there are parties other than staff who have not  
18 taken a position. You are deemed not to have taken  
19 a position if you have stated the following: No  
20 position at this time, or no position at all was  
21 stated in the prehearing statement.

22          Pursuant to the Order Establishing Procedure,  
23 if is a party fails to take a position on an issue  
24 by the time of the prehearing conference, the party  
25 waives its opportunity to conduct cross-examination

1 on the issue, as well as file post-hearing briefs  
2 on the issue.

3 COMMISSIONER GRAHAM: All right. Let's get  
4 started on the issues.

5 Issues 1 through 17?

6 MS. LHERISSON: Yes. Issue 1 through 17 are  
7 uncontested by the parties. However, Issues 18  
8 through 23 were proposed by JEA, and it is included  
9 in the prehearing statement, and these are  
10 contested.

11 MR. WHARTON: Did we just skip the uncontested  
12 issues?

13 MS. LHERISSON: No, I was just stating all of  
14 the issues.

15 MR. WHARTON: Okay.

16 MS. LHERISSON: So 1 through 17 are  
17 uncontested by the parties, and then 18 through 23  
18 were proposed by JEA and are contested. It is up  
19 to the chairman to decide how to proceed with the  
20 issues.

21 COMMISSIONER GRAHAM: All right. You said you  
22 had a comment or concern about one of the  
23 uncontested issues, 1 through 17?

24 MR. WHARTON: I do.

25 COMMISSIONER GRAHAM: Okay. Let's hear it.

1 MR. WHARTON: First of all I would like to see  
2 if we can go ahead and stipulate Issue 1, issue of  
3 the notice.

4 COMMISSIONER GRAHAM: Staff?

5 MS. CRAWFORD: Staff has no objection.

6 COMMISSIONER GRAHAM: JEA?

7 MR. CRABB: No -- no objection to that one,  
8 and all the others in our prehearing statement  
9 where we state that we have no position, that  
10 hasn't changed.

11 COMMISSIONER GRAHAM: Okay.

12 MR. WHARTON: The other thing is that for  
13 Issue 3, where it says FCRU yes, that should  
14 definitely be a no.

15 COMMISSIONER GRAHAM: Okay. Is that it for 1  
16 through 17?

17 MR. WHARTON: I believe it is.

18 COMMISSIONER GRAHAM: JEA, anything 1 through  
19 17?

20 MR. CRABB: No.

21 COMMISSIONER GRAHAM: Okay. Mr. Friedman.

22 MR. FRIEDMAN: It looks like Issue 10 would be  
23 a stipulation as well.

24 COMMISSIONER GRAHAM: Staff.

25 MS. LHERISSON: If we may have a moment,

1 please?

2 COMMISSIONER GRAHAM: Sure.

3 MS. LHERISSON: Staff can stipulate to Issue  
4 10. Yes.

5 COMMISSIONER GRAHAM: Okay. All right. So  
6 we --

7 MR. FRIEDMAN: Mr. --

8 COMMISSIONER GRAHAM: Marty.

9 MR. FRIEDMAN: I hate to keep butting in, but  
10 it looks like that all of the -- that would be --  
11 that would follow through to Issues 12, 13, 14, 15,  
12 16. Those issues all deal with rates, and seem to  
13 be where JEA has taken no position, nor has the  
14 staff. And I am assuming that if they stipulate to  
15 all of those, that we may need to revisit whether  
16 Ms. Swain needs to be here in person.

17 COMMISSIONER GRAHAM: See, I told you you were  
18 going to come here and cause trouble, didn't I?

19 ms. cr: May I suggest --

20 MR. FRIEDMAN: I'm just trying to live up to  
21 my expectations.

22 MS. CRAWFORD: All right. In theory, we are  
23 certainly open to having that discussion. I would  
24 like to have a little bit of time to confer with  
25 staff to make sure they are comfortable with the

1 positions that are currently stated for those  
2 issues. We will certainly endeavor to get back  
3 very quickly with the parties.

4 COMMISSIONER GRAHAM: So right now we know  
5 neither party is opposed to being stipulated. If  
6 we don't have any problems with other Commissioners  
7 or staff, we will --

8 MS. CRAWFORD: Yes, sir. And -- and we just  
9 want to make sure the staff is okay with what's  
10 reflected there, and we can have that reflected in  
11 the prehearing order very shortly. We will not  
12 hold up the process.

13 COMMISSIONER GRAHAM: I was just going to say,  
14 we will just make -- we will just make sure it's in  
15 the prehearing order.

16 MS. CRAWFORD: Yes, sir.

17 MR. FRIEDMAN: And if that's the case, then do  
18 we stipulate Ms. Swain's testimony?

19 MS. CRAWFORD: Subject to ensuring as long as  
20 JEA is amenable.

21 MS. CLARK: No. She testifies to more than  
22 the rate so we need her.

23 MR. FRIEDMAN: Okay.

24 COMMISSIONER GRAHAM: So then the answer to  
25 your question regardless is no.

1 MR. FRIEDMAN: Thank you.

2 COMMISSIONER GRAHAM: Does that answer -- is  
3 that -- are we good?

4 So staff will let you know and it will be in  
5 the prehearing order if we are going to stipulate  
6 those issues that Mr. Friedman just mentioned, but  
7 the witness is still going to be here. She will  
8 not be stipulated.

9 Okay. So we are done with 1 through 17,  
10 correct?

11 MS. LHERISSON: That's correct.

12 COMMISSIONER GRAHAM: Let's go to 18 through  
13 23. JEA, can you give me a brief argument on why  
14 these issues should be included?

15 MR. LUNNY: Yes, Commissioner.

16 The issues were ones that we think are  
17 necessary for an adjudication in this case,  
18 particularly as to the subject matter jurisdiction.  
19 The parties previously went to the First DCA to  
20 raise these issues, and the First District sent us  
21 back here saying that the appeal was premature, or  
22 the writ of prohibition was premature because the  
23 PSC should be given an opportunity to adjudicate  
24 the issues first. And so that's exactly why we put  
25 them here.



1           Our fear is if we don't get adjudications on  
2           this, and we end up having an appeal, if -- should  
3           there be a certification given, the First DCA will  
4           send us right back here again to have these issues  
5           addressed.

6           COMMISSIONER GRAHAM:   First Coast?

7           MR. WHARTON:   If you will bear with me a  
8           moment, Commissioner Graham.

9           We do not think they should be issues.  We  
10          think they should be stricken.  Not because the  
11          statute is obvious, not because you have operated  
12          under your exclusive jurisdiction for decades, but  
13          because the DCA has already ruled in this case on  
14          this issue.  And a lot of money was spent on it and  
15          a lot of delay.

16          If you will just allow me, Commissioner, to  
17          remind you of a little bit of background in that  
18          regard.

19          COMMISSIONER GRAHAM:   Okay.

20          MR. WHARTON:   JEA's petition says,  
21          accordingly, issuance of assert of authorization to  
22          applicant would be directly contrary to JEA's  
23          exclusive franchise.  Then an appeal was taken to  
24          the DCA to, an interlocutory appeal, to a non-final  
25          order that said, hey, I think the Commission is

1           about to get into these ordinances. But in JEA's  
2           briefs, as I will read to you in a second, they  
3           didn't just stick to that issue. They got into  
4           this issue of the exclusivity of their  
5           jurisdiction. And when the Court of Appeals ruled,  
6           they put a sentence in there about it.

7                     This is the brief that you, the Commission,  
8           from the brief that the Commission filed in that  
9           case. The Commission has the exclusive authority  
10          to decide whether the certificate indicate First  
11          Coast.

12                    JEA's assertions that local government  
13          ordinances and franchise agreements divest the  
14          Commission of its authority to decide First Coast  
15          Utility's application or create some sort of  
16          concurrent jurisdiction with the circuit court are  
17          not only legally incorrect, they are contrary to  
18          the Legislature's stated policy in law.

19                    Also the Commission's brief said, as shown  
20          above, JEA's assertion that the Commission lacks  
21          the jurisdiction and authority to decide First  
22          Coast's application and to certificate the utility  
23          is wrong.

24                    The order was then issued by the DCA that had  
25          a couple of lines in it that basically said, you

1 know, you say they are going to interpret the  
2 ordinance. That's premature. We don't know if  
3 they are going to get into the ordinance and  
4 interpret it more than they should. And then they  
5 stuck at the end of that order, because Section  
6 367.045 Florida Statutes gives the PSC authority to  
7 decide certificate of authorization application,  
8 take into account objections filed by  
9 municipalities, local comprehensive plans and  
10 existing systems, we deny the petition.

11 In this draft prehearing order, it's  
12 interesting to note that if you look at Section XI,  
13 the Commission has put in an uncontested  
14 uncontroversial part of this order, probably put it  
15 in 10,000 orders before, the Commission is vested  
16 with jurisdiction over the subject matter by the  
17 provisions of 367.

18 That's what they challenged when they filed.  
19 It's what they challenged at the DCA. And it's  
20 what they seek to challenge again. JEA's position  
21 in this draft order on one of the issues is, does  
22 the Commission have jurisdiction to issue a  
23 certificate of authorization for those portions of  
24 the service territory?

25 Imagine what's going to happen in this

1 proceeding. Are you going to revisit that issue?  
2 And if you decide it the other way, you are going  
3 to say, oh, Court of Appeals, you know, those  
4 briefs we filed saying that the jurisdiction is  
5 exclusively ours and that you agreed with us, we've  
6 decided it the other way.

7 This is the second bite out of a thoroughly  
8 bit apple, and those issues have been adjudicated  
9 and they should not be included.

10 MR. LUNNY: Well, he is wrong. I mean, he is  
11 absolutely wrong. And I have a tremendous amount  
12 of respect for John, but the First District ruled  
13 that it was premature. And premature means that  
14 there has to be a maturation process, and that is  
15 in front of this agency, and those are the issues.  
16 So, you know, if we don't get -- if we don't get an  
17 adjudication about the exclusive franchise then we  
18 are going to be back here talking about this,  
19 because that is the basis on which we've challenged  
20 subject matter jurisdiction, but the First District  
21 told us it was premature. It didn't decide it. It  
22 was a writ of prohibition. As John said, it was  
23 interlocutory. But it wasn't a decision, it was  
24 ago back and let the PSC address it, and that's  
25 exactly why we are here.

1           COMMISSIONER GRAHAM: All right. I am going  
2 to go through these issues one at a time.

3           Issue 18, as TPR far as I am concerned I think  
4 that can be handled under Issue 4. So we don't  
5 need to include it.

6           Issue 19, staff is this something that just  
7 can be stipulated?

8           MS. CRAWFORD: Certainly staff would be  
9 amenable to doing so. I don't know that that's  
10 really factually in dispute. I suppose I would  
11 need to hear from JEA on that.

12          MR. CRABB: From JEA on 19, certainly we would  
13 stipulate to that whether it's included as an issue  
14 or not. You might mean First Coast.

15          COMMISSIONER GRAHAM: First Coast?

16          MR. FRIEDMAN: I don't know what the  
17 materiality of that is within or without of the  
18 City of Jacksonville, what does that matter? You  
19 could make a lot of statements that just have no  
20 significance to your final determination. You  
21 know, are there streets and roads? Are there stop  
22 signs? And it -- you got -- if we are going to  
23 stipulate to an issue, it's got to have some  
24 materiality in the determ-- in your final  
25 determination in what your obligations are in

1 the -- in the standards that you have to review and  
2 whether it's within the city is irrelevant.

3 COMMISSIONER GRAHAM: Well to, me --

4 MR. FRIEDMAN: I looked at all four of these,  
5 and the argument that I read made that was all  
6 these issues that they these what they call  
7 contested issues are all subsumed in Issues 2, 3  
8 and 4.

9 COMMISSIONER GRAHAM: Well --

10 MR. FRIEDMAN: You can make every one of these  
11 arguments in 2, 3 and 4 to the extent that they  
12 think it's significant.

13 COMMISSIONER GRAHAM: I thought Issue 19 was  
14 obvious, but I am not going to debate that one  
15 right now, so I will take that under advisement and  
16 you will see in the prehearing order -- you will  
17 see in the prehearing order if I include it or not.

18 Issue 20, I think you can handle that in Issue  
19 2 or 4.

20 Issue 21, I think can be handled in Issue 2  
21 and 4 -- 2 and/or 4.

22 Issue 22, I will have to take that one under  
23 advisement and we will either include it or not  
24 include it in the prehearing order. We will do  
25 both the same with 22 and 23.

1 MR. WHARTON: And 23, again, is right on the  
2 nose. Does the Commission have jurisdiction?

3 COMMISSIONER GRAHAM: Once again, I will sit  
4 down with staff and we will make a determination  
5 and staff will reach out to you guys.

6 Do we have any idea when the prehearing order  
7 is going to be ready?

8 MS. CRAWFORD: Sir, it depends largely on how  
9 many changes might be made subject to today's  
10 prehearing conference. We will certainly endeavor  
11 to get it turned around to you as quickly as we  
12 possibly can. Some of that will depend on whether  
13 the parties have any significant changes, or if  
14 there are significant changes based on the  
15 discussion.

16 COMMISSIONER GRAHAM: Okay. So we've dealt  
17 with, as far as this meeting goes, Issues 18  
18 through 23, and we are going to get back to them on  
19 Issues 19, 22 and 23.

20 Okay. Staff, where are we?

21 MS. CLARK: Mr. Chairman, just to be clear, if  
22 you incorporate those in the issues, will we have  
23 the opportunity to adjust our answers to those  
24 issues?

25 MS. CRAWFORD: What I would suggest, sir, is

1           depending on how quickly we can get the order out,  
2           you can also let staff, us, convey to the parties  
3           in an oral -- make an oral ruling, which we can  
4           then convey to all parties, what issues are in and  
5           which issues are out, and give them a very discrete  
6           amount of time in which to supplement their  
7           responses if -- if needed. That would be my  
8           suggestion.

9           COMMISSIONER GRAHAM: Okay. Well, we've  
10          already told them about Issues 18, 19 and 21 that  
11          are out, but we said that they can address it in  
12          Issues 2 or 4. So the question I believe Ms. Clark  
13          is asking is can she change her answers to Issues 2  
14          and 4?

15          MS. CRAWFORD: Okay. Well, in that case, it's  
16          subject to your discretion, but it seems  
17          appropriate to me to give the parties, again, some  
18          limited amount of time to adjust their answers as  
19          needed. I would suggest close of business today,  
20          noon tomorrow.

21          COMMISSIONER GRAHAM: But you still have to  
22          get back to them on 19, 22 and 23.

23          MS. CRAWFORD: Correct.

24          COMMISSIONER GRAHAM: I think it's got to be  
25          after you get back to them on those issues so that



1           they can still change their answers.

2           MS. CRAWFORD: So for the issues you have  
3           already disposed of today, I think they can go  
4           ahead and get us whatever changes to Issues 2 or 4  
5           they believe appropriate based on your striking  
6           those issues.

7           For the issues that are still under  
8           advisement, we can reach out to them as quickly as  
9           possible so they can amend if they stay in -- oh, I  
10          see what you are saying. Further -- further  
11          adjustment to Issues 2 and 4 might be possible or  
12          what have you.

13          COMMISSIONER GRAHAM: Ms. Clark.

14          MS. CLARK: I would agree with you, Mr.  
15          Chairman, that it would be better if we see how the  
16          issues are changing, and we will adjust our answers  
17          to what's been left in and what's been left out  
18          accordingly. So we need to see the whole thing.

19          MS. CRAWFORD: Understood. Agreed.

20          COMMISSIONER GRAHAM: So I think while we are  
21          here, after you get back to them and let them know  
22          what the determination is going to be for those  
23          other three issues, we give them 24 hours to get  
24          back to us with changes?

25          MS. CRAWFORD: That seems reasonable to me.

1 Less is more is better. If you can get them to us  
2 sooner, we will certainly get them incorporated  
3 sooner, 24 hours I think is reasonable.

4 COMMISSIONER GRAHAM: I am looking at heads  
5 nod, so that works for me. Okay.

6 MR. CRABB: Commissioner, will -- will that  
7 order have some direction as far as which issue  
8 they are subsumed into so that we have a roadmap  
9 there for -- for some of these that you said were  
10 going into 2 or 4, that will be laid out?

11 COMMISSIONER GRAHAM: You want for us to  
12 specifically tell you to answer it in 2 or answer  
13 it in 4, or just give you the opportunity to answer  
14 in 2, 3 or 4?

15 MR. CRABB: That -- that would be helpful,  
16 just some direction so we have a record as to where  
17 we should record that information.

18 COMMISSIONER GRAHAM: Okay.

19 Okay. Staff, are we done with that?

20 MS. LHERISSON: Yes, sir.

21 COMMISSIONER GRAHAM: Okay. Let's move on to  
22 comprehensive exhibit list. Didn't we do this  
23 already?

24 Exhibit list. Staff.

25 MS. LHERISSON: We touched on this briefly,

1 but staff has prepared a comprehensive exhibit list  
2 which lists all prefiled exhibits and those  
3 exhibits staff wishes to include in the record. It  
4 is -- it is -- is it correct that all parties have  
5 stipulated to the staff comprehensive exhibit list,  
6 the CEL?

7 COMMISSIONER GRAHAM: JEA?

8 MR. WHARTON: The very next section is  
9 stipulations. I don't care if I do it now, but  
10 we -- we don't have a problem with the list, but  
11 there are a few things that I hope to get  
12 stipulated on here. We've already talked about  
13 one, and that is --

14 COMMISSIONER GRAHAM: But specifically the  
15 comprehensive exhibit list, you have no problem  
16 with --

17 MR. WHARTON: No, I don't have any objections.

18 COMMISSIONER GRAHAM: JEA?

19 MR. CRABB: No objections from JEA as to  
20 what's on the list presently.

21 COMMISSIONER GRAHAM: Okay. Staff.

22 MS. LHERISSON: For the proposed stipulations,  
23 we do not have any proposed stipulations, but we  
24 understand that First Coast may have.

25 COMMISSIONER GRAHAM: First Coast?

1           MR. WHARTON: Well, this -- this, I suppose,  
2           relates to the comprehensive exhibit list.

3           First of all, there was a deficiency letter  
4           written right after the application was filed,  
5           another letter came back in very quickly, and it  
6           was just a couple of things like here's our  
7           registration with the Secretary of State. I wrote  
8           an email around and there was no objection to  
9           including that in the exhibits, just so -- to make  
10          sure it's in the record.

11          COMMISSIONER GRAHAM: Staff.

12          MS. LHERISSON: Staff will include that in the  
13          comprehensive exhibit list.

14          MR. WHARTON: There -- there is a very  
15          important issue in this case that I won't preach  
16          about, but there was an ordinance of the City of  
17          Jacksonville as part of the development order, part  
18          of the PUD for this property that read a certain  
19          way when the petition was filed. JEA, in one of  
20          its positions in this draft, acknowledges that that  
21          has now changed. I think it would be behoove  
22          everyone let's get the current version of that into  
23          this record.

24          I mean, you have got witnesses saying, this is  
25          what it reads, and it doesn't read that way

1           anymore. And I think there is universal agreement  
2           to that, and we ought to get a copy of it is and  
3           give it to staff and have it added.

4           COMMISSIONER GRAHAM: Did we take this case as  
5           is filed or as it sits when we start the hearing?

6           MS. CRAWFORD: So it is not unusual as the  
7           discovery process goes on that updated information  
8           is provided. So especially to the extent everybody  
9           wants to discuss that updated information, I think  
10          it's appropriate for them to stipulate to it.

11          COMMISSIONER GRAHAM: Okay. All right. Any  
12          other --

13          MR. WHARTON: The -- the only other thing is  
14          that we would seek a stipulation that the three  
15          letters of support from local governments that are  
16          in the PSC's files would be stipulated into the  
17          record.

18          COMMISSIONER GRAHAM: JEA.

19          MR. CRABB: We -- we would object to that --  
20          to that stipulation.

21          MR. WHARTON: We will try to get them in  
22          another way, for official recognition, see if that  
23          works.

24          MS. CRAWFORD: I will point out, for official  
25          recognition, the types of things that are

1           susceptible to official recognition are things like  
2           official government documents that are enacted by  
3           the agencies or local governments. I don't believe  
4           a letter would fall within that. And I would  
5           suggest the appropriate venue would be to try to  
6           use those letters as a matter of cross-examination  
7           exhibits.

8           COMMISSIONER GRAHAM: So you would need  
9           something that was voted on by the City of Baldwin.

10          MS. CRAWFORD: I'm sorry, sir?

11          COMMISSIONER GRAHAM: You would need something  
12          voted on by the City of Baldwin saying, we, as the  
13          City Council, agree --

14          MS. CRAWFORD: Correct, sir. An enacted  
15          ordinance, or something like that, yes, sir.

16          To put it in perspective, it would be the  
17          difference between the order of the Commission  
18          versus a letter from a single Commissioner who  
19          doesn't have the power to act on behalf of the body  
20          by themselves.

21          COMMISSIONER GRAHAM: Okay. Any other  
22          proposed stipulations?

23          All right. XI, the part that we are waiting  
24          for. Staff, Section XI.

25          MS. LHERISSON: There are four outstanding

1 motions, a notice of intent to use depositions and  
2 an objection to the notice. The four out stanchion  
3 motions are as follows:

4 One, JEA filed a motion for leave to serve one  
5 additional production request to applicant and  
6 request for expedited response.

7 Two, JEA filed a motion to strike the  
8 testimony of Robert Kennelly.

9 Three, JEA filed a motion to strike the  
10 testimony of Deborah D. Swain.

11 Four, JEA filed a motion to strike portions of  
12 rebuttal testimony of Scott Kelly.

13 All of these motions were filed on January  
14 24th, 2022. It is staff's understanding that First  
15 Coast intends to make an oral response to these  
16 motions.

17 Additionally, on January 19th, 2022, First  
18 Coast filed a notice of intent to use depositions  
19 at hearing of the following witnesses: Deborah  
20 Swain, Bevin Beaudet, Paul Gandy, Robert Kennelly  
21 and Scott Kelly.

22 Section V(G) of the Order Establishing  
23 Procedure states that any party wishing to  
24 introduce all or part of a deposition at hearing  
25 for any purpose other than impeachment must file a

1 notice of intent to use deposition no later than  
2 the last day to conduct discovery, which First  
3 Coast has done. JEA has filed a timely objection  
4 to First Coast's notice of intent to use  
5 depositions at hearing.

6 COMMISSIONER GRAHAM: All right. So let's  
7 take up the motions first.

8 First Coast, can you summarize your objections  
9 to the motions?

10 MR. WHARTON: The -- my response to the  
11 motions, all the motions?

12 COMMISSIONER GRAHAM: All four of them.

13 MR. WHARTON: I think that I can. I can  
14 certainly -- certainly I could go one by one. I  
15 mean, they have different bases for each motion,  
16 but first let's talk about Swain.

17 They say that it's not rebuttal testimony, and  
18 yet they say right in there that she is responding  
19 to testimony where a JEA witness said the rates  
20 were high. What they are attempting to strike is  
21 Swain saying, well, there may be an alternative way  
22 to do the financing that would result in lower  
23 rates. If that's -- that's rebuttal. I mean, JEA  
24 says in their petition, and throughout this case,  
25 we are better able to serve than you are. Anything



1           that Swain comes up with that tends to lower the  
2           rates is in the nature of rebuttal.

3                   Swain has probably testified in front of the  
4           Commission 100 times. I think that it would be  
5           extremely over-technical to strike that. I think  
6           that when she drafted that testimony that she felt  
7           like she was responding to the testimony of JEA,  
8           and to the position of JEA. She will be subject  
9           for cross-examination. She's been deposed in this  
10          case.

11                   I think that it's interesting to note that  
12          this testimony has been pending for over 500 days,  
13          but I have no quarrel with that. I would rather  
14          get it resolved today. And with regard to Swain,  
15          that would -- that would be our response.

16                   With regard to Kennelly, they have essentially  
17          made three points. One is that some of his  
18          testimony is hearsay.

19                   First of all, hearsay is admissible in  
20          administrative proceedings. I don't think that you  
21          can know whether or not it will be corroborated.  
22          And that that is a key fact. If hearsay is not  
23          corroborated then it cannot serve as the basis for  
24          a finding of fact. Well, you don't know whether it  
25          would be corroborated until you have heard the

1 cross-examination, or the answers to staff's  
2 questions, or OPC's, or questions from the  
3 Commissioners. I think that's a decision you make  
4 after-the-fact and you decide what weight to give  
5 to that.

6 They also say that Kennelly is speaking as a  
7 non-expert. Well, unless I am mistaken, he went to  
8 Georgia Tech, which is an institution you know  
9 well, and he is a lawyer, he is an accountant.  
10 He -- when he says a comprehensive plan or an  
11 ordinance says this, that's more in the nature of  
12 fact testimony. But once again, I certainly don't  
13 think that the PSC is going to decide this case,  
14 well, Bob Kennelly who is a principal for 301  
15 Capital, it's the developer who owns the utility,  
16 he said the ordinance says this.

17 He is -- again, I think it would be highly  
18 over-technical to strike it. He is subject to  
19 cross. He has already been subject to a  
20 deposition. I think it's interesting that attached  
21 to the motion with regard to Kennelly are pieces of  
22 the deposition that will, in a few minutes, they  
23 will be arguing they don't want to come into  
24 evidence. So once again, I don't think that motion  
25 should be granted.

1           They also say that he is a non-expert. Well,  
2           the -- you know, I -- I have no doubt that there  
3           are cases out there and statements under law about  
4           experts. It's interesting that the rule actually  
5           says skilled or expert. But I -- I have been in a  
6           lot of PSC proceedings where a lot of folks were  
7           allowed to testify about a variety of matters.  
8           This is not a jury who can be fooled. It's more  
9           akin to a bench trial.

10           I know that some of the staff was here this  
11           morning and -- and the testimony was put in in the  
12           Environmental Utilities case from a woman who  
13           basically said in her testimony she's an expert in  
14           everything. Well, she's been around the block, and  
15           she's been -- we didn't move to strike that. The  
16           Commissioners can work that out.

17           You know, I found some interesting cases, and  
18           if anybody wants the cites I can give them to you,  
19           they are PSC cases, consistent with the  
20           Commission's practice to presume a witness to be an  
21           expert in the field to which he or she is  
22           testifying.

23           Another one says the rules for evidence in  
24           administrative proceedings are liberal. And they  
25           are talking about whether to take expert testimony

1 from someone.

2 And another one says, due to the nature of  
3 this Commission's duties, and the specialized  
4 unique issues presented in Commission cases, most  
5 persons testifying at formal hearing are experts  
6 since they have acquired specialized training,  
7 education or experience.

8 I -- I think, again, to carve part of  
9 Kennelly's testimony before hearing it -- before  
10 hearing the cross-examination, the redirect and  
11 different responses to any questions the  
12 Commissioners might have would be premature.

13 The final witness was Kelly, that was -- it  
14 was a broad ranging motion. One of the things they  
15 said is that when he is talking about something  
16 being inconsistent with the comp plan, he is giving  
17 a legal opinion. Plaintiffs do that I will at  
18 time. All the time. I don't think that's a legal  
19 opinion. And in fact, if you look at Kelly, he  
20 tends more to say the comp plan says this and the  
21 comp plan says that.

22 He is critical of JEA. That's one of the  
23 things they say. He is a former employee. They  
24 say that he is not an expert in the areas he  
25 testifies on. Each of the last two, when they say

1           they are not an expert, they didn't give you the  
2           motion part from the prefiled and rebuttal  
3           testimony when they talk about their expertise. I  
4           think that's a decision that the Commission can  
5           make at the time when they give it the weight,  
6           something you often hear the Commissioners say.

7           You know, one thing they actually said about  
8           Kelly, which kind of surprised me, was that we said  
9           in our prehearing statement he would only testify  
10          on the comp plan. I would respectfully -- that's a  
11          little cherrypicked, first of all. I don't think  
12          you waived anything in your prehearing statement.  
13          We are still formulating the draft prehearing order  
14          as we sit here today. Not only that, there were  
15          other parts of the prehearing statement that have  
16          him testifying more than that. And in this draft  
17          prehearing order page four, staff has him  
18          testifying on nine different issues.

19          So I don't think of this kind of a gotcha, oh,  
20          you didn't -- you put in your prehearing statement  
21          he was only going to talk about the comp issue,  
22          this is a non-comp issue.

23          I just think with each regard with these  
24          motions to strike, I would appreciate it if they  
25          would have been brought on an earlier date. I

1           would have had a seven-day response time and we  
2           could have line-itemed matters. I don't cast  
3           aspersions for that. I just would have liked more  
4           time. But I think that they are overly technical.  
5           I don't think it would really contribute anything  
6           to the record, and I think the Commissioners are  
7           well able to listen to that testimony and provide  
8           what should form the basis of their decision.

9           COMMISSIONER GRAHAM: JEA.

10          MS. CLARK: Madam Chairman -- I mean, Mr.  
11          Chairman, excuse me, I am going to go first because  
12          I have Swain, and Mr. Lunny has the other motions.

13          We have moved to strike the testimony that  
14          we've outlined in our motion because it is improper  
15          supplemental direct testimony. She is purportedly  
16          abutting -- rebutting Ms. Crawford's comparison of  
17          First Coast rates to JEA's rates. She actually  
18          offers no rebuttal to that comparison. In fact,  
19          she agreed that her -- Ms. Crawford's rate  
20          calculations were correct, and that First Coast  
21          rates were comparatively high, and I have cited to  
22          those pages in our motion.

23          What she then does is present additional -- an  
24          additional alternative financing scheme to reduce  
25          the revenue requirements, adding additional facts

1           that could and should have been part of the  
2           application in the prefiled testimony. Your  
3           precedent clearly supports striking that testimony.

4           There was the TDS telecom case cited in our  
5           motion in which it said, rebuttal should be limited  
6           to issues brought out in the JEA intervenor  
7           testimony, which was comparison -- a comparison of  
8           JEA's rates to First Coast.

9           A new financing scheme does not rebut the  
10          validity of the comparison by taking issue with  
11          assumptions regarding residential service. It does  
12          not explain why the comparison is wrong or  
13          otherwise flawed, and it does not disprove the  
14          calculation. Instead, upon being confronted with a  
15          wide difference in rates, her testimony offers a  
16          new scheme of financing. Clearly an attempt to  
17          supplement their application and testimony.

18          I would point out that in her deposition, she  
19          admitted that the alternative scheme could have  
20          been filed with the application had she been  
21          presented with it then.

22          She said there were conversations on how to  
23          finance the utility, discussions on the use of  
24          CIAC, so clearly they could have provided this  
25          alternative in their application. We have been

1 prejudiced by not being left the opportunity to  
2 test and respond to this new financing scheme, and  
3 it's for that reason we've asked for this testimony  
4 to be stricken.

5 Mr. Lunny will address the other motions.

6 MR. LUNNY: Commissioner, thank you.

7 With respect to the rebuttal testimony of Mr.  
8 Kelly, the reason that we started by pointing out  
9 that at least half of his deposition, or his  
10 testimony really bore no relation to the comp plan  
11 was because it bore no relation to any real issue.  
12 It was really sort of a smearing of the JEA, saying  
13 that it had enterprise funds; it had substantial  
14 debt, capital improvement plan; it had to delay  
15 things; it has a consent order. And -- and it was  
16 sort of this laundry list from a former employee  
17 that was really focused in issues of accounting and  
18 finance. And he was a -- an engineer.

19 And my objection at this point was there was  
20 real now predicate laid for any of his final  
21 conclusions. Once he was done sort of having this  
22 discussion about JEA, his final conclusion was, oh,  
23 JEA doesn't have the financial wherewithal to -- to  
24 build a utility, and -- and he has absolutely no  
25 basis to render that opinion.



1           And so I figured, quite honestly, with respect  
2           to his comp plan discussions, I don't think we move  
3           to strike that, but we certainly move to strike the  
4           laundry list of gripes that he had followed by his  
5           financial and accounting conclusion, which there  
6           was no showing that he was qualified to make.

7           With respect to Mr. Kennelly, Mr. Kennelly  
8           creates a number of legal opinions and talks about  
9           how JEA is prohibited from investing in facilities  
10          in our area. That's on page two, line 19. He goes  
11          on and does have hearsay, talking about his  
12          understanding of conversations at the time that the  
13          property was acquired. But the way we usually deal  
14          with hearsay in an administrative proceeding is to  
15          have the independent evidence first and then the  
16          hearsay can come in. You don't just admit the  
17          hearsay with the hope that they will be  
18          corroborating independently valid evidence to later  
19          come.

20          And so, you know, we felt, quite honestly,  
21          that this was going to streamline it, and that  
22          these portions of these statements in this  
23          testimony -- they are prepared by counsel. You  
24          have every opportunity to work with the witness on  
25          that, and the predicates just weren't laid here, or

1           they were inadmissible legal opinions.

2           COMMISSIONER GRAHAM: Well, I am not ready to  
3           make a determination on these motions. I need to  
4           sit down and talk to staff about a couple of these.

5           Staff, do we have any other questions about  
6           these motions?

7           MS. LHERISSON: Not at this time.

8           COMMISSIONER GRAHAM: All right. So we will  
9           handle those, and staff will get back to you on the  
10          answers, or we will put those in a prehearing  
11          motion.

12          MR. LUNNY: Commissioner, if I could on one  
13          small issue.

14          COMMISSIONER GRAHAM: Sure.

15          MR. LUNNY: The -- the one that is time  
16          sensitive is our request for leave to serve an  
17          additional request for production because we would  
18          need that fair market valuation at the hearing.

19          Mr. Kennelly was deposed on the 19th. It was  
20          the last day of discovery. We got his transcript  
21          back on Monday morning. In his deposition, he  
22          talked about -- for the first time he revealed that  
23          there was a fair market value that was done in the  
24          last two weeks that we don't have, that is  
25          substantially lower than any number that Mr.

1 Kennelly ever opined about. His number was 71  
2 million versus 170 or 200 plus million that he has  
3 talked about. And a core issue in the case is the  
4 financial ability of the applicant. And so we --  
5 we really do need that fair market valuation  
6 opinion, and we've timely asked for leave and we've  
7 just included one request, and that's just give us  
8 the opinion.

9 We think it should be easy. He testified to  
10 it in his deposition. He pulled it up on his  
11 computer. He read portions of it to us, but  
12 reading, you know, the conclusion of 71 million  
13 doesn't really give us everything else.

14 And what's curious about this is this  
15 valuation was prepared when one of the parents of  
16 -- members was bought out. So it's a totally  
17 different number that's prepared for the purposes  
18 of buying out a partner in the parent entity that  
19 is supposed to fund this. And I suggest, and will  
20 say at the hearing, that it's a lot more compelling  
21 of what your partner's buyout is than what you are  
22 telling the PSC as far as the value of the company.  
23 But setting that aside, I can't even make those  
24 arguments until I get the document.

25 COMMISSIONER GRAHAM: First Coast, you can

1 speak to this.

2 MR. WHARTON: This is one that I did not  
3 address, if I may.

4 Well, first of all, we are talking about  
5 depositions that occurred on the last day of the  
6 discovery period. We are talking about a valuation  
7 that he had a chance to talk to him about and it  
8 was explained the difference in deposition, the  
9 same deposition we are going to talk about in a  
10 moment they want to keep out, they attached part of  
11 them to this motion too.

12 The valuation was done three weeks ago, in the  
13 end of December. They haven't even attempted to  
14 tell you that they had a request to produce out and  
15 outstanding at the time the valuation was done and,  
16 therefore, this was something that wasn't  
17 disclosed. It was, rather, something that Mr.  
18 Kelly -- or Mr. Kennelly volunteered during the  
19 deposition. He explained the basis of it. I don't  
20 think there is any need to get into discovery after  
21 the discovery period. I don't think this issue --  
22 first of all, it's still tens and tens and tens of  
23 millions of dollars -- is nearly as important as is  
24 being played, and it's well explained in the  
25 discovery. Anyone who wants to ask Mr. Kennelly

1           about it at the hearing, why was there a different  
2           value, this valuation was discounted as I  
3           understand it because of partnership or something,  
4           he will be there on the stand if anybody has any  
5           questions.

6                    COMMISSIONER GRAHAM: Well, I do not have  
7           enough of the facts in front of me for motion  
8           number one, so I am definitely going to have to sit  
9           down and talk to staff about that one.

10                   Staff, do you need any other --

11                   MS. CRAWFORD: Could I ask one clarifying  
12           question, please, of JEA?

13                   COMMISSIONER GRAHAM: Sure.

14                   MS. CRAWFORD: So if this information was  
15           first brought up and discussed, and you mention  
16           there was some discussion at the deposition in the  
17           transcript, was there a particular reason you  
18           didn't ask for this valuation as a late-filed  
19           exhibit? And if it had been done that day, it  
20           would have been, arguably, within the discovery  
21           period.

22                   MR. LUNNY: Meaning is there a reason that I  
23           didn't serve a request for production on the 19th?

24                   MS. CRAWFORD: No, sir. In the course of the  
25           deposition when the information was first raised

1 and discussed --

2 MR. LUNNY: Right.

3 MS. CRAWFORD: -- was there a particular  
4 reason that it was not requested that Mr. Kennelly  
5 provide that information as a late-filed deposition  
6 exhibit?

7 MR. LUNNY: Well, for one thing, ma'am, Mr.  
8 Wharton instructed witness not to look any further  
9 into the computer and do any research at all to  
10 respond to any additional questions that we had.  
11 And so it didn't seem like the climate was right to  
12 make a request for it. If it -- if that -- if I  
13 should have, I apologize.

14 What I did was I waited until I got the  
15 transcript back. We paid for it to be expedited,  
16 and the minute that it came back we cranked off the  
17 motion. And the delta here of what we are talking  
18 about is whether or not we would have done, you  
19 know, something a day or two earlier on the eve of  
20 trial. We've tried to get this out as quickly as  
21 we could. And again, I mean, we are probably  
22 talking about 20 or 30 pieces of paper.

23 So I don't know what the applicant wants to  
24 hide here. If it's a fair market value that was  
25 done of this company recently, it should be

1 available to the Commission. And I may be a  
2 descent lawyer, but I am not great, and I can't  
3 cross-examine a witness fantastically without the  
4 document.

5 MS. CRAWFORD: One more question, sir.

6 COMMISSIONER GRAHAM: Sure.

7 MS. CRAWFORD: If your decision is to require  
8 First Coast to provide the information, how quickly  
9 could it be provided?

10 MR. WHARTON: I am sorry, what was the final  
11 question?

12 MS. CRAWFORD: If -- if Commissioner Graham  
13 decides that he wants to grant this motion and  
14 require First Coast to provide the valuation to  
15 JEA, how quickly can that information be provided  
16 to JEA?

17 MR. WHARTON: I am sure that it can be done  
18 quickly.

19 COMMISSIONER GRAHAM: 12 hours? 24 hours?

20 MR. WHARTON: 24 hours.

21 COMMISSIONER GRAHAM: Okay.

22 MR. WHARTON: Now, I -- may I say one thing,  
23 Commissioner, just to respond --

24 COMMISSIONER GRAHAM: Sure.

25 MR. WHARTON: -- to this that I instructed

1           him. Even though my malpractice insurance is  
2           current, yes, I looked on that computer and saw  
3           that he was looking up answers he did not --  
4           questions he did not know the answers to them on  
5           the computer. I said, hey, you don't need to do  
6           that, or everybody would know everything.  
7           Everybody has got their entire business on the  
8           computer. So that's all of that exchange.

9           COMMISSIONER GRAHAM: Well, we will go through  
10          these four motions, and staff will reach out to you  
11          guys as determinations are made, and they will all  
12          definitely be addressed in the prehearing order.  
13          But just so, to kind of expedite this stuff, we  
14          don't have to wait for all four decisions to be  
15          made to reach out to you, so -- because I know the  
16          hearing is coming up pretty quickly.

17          Okay. Let's go to the notice of intent.

18          JEA, will you summarize your objections to  
19          First Coast's Notice of Intent?

20          MR. CRABB: Certainly, Commissioner.

21          Consistent with our -- our portions of our  
22          motions to strike, our objection is that admitting  
23          all of these deposition transcripts in their  
24          entirety at this date is nothing more than  
25          supplemental prefiled testimony, supplemental



1 direct, supplemental rebuttal; which, of course,  
2 the deadline has long since passed for that.

3 There was no discussion in the notice about  
4 which particular sections of the deposition  
5 transcripts they would seek to be admitted, or for  
6 what reason. And the rules relating to -- to  
7 admitting deposition transcripts at trial that we  
8 cite in our objection essentially relate to  
9 circumstances where the witness can't be there in  
10 person. They are unavailable for one reason or  
11 another, or those types of situations. None that  
12 would apply here.

13 COMMISSIONER GRAHAM: First Coast?

14 MR. WHARTON: That is entirely not what the  
15 rules say. If you want to get -- maybe this is one  
16 to give your staff time to look at.

17 The rule clearly says the deposition of an  
18 expert can be used by any party for any purpose.  
19 It then goes on to six reasons about people who are  
20 dead, or unavailable, or why there should be  
21 exceptional circumstances, something else they  
22 mention. But rather than -- first of all,  
23 supplemental direct, supplemental, I draft the  
24 questions in direct. I draft the questions in  
25 rebuttal. This is not that.

1           Is it supplemental evidence to the record?

2           Yes. Guilty. It is depositions they took of our  
3           experts that do I think they would benefit us to  
4           put us in the record? Yes. I will admit. But  
5           they obviously don't think that. That's not the  
6           point.

7           The point is that I have heard judges muse  
8           over this rule before, and say it could not be any  
9           more clear or less qualified. The deposition of an  
10          expert may be used by any party for any purpose.

11          As far as saying that I should have delineated  
12          the pages that were only favorable to us, and then  
13          the rule allows them to come back in and say, well,  
14          we think these other parts should go in fairly,  
15          absolutely not incumbent upon me to do that.

16          We were in a -- we had a prehearing this  
17          morning where a deposition in its entirety came in.  
18          I know that in the Utilities, Inc., case last year,  
19          all the depositions that came in were in their  
20          entirety.

21          Will I go out in the hall in a half hour now  
22          and highlight the parts that are favorable to me,  
23          and then they would have to go through the effort?  
24          These weren't long depositions. I said in their  
25          entirety certainly satisfies the rule and what the

1 rule requires.

2 COMMISSIONER GRAHAM: I have seen this thing  
3 -- I have seen this thing addressed so many  
4 different ways so many different times, I am not  
5 ready to make a decision on this yet. I need to  
6 speak to staff, because what I don't want to do is  
7 make a mistake in this determination.

8 MS. CRAWFORD: Commissioner Graham, may I ask  
9 a question of First Coast?

10 COMMISSIONER GRAHAM: Sure.

11 MS. CRAWFORD: So I have heard everybody's  
12 arguments. What I am still struggling with is when  
13 I look at Florida Rules of Civil Procedure 1.330,  
14 that talked about the exceptional circumstances.  
15 What are the -- and you are right there are a  
16 number of circumstances in which the expert of any  
17 person -- the deposition transcript of any person  
18 can be used by any party for any reason. The  
19 conditions are things like the death of the person  
20 who was deposed it; the person is unavailable  
21 because they are far distant or unwilling to come  
22 to the venue. And then, of course, we have the  
23 exceptional circumstances. And there aren't many  
24 cases that talk about what exceptional  
25 circumstances are. The few that we have are things

1           like the death of the deponent, or their refusing  
2           to testify because they are asserting their Fifth  
3           Amendment rights.

4           I am -- I am still not hearing what the  
5           exceptional circumstances are that would make it  
6           appropriate for these depositions to be entered  
7           into the -- this particular record -- to be able to  
8           use those depositions.

9           MR. WHARTON: And I -- and I cast no  
10          aspersions with apologies, but I would ask you to  
11          take a look, another look at 1.330(a)(3). The  
12          deposition of a witness, whether or not a party,  
13          may be used by any party for any purpose if the  
14          court finds, and one of those is that the witness  
15          is an expert or skilled witness.

16          The exceptional circumstances is an unrelated  
17          objection. And it's -- you know, it's not like --  
18          is this a supplement to the prefiled testimony?  
19          Absolutely not. Is it a supplement to the record?  
20          Yes. The CEL is a supplement to the record. The  
21          answers in response to cross-examination questions  
22          are supplements to the record. The answers to  
23          Commissioners questions of witnesses are  
24          supplemental to the record. The record gets  
25          supplemented in PSC cases. But I just don't think

1           this rule and the cases on this rule could be more  
2           clear. We do not need to demonstrate exceptional  
3           circumstances if the witness is an expert witness.

4           MS. CRAWFORD: So that was not clear to me.  
5           You are asserting this on the basis that they are  
6           expert witnesses?

7           MR. WHARTON: Yes.

8           MS. CRAWFORD: Okay. Thank you.

9           MR. WHARTON: I am sorry if I did not make  
10          that clear.

11          COMMISSIONER GRAHAM: JEA?

12          MR. CRABB: Just one last comment on this. As  
13          you look into this issue, my understanding of the  
14          purpose of that is it's so when experts have been  
15          deposed, their deposition transcripts can be put in  
16          so as to avoid the time and expense of having those  
17          experts having to testify at trial, not -- not when  
18          they are already planning to be there and will be  
19          in attendance.

20          MR. WHARTON: The rule couldn't be more clear.  
21          That's not in there.

22          COMMISSIONER GRAHAM: Once again, I need to --  
23          I need to talk to somebody smarter than me to  
24          figure this question out.

25          MR. WHARTON: Have them come see me

1 afterwards.

2 COMMISSIONER GRAHAM: So -- so I will get back  
3 to you guys on that one.

4 Okay. We are on Section No. XII.

5 Staff.

6 MS. LHERISSON: There are no pending  
7 confidentiality matters at this time.

8 COMMISSIONER GRAHAM: Section XIII.

9 MS. LHERISSON: Staff recommends that  
10 post-hearing briefs be limited to 40 pages should  
11 briefs be necessary.

12 Staff recommends that a summary of each  
13 position of no more than 50 words, set off with  
14 asterisks, should be included in each post-hearing  
15 statement.

16 If a bench decision is not made, post-hearing  
17 briefs will be due on February 24th, 2022.

18 COMMISSIONER GRAHAM: Are all parties in  
19 agreement to that?

20 MR. CRABB: Commissioner, the only thing I  
21 would ask on that, we definitely want the  
22 opportunity to file a brief. The original  
23 procedural order called for six weeks from the date  
24 of hearing to the brief deadline. The current  
25 procedural order is three weeks, or 21 days. We

1           would ask that to be just a little bit longer,  
2           perhaps 30 days from the date the transcripts  
3           are -- are ready.

4           COMMISSIONER GRAHAM:   First Coast?

5           MR. WHARTON:   I am sorry, what -- what's the  
6           question?

7           MR. FRIEDMAN:   We can get our brief filed  
8           within whatever time the Commission determines.

9           COMMISSIONER GRAHAM:   I don't think I have  
10          ever heard you say that before.

11          But the other three things that staff read out  
12          on the prehearing procedures -- post-hearing  
13          procedures.

14          MR. FRIEDMAN:   The 40 pages and the 50 words,  
15          and all that stuff?  We don't have any objection to  
16          that.

17          COMMISSIONER GRAHAM:   Staff, do we have a  
18          problem going 30 days rather than the 21 days  
19          stated here?

20          MS. LHERISSON:   If you will give me one  
21          moment?

22          COMMISSIONER GRAHAM:   Sure.

23          MS. LHERISSON:   So 30 days from the date that  
24          the transcripts are due?

25          COMMISSIONER GRAHAM:   That's what -- that's

1           what the request was.

2           MS. LHERISSON: Right. Staff doesn't have an  
3           issue with that.

4           COMMISSIONER GRAHAM: And we are not running  
5           into any sort of time issues?

6           MS. LHERISSON: No timelines, no.

7           COMMISSIONER GRAHAM: So then 30 days. And so  
8           that date would be -- remember February is only 28  
9           days or -- yeah, 28 days. So what's that specific  
10          date?

11          MS. LHERISSON: It depends on the length of  
12          the hearing and when we get the transcripts.

13          COMMISSIONER GRAHAM: It also depends on the  
14          transcripts. So we will just say 30 days. All  
15          right. I think that's appropriate enough.

16          Okay. So all parties are in agreement with  
17          that?

18          All right. Section XIV, rulings. You know,  
19          you guys know me well enough.

20          MS. LHERISSON: Staff recommends that the  
21          prehearing officer make a ruling that all parties  
22          shall be provided five minutes for opening  
23          statements.

24          COMMISSIONER GRAHAM: Is there a reason why we  
25          can't get that done in three minutes?



1           MR. WHARTON: I -- I know that this is set for  
2 a partial day, but it's set for three days. I  
3 don't think it's going to take nearly that long. I  
4 bet the one thing JEA and I could agree on is I  
5 just think that this should be 10 minutes. I  
6 intend to have a map beside me, and five minutes --  
7 I just think that we could set the stage a little  
8 better with -- with a 10-minute opening.

9           MR. CRABB: Commissioner Graham, we would be  
10 comfortable with three-minute opening statements.  
11 No, five minutes would be -- would be perfectly  
12 fine, or whatever -- whatever you decide is totally  
13 fine with us.

14           COMMISSIONER GRAHAM: Now, I said this one  
15 time before, and I guess I will say it again. When  
16 I was in fifth grade I had to recite the Gettysburg  
17 Address, and I recited that in about three minutes.  
18 What are you going to tell me in 10 minutes that's  
19 more important than what was recited in three  
20 minutes?

21           MR. WHARTON: I will do it in five. Five is  
22 sounding better all the time.

23           COMMISSIONER GRAHAM: Okay. We will  
24 compromise and go with five.

25           MS. CRAWFORD: And, Commissioner Graham, if I

1           may. I just heard Mr. Wharton say demonstrative  
2           exhibit, and perhaps he might address it at this  
3           time if he does have demonstrative exhibits he  
4           would like to use at the hearing.

5           MR. WHARTON: Yeah. Demonstrative --  
6           demonstratives were supposed to be revealed by the  
7           day of. We made some maps and we brought some  
8           copies if people want them. I don't know 100  
9           percent if we are going to use them, but we brought  
10          them. So it's just, like, maps of the property  
11          that we may use as demonstratives at the time of  
12          trial. So I don't think, really, anything is  
13          required in the order, just that I have complied  
14          with disclosing them by the date of the prehearing  
15          conference.

16          COMMISSIONER GRAHAM: Ms. Crawford?

17          MS. CRAWFORD: Apologies, sir.

18          The OEP specifics that if any party wants to  
19          use demonstratives, that they identify it by the  
20          prehearing conference. Staff has no concern about  
21          using them. If the other parties want to better  
22          quantify what they are, their nature, this is their  
23          opportunity to ask that question.

24          In general, I find demonstratives are up for,  
25          and useful, for about three seconds and then we

1 move on, so I don't have any concerns myself.

2 COMMISSIONER GRAHAM: JEA?

3 MR. CRABB: We have no objection to maps or to  
4 photographs that have already been produced in  
5 discovery and are listed in the exhibit list. If  
6 there were other demonstratives, we would want to  
7 know about those at this hearing.

8 COMMISSIONER GRAHAM: Do you have any that are  
9 not already in the record?

10 MR. WHARTON: No. That -- this -- these are  
11 not already in the record. I mean, obviously  
12 anything that's already in the record can be blown  
13 up by anyone.

14 COMMISSIONER GRAHAM: These are already in the  
15 record?

16 MR. WHARTON: They are not already in the  
17 record.

18 COMMISSIONER GRAHAM: They are not?

19 MR. WHARTON: They are just maps of the earth.

20 MR. CRABB: I'm sorry, I missed that very last  
21 part.

22 COMMISSIONER GRAHAM: Repeat what you just  
23 said, please, sir.

24 MR. WHARTON: What was that?

25 MR. LUNNY: John, is there something you can

1 show us now that we can just hammer out?

2 MR. CRABB: I don't -- I don't recall seeing  
3 these documents before. You say that these are on  
4 the exhibit list or they are not?

5 COMMISSIONER GRAHAM: He said they are not.

6 MR. WHARTON: And they are not exhibits.  
7 Demonstratives are typically not exhibits. They  
8 are illustrative of the testimony of a witness.

9 COMMISSIONER GRAHAM: Do you want to take  
10 about three to five minutes and go over these  
11 things and make a determination?

12 MR. CRABB: Yes. Thank you.

13 COMMISSIONER GRAHAM: We will break for five  
14 minutes.

15 (Brief recess.)

16 COMMISSIONER GRAHAM: I don't have to wait  
17 five if you guys are ready.

18 MR. CRABB: I'm assuming that these are the  
19 only four demonstrative exhibits, and we have no  
20 objection to these being used at the hearing.

21 COMMISSIONER GRAHAM: Okay. We are good?

22 All right. Staff, where are we? We are down  
23 to bottom of page seven?

24 MS. LHERISSON: We are still in Section XIV.

25 COMMISSIONER GRAHAM: Okay. If any -- if any

1 parties object to the positions from all parties  
2 and making of a ruling to be taken under  
3 advisement. We've already done that, right?

4 MS. LHERISSON: Yes.

5 COMMISSIONER GRAHAM: Okay, so --

6 MS. LHERISSON: We've discussed Attachment A,  
7 and all parties should provide the  
8 cross-examination exhibits, including impeachment  
9 exhibits, to the Commission Clerk by close of  
10 business, which is five o'clock, on January 27th.

11 COMMISSIONER GRAHAM: We -- we decided we were  
12 going to be flexible on that, okay.

13 MS. LHERISSON: Yes, but January 27th is the  
14 recommended.

15 MS. HELTON: When we say flexible, Mr.  
16 Chairman, I want to make sure we are -- we have the  
17 same definition. It's my understanding and belief,  
18 based on the conversation today, that everyone, all  
19 of the parties are going to make a good faith  
20 effort to provide all cross-examination exhibits to  
21 us by the date certain that's been provided by Ms.  
22 Lherisson. However, if during the course of their  
23 trial preparation they come across a stray exhibit  
24 that they did not previously identify and they can,  
25 you know, then we -- we will give them latitude, or

1           you will give them latitude for one or two perhaps,  
2           if it comes to that, but we are hoping it doesn't  
3           come to that.

4           COMMISSIONER GRAHAM: Well, I think what the  
5           request was that they are used to preparing the  
6           case all the way to the time of the hearing  
7           starting, so they don't want to be hamstrung to  
8           saying they need to be done by the end of the day  
9           on the 27th. So think may have four or five things  
10          that come before us.

11          MS. HELTON: The problem with that, Mr.  
12          Chairman, is that that doesn't necessarily make it  
13          easy for your staff to take the digital information  
14          that they give us, put it on the drive where we are  
15          supposed to put it and print out your copies.

16          COMMISSIONER GRAHAM: Well, if they are -- if  
17          we are doing a hybrid of the way things used to be  
18          done and the things, the way you want to currently  
19          do them, then anything that's not provided to you  
20          by the end of the day on the 27th, then the burden  
21          is upon them to bring those copies to be handed  
22          out. Unless I misunderstood the conversation.

23          MS. HELTON: If we can have one minute,  
24          please, Mr. Chairman?

25          COMMISSIONER GRAHAM: Sure.

1           MR. HETRICK: Mr. Chairman, I think we have  
2 strived in this case, and all of our cases, to move  
3 to digital formats, and this process has worked  
4 very well for us. We're -- as Mary Anne explained  
5 with the use of CaseLines and this new product that  
6 we are going to unveil to the Commission, we won't  
7 have that issue in the future.

8           The issue is, you know, if we don't have some  
9 sort of a deadline then -- and everybody says,  
10 okay, I will get half my documents on the 27th and  
11 I will bring up the other half in writing, or I  
12 will give the other half to staff to upload. They  
13 give the other half to staff to upload, and it's  
14 not real clear, we won't have the time. We could  
15 face delays in the start of the hearing. If  
16 everyone just brings half of their copies, there is  
17 going to be tremendous confusion during the  
18 hearing.

19           So our preference would be to stick with the  
20 digital format. If -- if you just, in this case,  
21 don't want to do that, and -- and you don't want to  
22 go down a hard copy paper, we will make you a copy,  
23 and any Commissioner copies; but our effort has  
24 been consistently to try to move parties towards a  
25 digital format.

1           So it makes more sense to me to stick with the  
2           deadline if you do, and give some flexibility for  
3           that document or two that needs to come in at the  
4           last minute, I think that's reasonable. But if we  
5           are going to try to allow parties to do whatever  
6           they want to do, or bring their own copies to give  
7           staff, that will lead to a very inefficient and  
8           potentially messy hearing in terms of what the  
9           expectations are for staff and our legal assistants  
10          in how to process this case.

11           So I guess to put it clearly, the  
12          recommendation would be to stick with the deadline  
13          on the 27th, but allow the flexibility; or to just  
14          say we are not going to do any kind of digital in  
15          this case. Let's just have all these documents  
16          done hard copy.

17           The hybrid, we haven't tested that. We -- I  
18          could see all kind of potential errors, and that  
19          would be very frustrating, I think, for the  
20          decision-maker and all the parties if we get into  
21          that level of uncertainty.

22           COMMISSIONER GRAHAM: So you are saying do it  
23          one way or the other, don't try to split the --

24           MR. HETRICK: Well, one way or the other, but  
25          one way, I think, with some flexibility or the



1 other, and don't try to hybrid it.

2 COMMISSIONER GRAHAM: Well, if that's the  
3 case, then I will say let's go ahead and do hard  
4 copies.

5 MR. HETRICK: Okay.

6 COMMISSIONER GRAHAM: Is that going to cause  
7 anybody any heartache?

8 MS. CRAWFORD: So for clarity on the record,  
9 we are going to use paper copies for this  
10 proceeding --

11 COMMISSIONER GRAHAM: That's correct.

12 MS. CRAWFORD: -- exclusively paper?

13 Okay. If you can give us just a moment, we  
14 need to figure out how many copies of  
15 cross-examination exhibits we need to require of  
16 parties.

17 COMMISSIONER GRAHAM: I was going to say, I  
18 think one of the things you need do now before we  
19 adjourn is articulate to them what exactly that  
20 means --

21 MS. CRAWFORD: Yes, sir.

22 COMMISSIONER GRAHAM: -- and such.

23 MS. CRAWFORD: I completely agree. Thank you.

24 COMMISSIONER GRAHAM: Okay.

25 MS. CRAWFORD: So for the prefiled testimony

1 and exhibits, everybody has access to those. They  
2 are publicly available. You will be responsible  
3 for bringing your own copies of those and having  
4 copies available for your witnesses, okay.

5 For staff's comprehensive exh-- for staff's  
6 cross-examination exhibits, we will provide paper  
7 copies to everybody. They have been stipulated to,  
8 but we will still bring and distribute paper copies  
9 to everybody at the start of the hearing so you can  
10 have those available to you.

11 For the parties' cross-examination exhibits,  
12 where they are for cross-examination purposes of  
13 impeachment, please have 15 paper copies of each  
14 exhibit. Staff will distribute a cover sheet.  
15 Each copy of your exhibit needs to have that cover  
16 sheet on it. You will identify the witness -- you  
17 will see on the cover sheet. It's pretty  
18 self-explanatory, but the witness name, the party  
19 proffering the exhibit, a brief, brief title of  
20 what the exhibit is. And there will be a number  
21 that can be left blank because the number will be  
22 provided when the exhibit is proffered at the  
23 hearing for purposes of cross-examination.

24 So 15 paper copies at the hearing. It's a  
25 panel of three.

1 MS. HELTON: Can we do one clarification?

2 So for the exhibits on the CEL, the  
3 comprehensive exhibit list, if anyone is planning  
4 to use one of those exhibits for cross-examination  
5 purposes, that person would need to bring the  
6 copies. Staff does not plan to print out -- are  
7 you planning to print out all of those exhibits and  
8 have them available in the hearing room?

9 MR. HETRICK: No. I think the party who wants  
10 to offer --

11 MS. HELTON: Okay. Yes, I think -- my  
12 recommendation, Mr. Chairman, would be if any of  
13 the parties wish to use an exhibit on the CEL for  
14 cross-examination purposes, that that party, be it,  
15 you know, First Coast, JEA or the staff, that they  
16 are the ones that provide the copies of the  
17 exhibits so that we do not have to go through the  
18 effort of printing out all of those exhibits that  
19 may not be used.

20 COMMISSIONER GRAHAM: Okay. Are we clear?

21 MR. CRABB: Commissioner, I wrote as  
22 feverishly as I could. Could we get some direction  
23 on that in the final or updated order as to those  
24 -- as to those procedures? Thank you.

25 MS. HELTON: And I am sorry, we haven't done

1           this in a while so we are a little bit flatfooted  
2           here.  If I could make one other suggestion, which  
3           I think will make you happy.

4                        That when you come to the hearing and you have  
5           each of your exhibits that you plan to use for each  
6           witness collated and put together so that they can  
7           be passed out once before each witness takes the  
8           stand so that we are not, for each exhibit, going  
9           around the room and passing out an exhibit.

10                      COMMISSIONER GRAHAM:  The request was, and I  
11           think it's a good one, let's make sure that we  
12           include all this in the prehearing order so they  
13           are real specific.  I heard you go back and forth  
14           between 15 and 20, so let's just be real clear what  
15           they are going to be so that the parties know.

16                      MS. CRAWFORD:  Yes, sir.  We will be sure to  
17           make sure it's clear in the order, yes, sir.

18                      COMMISSIONER GRAHAM:  All right.  Any other  
19           matters?

20                      MS. LHERISSON:  Staff is not aware of any  
21           other matters at this time.

22                      COMMISSIONER GRAHAM:  Do the parties have any  
23           additional matters to be addressed?

24                      Okay.  Seeing none, we are adjourned.  See you  
25           guys next week.

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(Proceedings concluded at 2:33 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 7th day of February, 2022.



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DEBRA R. KRICK  
NOTARY PUBLIC  
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EXPIRES AUGUST 13, 2024