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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.

_____ /

VOLUME 1

PAGES 1 - 155

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: COMMISSIONER ART GRAHAM
COMMISSIONER GARY CLARK
COMMISSIONER MIKE LA ROSA

DATE: Tuesday, February 1, 2022

TIME: Commenced: 11:10 a.m.
Concluded: 6:10 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

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7 and ROBERT C. BRANNAN, ESQUIRES, Sundstrom & Mindlin,
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10 Utilities (FCRU).

11 THOMAS CRABB, SUSAN CLARK and CHRISTOPHER B.
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20 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE
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23 Florida 32399-0850, Advisor to the Florida Public
24 Service Commission.

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

2 COMMISSIONER GRAHAM: Good morning, everyone.
3 Before I call this meeting to order, I just want to
4 give you guys a heads-up. I always like you guys
5 to be prepared for what to expect today. We are
6 going to run until about one o'clock and we will
7 break for lunch. I don't like to leave -- I don't
8 like breaking for lunch at noon, because then you
9 guys have to go try grab food and get back here in
10 an hour during the peak time, so we will break at
11 1:00. And we will go -- the end of the day will be
12 about 6:00, depending on where we are as a good
13 stopping point. And then basically the same thing
14 again tomorrow, starting at -- staff, are we
15 starting at 9:00 or 9:30 tomorrow morning?

16 MS. CRAWFORD: That's your call, sir.

17 COMMISSIONER GRAHAM: Okay. We will start at
18 nine o'clock tomorrow morning. And again, we will
19 stop at 1:00 for lunch and end the day at 6:00.
20 And if we have to go to Thursday, we will do the
21 same thing again on Thursday.

22 Any questions as far as the schedule goes? We
23 will be stopping, like, every two-and-a-half hours
24 to three hours so our court reporter can rest her
25 little fingers. And anything else as far as timing

1 goes?

2 Seeing none, okay, then we will call this
3 hearing to order. Let the record show it is
4 Tuesday, February 1st, and this is Docket No.
5 20190168-WS.

6 Staff, if I can get to you read the notice,
7 please.

8 MS. LHERISSON: By notice issued on January
9 14th, 2022, this time and place has been set for a
10 hearing in docket 20190068 WS. The purpose of the
11 hearing is set out more fully in the notice.

12 COMMISSIONER GRAHAM: Okay. Let's take
13 appearances.

14 First Coast.

15 MR. WHARTON: John Wharton, Marty Friedman and
16 Jordane Wong of Dean Mead on behalf of First Coast
17 Regional Utilities, the applicant.

18 COMMISSIONER GRAHAM: JEA.

19 MR. CRABB: Tom Crabb, Chris Lunny and Susan
20 Clark of the Radey Law Firm for JEA.

21 COMMISSIONER GRAHAM: Staff.

22 MS. LHERISSON: Bianca Lherisson on behalf of
23 Commission staff. I would also like to enter an
24 appearance for Jennifer Crawford.

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

1 your Advisor. I would also like to enter an
2 appearance for Keith Hetrick, your General Counsel.

3 COMMISSIONER GRAHAM: Okay. Anybody else?
4 Any other appearances?

5 Seeing none. Staff, any preliminary matters?

6 MS. LHERISSON: Yes, there are.

7 Staff notes that this is an original
8 certificate proceeding which, by statute, is
9 normally held in the proposed service area if
10 feasible. In this instance, the hearing is being
11 held in Tallahassee, and the proposed customer
12 service hearings have been waived with the consent
13 of the developer, who is, at this time, the sole
14 potential customer of the proposed utility.

15 There are proposed Type 2 stipulations for
16 Issues 1, 8, 10, 12, 13, 14 and 16, which we
17 recommend be taken up after opening statements and
18 before witness testimony.

19 There are also two requests for official
20 recognition and a motion to reconsider.

21 Regarding the first request for official
22 recognition: On January 28th, 2022, JEA filed a
23 Request for Official Recognition of five documents.
24 Would you like me to state the documents?

25 COMMISSIONER GRAHAM: Yes, please.

1 MS. LHERISSON: The first document is Charter
2 Laws of the City of Jacksonville. The second is a
3 JEA/City of Jacksonville Interlocal Agreement
4 Regarding Franchise Fee. The third is a Nassau
5 County/JEA Water and Wastewater Interlocal
6 Agreement. The fourth is City of Jacksonville
7 Ordinance 2021-692-E. And the fifth one is City of
8 Jacksonville Ordinance 2021-693-E.

9 COMMISSIONER GRAHAM: First Coast, do you wish
10 to address any of these official?

11 MR. WONG: First Coast has no objection to
12 these being officially recognized.

13 COMMISSIONER GRAHAM: Okay. Staff. Thank
14 you.

15 MS. CRAWFORD: I would just note that we get
16 our guidance on official recognition from the
17 statutes regarding evidence. It's 90.201 and 202.
18 Staff has no concerns about the charter laws, the
19 first item, or the fourth and fifth item, which are
20 the City of Jacksonville ordinances.

21 However, the interlocal agreements that are
22 items two and three are not appropriate for
23 official recognition. They are not items that are
24 accounted for in the statutes. They are
25 essentially contracts between the City of

1 Jacksonville and JEA and Nassau County and JEA. So
2 therefore, staff recommends that official
3 recognition is not appropriate for those two items;
4 however, JEA may offer these documents into
5 evidence subject to objection by First Coast.

6 COMMISSIONER GRAHAM: First Coast says they
7 don't object to any of them.

8 MS. CRAWFORD: Then perhaps, if the parties
9 are willing to stipulate to those items, we could
10 do it through that measure instead.

11 COMMISSIONER GRAHAM: First Coast?

12 MR. WONG: We will join in the objections of
13 the staff then.

14 COMMISSIONER GRAHAM: You -- so you are
15 objecting to those two because staff says that they
16 are objecting to them being officially recognized?

17 MR. WONG: Yeah. We would just choose to
18 agree with staff's interpretation of the statute.

19 COMMISSIONER GRAHAM: Okay. So, staff, where
20 do we go from there?

21 MS. CRAWFORD: Staff recommends that official
22 recognition be granted to the Charter Laws of the
23 City of Jacksonville and the two City of
24 Jacksonville ordinances.

25 Staff recommends that official recognize --

1 excuse me, official recognition not be granted with
2 regard to the two interlocal agreements, and that,
3 instead, if JEA wishes to offer those into evidence
4 in the course of this proceeding, it may do so
5 subject to any appropriate objection from First
6 Coast.

7 COMMISSIONER GRAHAM: Okay. Then we will do
8 that.

9 Let's move on, staff.

10 MS. LHERISSON: Regarding the second request
11 for official recognition: On January 28th, 2022,
12 First Coast filed a request for official
13 recognition of three documents. Number one, a
14 Letter in Support of First Coast's Application
15 filed by Baker County. Number two, Letter in
16 Support of First Coast's Application filed by the
17 City of Macclenny. And, number three, Letter in
18 Support of First Coast's Application filed by
19 Nassau County.

20 COMMISSIONER GRAHAM: JEA, do you wish to
21 address any of these requests?

22 MR. CRABB: We object to the request for
23 official recognition of these documents. They are
24 not official acts of a local government, nor are
25 they facts not subject to dispute. They are

1 letters that ostensibly reflect the opinion of the
2 person who wrote them, not facts. We searched
3 through Commission orders and were not able to find
4 any examples of a Commission order giving official
5 recognition to letters like these, so we object.

6 COMMISSIONER GRAHAM: Staff.

7 MS. CRAWFORD: Staff agrees with the
8 statements made by counsel for JEA. It appears to
9 us that these are documents that are not
10 appropriate for official recognition. And as we
11 stated with the two JEA items, if First Coast
12 wishes to offer these three items in the course of
13 the proceeding, it may do so subject to an
14 appropriate objection from JEA.

15 COMMISSIONER GRAHAM: Okay. Let's move on to
16 the motions for reconsideration.

17 MS. LHERISSON: Regarding the motion to
18 reconsider: On January 31st of 2022, First Coast
19 filed a Motion to Reconsider the Prehearing
20 Officer's decision to deny First Coast's Notice of
21 Deposition in Order No. PSC-2022-0045-PHO-WS.

22 COMMISSIONER GRAHAM: JEA, do you wish to
23 address the First Coast motion to reconsider?

24 MR. CRABB: Yes, Commissioner.

25 The issue of admission of the deposition

1 transcripts was thoroughly argued at the prehearing
2 conference, taken under advisement by the
3 prehearing officer, and a decision issued in the
4 Prehearing Order. The reconsideration motion makes
5 the same arguments.

6 The applicable Rule of Civil Procedure 1.330
7 makes admission of transcripts discretionary, not
8 mandatory, as the order pointed out. And here, in
9 this case, First Coast witnesses are testifying in
10 person. The rule is intended for situations where
11 the witness cannot be there in person, or the
12 deposition can be used so the witness does not have
13 to attend in person. Neither of those situations
14 are present here.

15 The reconsideration motion also suggests that
16 admission of the transcripts would be appropriate
17 because of the passage of time since the prefiled
18 testimony. But in this case, all the witnesses are
19 here in person. They will be given the opportunity
20 to update their testimony and make any corrections.
21 And so any idea that the transcripts would serve
22 that purpose would be duplicative.

23 And then finally, you know, in this case,
24 First Coast chose not to depose JEA's witness --
25 witnesses, and so under First Coast's logic in

1 their reconsideration motion, you know, because we
2 deposed their witnesses, they would be allowed
3 supplemental testimony through those transcripts;
4 but because they chose not to depose ours, we would
5 not be given that same opportunity, which strikes
6 me as fundamentally unfair. So we would request
7 that the motion to reconsider be denied.

8 COMMISSIONER GRAHAM: Thank you, sir.

9 First Coast.

10 MR. WONG: We would just like to disagree by
11 saying that the reasons that we argued at our
12 prehearing conference for why these should be put
13 into the record were not the same reasons that were
14 cited in the Prehearing Order, and that's why we
15 want to address those concerns and why they warrant
16 consideration.

17 Specifically, the staff cited the expedience
18 of this commission as one of the reasons that these
19 depositions should not be in there, and I think we
20 would all agree that we are not trying to prolong
21 this thing any longer than it needs to be. These
22 are three fairly small depositions that we would
23 not be reading into the record today. They would
24 be entered into the record, and you would -- and
25 the Commission would have them to refer to when

1 they are making their decision. And you could give
2 them whatever weight that you, in your discretion,
3 sees fit.

4 Further, I think it's important because of,
5 like they said, the -- how old the prefiled
6 testimony is. Some of this prefiled testimony has
7 been on this docket for almost two years. One of
8 the reasons we continue to conduct discovery in a
9 case like this is because things are updated.
10 Things are changed. And we want the Commission to
11 have everything to make a fair and accurate
12 decision in this proceeding.

13 And as JEA addresses, the issue of fairness,
14 which is also addressed in the Prehearing Order, we
15 acknowledge that, but we also would argue that JEA
16 is the one that asked for these depositions to be
17 taken. And when they did that, they knew that one
18 of the things that could be -- that these
19 depositions could be used for is to be used for
20 trial.

21 This is something that has been used in other
22 Commission -- in other Commission hearings along
23 with prefiled testimony. This is something that is
24 talked about in the Order Establishing Procedures.
25 This is not something that -- this isn't a new

1 tactic that we are trying to sneak in. This is
2 something, when you take depositions, this is one
3 of the things that is held for us to do.

4 And lastly, to their point of the statute
5 allowing discretion. While we agree, there is a
6 lot of case law, I would add, that is out there
7 that says that it's discretion to the facts and how
8 they apply, not to ignoring the rule completely.

9 I would say that there are several cases that
10 say that just basing that decision on that
11 discretion alone, when we've met the criteria under
12 the rule, would be reversible error; and for that
13 reason, we think the Commission should reconsider.

14 COMMISSIONER GRAHAM: Thank you, First Coast.

15 Commissioners, I made the decision not to let
16 this deposition into the record based on advice of
17 counsel. So, Mary Anne, if I can get you to
18 address this issue.

19 MS. HELTON: Yes, sir.

20 First, I would like to have everyone look at
21 the Rule of Civil Procedure in the context of our
22 proceedings. We are not a civil -- we are not in a
23 civil proceeding right now. We are in an
24 administrative proceeding. We are in an
25 administrative proceeding where your first order,

1 the Order Establishing Procedure, required you to,
2 the parties, to prefile their testimony.

3 There was never a request in this proceeding
4 for anyone to supplement that testimony because so
5 much time had passed since the testimony was first
6 filed. I have seen that done before. I think that
7 could be appropriate, but no one ever made that
8 request.

9 Instead, JEA took depositions of First Coast
10 witnesses in the last days that discovery was
11 allowed. And we learned at the prehearing
12 conference, or maybe just before the prehearing
13 conference, that First Coast wanted to admit into
14 the record, or gave notice pursuant to the Order
15 Establishing Procedure, that it wanted to enter
16 into the record the depositions of its witnesses.

17 It is very concerning to me, and the reason
18 why we made the recommendation that we did, and we
19 stay behind the recommendation that we gave you, is
20 because, in our mind, this is an attempt to -- for
21 First Coast to supplement its prefiled testimony.
22 And we think -- we agree with JEA, that that is
23 fundamentally unfair.

24 If First Coast had wanted to supplement its
25 testimony with additional information that it did

1 not have at the time it filed its testimony,
2 they've had two years to do that; two years to file
3 that, allow the parties to conduct discovery on
4 that, to vet that. Instead, they gave testimony,
5 on the notice of JEA, days before this hearing was
6 to commence. And Mr. Wharton admitted on the
7 record that what he was doing was supplementing the
8 testimony. And for us, that is our fundamental
9 problem.

10 I think that if we were to go down this road
11 and allow First Coast to supplement the record with
12 the deposition transcripts of its witnesses, we
13 would perhaps be inviting a process where parties
14 gave very slim prefiled testimony, depositions were
15 later taken, and it was that deposition testimony
16 that fleshed out the record. And we are concerned
17 that that may have a chilling affect on further
18 discovery in Commission proceedings.

19 If we are wrong on the discretionary part of
20 may, we still think we made the right decision in
21 the Prehearing Order. We still recommend to you
22 that, because of the process here at the
23 Commission, that we have to look at the entire
24 process, and we think that you made the correct
25 call, Mr. Chairman.

1 MR. WHARTON: If I may?

2 COMMISSIONER GRAHAM: No, sir.

3 MR. WHARTON: Just in terms of correcting a
4 statement.

5 COMMISSIONER GRAHAM: No, sir.

6 Commissioners, there is a motion for
7 reconsideration on the floor. If you want to
8 change the -- change the Prehearing Order, or if
9 you just have any comments.

10 COMMISSIONER CLARK: I move to deny the
11 request.

12 COMMISSIONER LA ROSA: Second.

13 COMMISSIONER GRAHAM: It's been moved and
14 seconded to deny the request.

15 All in favor -- all in favor of the motion say
16 aye.

17 (Chorus of ayes.)

18 COMMISSIONER GRAHAM: Okay. Any other
19 preliminary matters?

20 MS. LHERISSON: Staff has no other matters at
21 this time.

22 COMMISSIONER GRAHAM: Okay. To the record.
23 Exhibits, staff.

24 MS. LHERISSON: Staff has compiled a
25 comprehensive exhibit list, which includes the

1 prefiled exhibits attached to the witnesses'
2 testimony as well as staff's Exhibits 38 through
3 67. The list has been provided to the parties, the
4 Commissioners and the court reporter.

5 Staff requests that the comprehensive exhibit
6 list be marked for identification purposes as
7 Exhibit No. 1, and that the other exhibits be
8 marked for identification as set forth in the
9 comprehensive exhibit list.

10 COMMISSIONER GRAHAM: The exhibits are so
11 marked.

12 (Whereupon, Exhibit Nos. 1-67 were marked for
13 identification.)

14 MS. LHERISSON: Staff, at this time, asks that
15 the comprehensive exhibit list, marked as Exhibit
16 No. 1, be entered into the record.

17 COMMISSIONER GRAHAM: Exhibit 1 is entered
18 into the record.

19 MR. FRIEDMAN: No objection.

20 (Whereupon, Exhibit No. 1 was received into
21 evidence.)

22 MS. LHERISSON: Staff notes that the parties
23 have stipulated to the staff exhibits. Staff,
24 therefore, asks that Exhibits No. 38 through 67 be
25 moved into the record as set forth in the

1 comprehensive exhibit list.

2 COMMISSIONER GRAHAM: Have both parties
3 reviewed the exhibit list, and are there any
4 objections to entering those exhibits into the
5 record?

6 First Coast no. JEA no. Let the record show
7 they both indicated no.

8 With no objections, we will enter 38 through
9 67 into the record.

10 (Whereupon, Exhibit Nos. 38-67 were received
11 into evidence.)

12 COMMISSIONER GRAHAM: Okay. Opening
13 statements.

14 Per the prehearing officer -- I don't know who
15 the hell that guy was -- you are both allowed five
16 minutes opening statements.

17 First Coast.

18 MR. WHARTON: We are going to pass out a map
19 that we talked about being used as a demonstrative
20 real quick, and I thought it would be better than
21 an easel, given the size of the room.

22 COMMISSIONER GRAHAM: Okay.

23 MR. WHARTON: Is it okay, Commissioner Graham,
24 if I sit?

25 COMMISSIONER GRAHAM: Yes.

1 MR. WHARTON: Thank you, sir.

2 COMMISSIONER GRAHAM: And I will try to let
3 you know when you have a minute left.

4 MR. WHARTON: I am going to do less than half
5 of a Gettysburg Address here.

6 COMMISSIONER GRAHAM: Oh, look at you.

7 Okay, First Coast, you have the floor.

8 MR. WHARTON: Commissioners, First Coast
9 Regional Utilities is an applicant for an original
10 certificate in Duval, Nassau and Baker Counties.
11 First Coast is an affiliated party of 301 Capital,
12 the developer of the proposed service area. 301
13 Capital owns 8,100 acres, and has exclusive rights
14 to another 1,300 acres. That 9,400 acres being
15 contiguous property located in those three
16 counties. An additional 1,800-acre property
17 included in the application is located in Baker
18 County. The owner of that property has requested
19 service from First Coast.

20 First Coast proposes to provide water and
21 wastewater within the entire proposed service area,
22 along with reclaimed water. The proposed
23 facilities will be constructed and expanded to
24 serve the development as it is constructed and
25 expanded. There is no dispute in this case that

1 the proposed service area traverses county
2 boundaries.

3 JEA, the protesting party in this case, has no
4 water or wastewater lines or facilities in any
5 reasonable proximity to First Coast's proposed
6 territory, nor any present plans to timely or
7 economically provide water or wastewater service
8 for that proposed territory. The proposed First
9 Coast utility system is between seven and 22 miles
10 from existing JEA pipelines, which currently don't
11 have the capacity to meet First Coast's demand.

12 Further, JEA hasn't taken any affirmative
13 steps to provide services to the proposed
14 certificated territory, notwithstanding the fact
15 that the City of Jacksonville Duval County portions
16 of these lands are fully vested for the
17 construction of in excess of 15,000 units.

18 At the time that JEA filed its petition in
19 this case, there was a development order issued by
20 the City of Jacksonville that directed First Coast
21 to design, permit, construct and give to JEA for
22 free the facilities. That is a very important act
23 of JEA. They mentioned it in the petition. They
24 mentioned it in pleadings in this case. They
25 mentioned it in the case that they filed with the

1 Court of Appeals, that they lost in the middle of
2 this case that held this case up for six months,
3 and two other witnesses mentioned that part of the
4 development order. That language has now changed.

5 A couple of months ago, the City of
6 Jacksonville, at the request of the developer, 301
7 Capital, took out that language that required that
8 the developer should construct the utilities and
9 dedicate them for free to JEA, and JEA showed up at
10 that meeting and protested, and they made that
11 change anyway.

12 It's been JEA's continuing position here, they
13 took it at the Court of Appeals and still have it
14 as of today, you don't have any jurisdiction to
15 issue a certificate in that case. That's a legal
16 issue. I won't say more about it, but we will get
17 into it; but I think the Court of Appeal order that
18 was issued in the middle of the case has already
19 disposed of that, but they still had the issues in
20 there at the time of the prehearing conference.

21 JEA claims that the First Coast system will be
22 in competition with or duplication of an existing
23 system -- that's one of the important
24 considerations under Chapter 367 -- because it has
25 franchise rights over large areas of land that,

1 like in this case, they don't have any ability to
2 serve, and they don't serve, but they have
3 promulgated a big franchise area.

4 In fact, JEA admitted in this case, and it
5 will go into the record that they admitted in this
6 case, that they don't have the water capacity to
7 serve First Coast. They don't have the wastewater
8 capacity to serve First Coast. They don't have any
9 plans to build the water capacity. They don't have
10 any plans to build the wastewater capacity to serve
11 First Coast.

12 To close, Mr. Graham, First Coast's
13 application and the other evidence in the case,
14 some of which you will see and some of which will
15 be brought to light within the documents, et
16 cetera, when the parties file their briefs, will
17 demonstrate that First Coast satisfies the criteria
18 for issuance, and that it should be granted the
19 certificates for which it has applied.

20 COMMISSIONER GRAHAM: Thank you, sir.

21 Okay, opening statements for JEA.

22 MR. CRABB: Good morning, Commissioners.

23 JEA is the City of Jacksonville's municipal
24 utility. Its water and sewer system currently
25 serves 378,000 customers -- 378,000 water

1 customers, 298,000 wastewater customers, and 21,000
2 reclaimed water customers throughout the city, as
3 well as into portions of Nassau, Clay and St. Johns
4 Counties with over \$470 million in annual operating
5 revenue.

6 JEA is now, and has been for years, ready
7 willing and able to provide service to the
8 development at issue in this docket.
9 Overwhelmingly, JEA has the financial, physical and
10 all other resources necessary to serve this
11 development to the benefit of the ratepayers who
12 will ultimately live and work there.

13 JEA objected in this docket because this
14 development is in JEA's service territory, with the
15 exception of the future portion of the development
16 in Baker County. JEA has provided the developer
17 with service alternatives, including simply
18 connecting by pipes with JEA's existing system,
19 construction of on-site treatment capacity, and
20 connection to JEA regional facilities.

21 The developer rejected all alternatives put
22 forward by JEA, and, instead, created a subsidiary
23 called First Coast Regional Utilities to seek
24 certification from the Commission at rates that
25 would be double or triple of those of JEA to

1 ratepayers.

2 JEA objects to First Coast's application on
3 both legal and factual bases. As a municipal
4 public works provider with franchises from the City
5 of Jacksonville and Nassau County, coupled with the
6 present ability to serve, JEA, we believe, has the
7 right to provide service to this area.

8 JEA also challenges many of the factual
9 elements necessary for certification, as will be
10 addressed by the witnesses.

11 JEA believes the evidence will show that,
12 number one, there is no need for service in the
13 territory sought by First Coast beyond the first
14 face of the development within the City of
15 Jacksonville.

16 Two, certification of First Coast would be
17 inconsistent with the City of Jacksonville's comp
18 plan.

19 Three, certification of First Coast would
20 result in a system in competition with or
21 duplication of JEA's system.

22 Four, First Coast lacks the financial
23 resources needed to construct and operate a water
24 and wastewater total utility.

25 Five, First Coast lacks the technical ability

1 to operate a utility.

2 And finally, certification of First Coast is
3 not in the public interest.

4 And so for these reasons, JEA objects to the
5 application and requests that the Commission deny
6 it.

7 Thank you.

8 COMMISSIONER GRAHAM: Thank you, JEA.

9 Okay. Stipulated issues. Staff, are there
10 any stipulated issues?

11 MS. LHERISSON: Yes. There are Type 2
12 stipulations on the following issues: Issues 1, 8,
13 10, 12, 13, 14 and 16. The stipulation language
14 for these issues is in Section X of the Prehearing
15 Order. A vote on these proposed stipulations is
16 appropriate at this time.

17 COMMISSIONER GRAHAM: Commissioners.

18 COMMISSIONER CLARK: Mr. Chairman, I move to
19 approve the proposed stipulations.

20 COMMISSIONER LA ROSA: Second.

21 COMMISSIONER GRAHAM: It's been moved and
22 second.

23 Any further discussion?

24 Seeing none, all in favor say aye.

25 (Chorus of ayes.)

1 COMMISSIONER GRAHAM: Any opposed?

2 (No response.)

3 COMMISSIONER GRAHAM: By your action you have
4 approved the motion.

5 Okay, witnesses. Before I swear the
6 witnesses, I want to thank staff and both parties
7 for -- I know we had some last minute things come
8 up, and it caused for a lot of people to be
9 flexible and innovative, and so I want to thank
10 everybody for allowing this to work and move
11 forward, hopefully work correctly and move forward.
12 I know we are working on one of the witnesses
13 technically in their efforts, but she's not on?

14 STAFF: She's not on at this point.

15 COMMISSIONER GRAHAM: Okay, that's fine, but
16 she doesn't come up for a while, so I just -- once
17 again, I just wanted to take the privilege as Chair
18 to thank you guys for your time and effort on this,
19 because we didn't want to kick this can down the
20 road yet again, because we heard, this has already
21 been for two years going, so let's continue to move
22 forward.

23 So if I can get the witnesses that are here to
24 stand and raise your right hand.

25 (Whereupon, witnesses were sworn by

1 Commissioner Graham.)

2 COMMISSIONER GRAHAM: Okay. Just a reminder,
3 every witness will be allowed a three-minute
4 summary of their testimony before they enter into
5 cross-examination, and we have the order of
6 witnesses so, First Coast, I believe you have the
7 first witness.

8 MR. WHARTON: We would call Mr. Bevin Beaudet
9 to the stand. Now, are the prefiled testimony
10 exhibits -- your testimony and your exhibits are
11 over there.

12 MR. CRABB: Commissioner Graham, just a point
13 of procedure, how you would like us to pass out our
14 cross exam exhibits and get that piece done? We
15 brought copies of all of our cross exam exhibits
16 for each witness.

17 COMMISSIONER GRAHAM: Let him do his
18 three-minute summary and then we will pass them all
19 out and then you can start your cross-examination
20 at that point.

21 Whereupon,

22 BEVIN A. BEAUDET
23 was called as a witness, having been previously duly
24 sworn to speak the truth, the whole truth, and nothing
25 but the truth, was examined and testified as follows:

1

EXAMINATION

2 BY MR. WHARTON:

3 Q Sir, would you state your name and business
4 address for the record?

5 A Yes. My name is Bevin Beaudet.

6 Q What about your business address?

7 A My current business address is 1543 Maple
8 Street, Bethlehem, Pennsylvania.

9 Q Did you cause prefiled direct testimony to be
10 filed in this case?

11 A Yes, I did.

12 Q And if I ask you the same questions as you
13 were asked in your prefiled direct testimony, would your
14 answers today be the same?

15 A There would be some differences.

16 Q All right. Do you have corrections or updates
17 to your testimony?

18 A The main difference in my testimony that I had
19 previously prefiled is the fact that JEA has very
20 significantly increased their connection fees, so that
21 greatly affects the difference between the on-site
22 facilities at FCRU and any option that JEA has presented
23 to FCRU to the tune of about \$8 million for a number --
24 that's -- and only for the first phase.

25 Q All right. Did you cause any prefiled

1 exhibits to be attached to your prefiled testimony?

2 A Yes, I did.

3 Q All right. And was that -- were those
4 exhibits labeled BAB-1, BAB-2 and BAB-3?

5 A Yes. That's correct.

6 Q All right, sir, have you prepared a summary of
7 your testimony?

8 A Yes, I have.

9 Q Please give that summary.

10 A Okay. Back in February of 2019, I was hired
11 as the consulting engineer for 301 Capital Partners, who
12 later formed FCRU. And the purpose of my being hired
13 was to evaluate, assess and recommend the most
14 practical, cost-effective and timely manner in which to
15 provide water, wastewater and water reuse facilities for
16 the entitled land in Duval County and Nassau County, and
17 the potentially entitled land in Baker County.

18 So I wrote the June 2019 feasibility
19 assessment report, and signed and sealed it as a
20 professional engineer in the State of Florida. And that
21 report, what -- it evaluated the possibility of the
22 utilities built on-site against the only option at the
23 time that was in writing on the table from JEA, which
24 was an option that they would build a regional
25 wastewater plant east of 301 and the railroad tracks,

1 CSX. They would pipe the wastewater and reuse water
2 back and forth to FCRU, and that they would build a
3 water plant on FCRU's property with the potential of
4 connecting that with another pipeline to Normandy
5 Boulevard, which was their closest location 36,000 feet
6 from the plant site at FCRU. Nearly seven miles.

7 So I wrote the report, again, visiting the
8 plant, reviewing all the reports that had been done on
9 the site, including environmental and soil borings, and
10 floodplain maps, and all this type of thing. We picked
11 a 50-acre site that we believed was more than sufficient
12 for the build-out, which at that time was about 4 mgd
13 for the full build-out over 30 years.

14 And in that report -- and I worked with a
15 design build firm as a subcontractor, Globaltech, Inc.
16 We worked on developing the appropriate process. We
17 worked on developing the best layout. We only, and the
18 client insisted and we recommended to the client that we
19 build very high quality facilities that would meet or
20 exceed JEA standards. Not a package plant type of thing
21 that many developers will do, is throw together a field
22 directive steel plant. This was not what was in our
23 report.

24 So the report concluded clearly that on-site
25 treatment facilities was the most practical, the most

1 cost-effective, and the most timely, the only really
2 timely way to get some utilities to this entitled
3 property.

4 COMMISSIONER GRAHAM: Sir, that's your
5 three-minute summary.

6 THE WITNESS: The --

7 COMMISSIONER GRAHAM: Sir --

8 THE WITNESS: -- cost of the -- I am sorry,
9 sir?

10 COMMISSIONER GRAHAM: That's your three-minute
11 summary. Thank you.

12 THE WITNESS: Okay. The cost was
13 27-and-a-half million versus 39 million --

14 COMMISSIONER GRAHAM: Sir --

15 THE WITNESS: In writing --

16 COMMISSIONER GRAHAM: -- that concludes
17 your --

18 THE WITNESS: Oh, I am finished?

19 COMMISSIONER GRAHAM: Yes.

20 THE WITNESS: Okay. Thank you.

21 COMMISSIONER GRAHAM: Thank you.

22 Mr. Wharton.

23 MR. WHARTON: We would move Mr. Beaudet's
24 testimony into the record as though read an tender
25 him for cross.

1 COMMISSIONER GRAHAM: Okay. We will move that
2 testimony into the record as though read.

3 (Whereupon, prefiled direct testimony of Bevin
4 A. Beaudet was inserted.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original Certificate of
Authorization and initial Rates and Charges for
Water and Wastewater Service in Duval, Baker,
and Nassau Counties, by First Coast Regional
Utilities, Inc.

Docket No.: 20190168-WS

DIRECT TESTIMONY

OF

BEVIN A. BEAUDET

on behalf of

First Coast Regional Utilities, Inc.

1 **Q. Please state your, name profession and address.**

2 A. My name is Bevin Beaudet. I am the sole proprietor of Bevin A. Beaudet, P.E., LLC. My
3 business address is 1543 Maple Street, Bethlehem, PA 18017.

4 **Q. State briefly your educational background and experience.**

5 A. I have a Bachelor of Science degree in Chemical Engineering from the University
6 Massachusetts, a Master of Science degree in Environmental Engineering from the University
7 of Florida, and an Executive Certificate in Public Management from Florida Atlantic
8 University. I have been a licensed engineer in Florida since 1976. I have approximately 40
9 years of experience in the management, engineering, process design and development of
10 water and wastewater systems. I am the former President of the American Waterworks
11 Association. I served 13 years as the Director of Palm Beach, Florida Water Utilities
12 Department and 5 years as Deputy County Administrator for Palm Beach County, Florida. A
13 more thorough description of my experience is attached as Exhibit BAB-1.

14 **Q. Have you previously appeared and presented testimony before any regulatory bodies?**

15 I have prepared and presented expert testimony in the areas of regulatory accounting, rate
16 regulation and utilities in general, before various federal, state, county, courts and regulatory
17 agencies, including the US Senate and House of Representatives, the Florida Public Service
18 Commission, the Florida Department of Environmental Protection, the South Florida Water
19 Management District, Indian River County, the Circuit Courts of Palm Beach and Indian
20 River Counties, the Town of Riviera Beach, the Town of Palm Springs and Burrillville,
21 Rhode Island and the US Bankruptcy Court.

22 **Q. On whose behalf are you presenting this testimony?**

23 A. I am presenting this testimony and appearing on behalf of First Coast Regional Utilities, Inc.
24 ("First Coast"), the applicant for original certificate of authorization and initial rates and
25 charges for water and wastewater service in the present docket.

1 **Q. What is the purpose of your direct testimony?**

2 A. The purpose of my direct testimony is to present information supporting the water and
3 wastewater system information, including siting, design, and evaluation of alternatives for
4 First Coast's request for an original certificate as presented in the Application, and to provide
5 supporting testimony to show the basis for the Feasibility Assessment included as Exhibit
6 "E" to the Application.

7 **Q. Are you sponsoring any exhibits?**

8 A. Yes, I am sponsoring two exhibits. Exhibit BAB-2 contains the Feasibility Assessment of
9 First Coast Regional Utilities, Inc. originally dated April 2019, revised and finalized in June
10 2019 (Exhibit E to the Application). Composite Exhibit BAB-3 are maps of the proposed
11 initial lines and facilities (Exhibit L to the Application).

12 **Q. Were these Exhibits prepared by you and your staff?**

13 A. The Feasibility Assessment was prepared by me. The maps were prepared by me in
14 conjunction with ETM. The Exhibits were prepared from information provided to me and
15 ETM by First Coast.

16 **Q. Does that conclude your direct testimony?**

17 A. Yes, it does.

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1 COMMISSIONER GRAHAM: Cross-examination. You
2 have some exhibits for us?

3 MR. CRABB: We do, Commissioner Graham.

4 COMMISSIONER GRAHAM: If you would give it to
5 the clerk and help the clerk pass them out, please.

6 Mr. Crabb, you are going to have to let us
7 know, we are at Exhibit No. 68, which is which of
8 these three exhibits?

9 MR. CRABB: I'm sorry, Commissioner, I am
10 having a hard time hearing you.

11 COMMISSIONER GRAHAM: We are currently, on our
12 exhibit list the next available number is 68. We
13 need to start labeling your exhibits. So I need to
14 knee which one is going to be 68, what's going to
15 be 69 and what's going to be 70.

16 MR. CRABB: Okay. Then I believe I only have
17 three exhibits for Mr. Beaudet on his direct, so I
18 guess that would be 68, 69 and 70.

19 COMMISSIONER GRAHAM: Which one is which?

20 MR. CRABB: The one that's behind Tab No. 1
21 would be 68, behind Tab No. 2 would be 69 and
22 behind Tab No. 3 would be 70.

23 COMMISSIONER GRAHAM: So a short description
24 is Preliminary Absorption Schedule is 68?

25 MR. CRABB: Correct.

1 COMMISSIONER GRAHAM: And then JEA Planning
2 Development Meeting Minutes would be 69?

3 MR. CRABB: Correct.

4 COMMISSIONER GRAHAM: And then August 9th,
5 2019, letter to Paul Harden would be 70?

6 MR. CRABB: Correct.

7 COMMISSIONER GRAHAM: Okay.

8 (Whereupon, Exhibit Nos. 68-70 were marked for
9 identification.)

10 COMMISSIONER GRAHAM: Cross exam, sir.

11 EXAMINATION

12 BY MR. CRABB:

13 Q Good afternoon, Mr. Beaudet. My name is Tom
14 Crabb, and I represent JEA in this docket.

15 I would like to ask you some questions about
16 your prefiled direct testimony. Do you have a copy of
17 your testimony and exhibits in front of you?

18 A Yes, I do.

19 Q Who first contacted you about doing work for
20 the 301 development?

21 A Attorney William Sundstrom.

22 Q And when was that?

23 A That was approximately February of 2019.

24 Q And what was the substance of the initial
25 communication?

1 A Mr. Sundstrom indicated that he had clients
2 that had entitled property in the three counties, and
3 that they wanted to -- for me to help them determine
4 what the most effective -- cost-effective, practical and
5 timely alternative would be to serve water, wastewater
6 and water reuse to this property.

7 **Q Were you told about First Coast Regional**
8 **Utilities in that first communication?**

9 A I was told that the client wanted to form a
10 utility. I am not sure they had named it at that time.
11 And they told me that they were going to apply for a
12 certification for authorization to the PSC to build the
13 facilities if that were the most appropriate choice.

14 **Q Okay. So you were hired by -- or to help**
15 **First Coast Regional Utilities get a certificate of**
16 **authorization from this commission, am I correct about**
17 **that?**

18 A That's correct.

19 **Q And the key deliverable from you as part of**
20 **your work for 301 subsequently filed with the**
21 **application is Exhibit No. BAB-2, titled Feasibility**
22 **Assessment Report, is that correct?**

23 A Yes, it is.

24 **Q Do you have a copy of the feasibility report**
25 **in front of you?**

1 A Yes, I do.

2 Q And from the date on the report, this report
3 was completed in April of 20 --

4 A I am sorry, could you speak a little more
5 clearly, please?

6 Q From the date on the front of the report, it
7 was completed in April of 2019?

8 A The report that was filed with the certificate
9 was completed in June 2019.

10 Q So on this first page of BAB-2, page one of
11 33, where it says, April of 2019, do I understand
12 correctly that instead it should be June of 2019?

13 A Well, the issue here was this, I had completed
14 my report in April, and that report addressed an option
15 that had been verbally discussed by JEA with our client,
16 and that option was intersection by two pipelines on
17 nearly seven miles from Normandy Boulevard to the FCRU's
18 site.

19 Q Mr. Beaudet, my -- I just want to understand
20 when the report was completed.

21 A The report that was filed with the application
22 was dated June 2019.

23 Q Okay. Is this version of the report that's
24 titled Exhibit BAB-2, page one of 33, marked April of
25 2019 is a different version of the report?

1 A Yes, it is.

2 MR. CRABB: If I could have just a moment,
3 Commissioner, to pull the right version?

4 COMMISSIONER GRAHAM: Sure.

5 THE WITNESS: Okay --

6 COMMISSIONER GRAHAM: Sir, hold on. There is
7 no question before you.

8 THE WITNESS: The -- I can -- I can clarify
9 this.

10 Again, the very first report I did was dated
11 April. That report compared the on-site facilities
12 to a seven-mile pipeline for water and wastewater
13 only, no reuse, between Normandy Boulevard and the
14 FCRU site. Those were the two options that I
15 looked at, crossed it out, reviewed it for
16 practical and timeliness, and that was done and
17 submitted to my client on April 2019.

18 On April 9th of 2019, there was a meeting
19 between JEA and my client. That option was no
20 longer on the table. Instead, in writing -- and
21 that option that I did in April had never put in
22 writing. Then in writing was placed an option
23 where JEA would build a regional plant east of 301,
24 connect for wastewater, connect wastewater and
25 reuse lines to the FCRU site, build a water

1 plant --

2 BY MR. CRABB:

3 Q Mr. Beaudet --

4 A Yes.

5 Q -- can I continue on with my questions? I
6 think I found at least the correct exhibit. I was
7 confused on the dates earlier. I am ready to proceed
8 with questions.

9 A Well, to the best of my knowledge, the report
10 that was filed in June was the one --

11 Q Mr. Beaudet, would you kindly wait for my
12 questions to answer before providing testimony?

13 COMMISSIONER GRAHAM: Please continue.

14 BY MR. CRABB:

15 Q What was the direction from your client as far
16 as the phasing of the development, and when and where
17 connections would be needed?

18 A Okay, there -- Exhibit B here that I was
19 handed out, on the second tab is an absorption schedule
20 that they gave me, and they gave me an absorption
21 schedule --

22 Q Mr. Beaudet, would you -- would you please
23 listen to my question and answer just the question.

24 My question was --

25 A I was given an absorption schedule.

1 MR. WHARTON: Objection. I think it's fair
2 for counsel to say -- not to cut the witness off in
3 the middle of a sentence. He was replying.

4 COMMISSIONER GRAHAM: Let me be clear about
5 this. Now, I can let the witness editorialize as
6 long as the person asking the question wants to
7 allow that to go. We can make it real simple. You
8 ask a question, you will answer the question yes or
9 no, and if you have a brief sentence, one or two to
10 clarify that answer, that's fine. Unless he allows
11 you to continue on past that, just answer yes or
12 no, and you can -- you can explain your answer but
13 within a sentence or two.

14 THE WITNESS: Yes, sir.

15 COMMISSIONER GRAHAM: Okay. Please.

16 BY MR. CRABB:

17 **Q My question is: What was the direction from**
18 **your client as far as phasing the development, and when**
19 **and where connections would be needed?**

20 A I was given an absorption schedule.

21 **Q And if you would turn to the exhibit that we**
22 **have marked now 68, titled Preliminary Absorption**
23 **Schedule. Do you recognize this document?**

24 A Yes, I do.

25 **Q Is this the absorption schedule that you speak**

1 of?

2 A I am sorry?

3 Q When you said that you were given an
4 absorption schedule from the client, is this document
5 the absorption schedule?

6 A Yes.

7 Q Do you know who prepared this document?

8 A I do not.

9 Q For the columns that have village in their
10 name, if we look across the top North Village, Central
11 Village, West Village, for those columns that have
12 village as part of their name, those areas are all in
13 the City of Jacksonville, is that correct?

14 A Yes, they are.

15 Q And then the columns for Nassau County and
16 Baker County show no connection is needed in those
17 counties for at least the first 10 years, is that
18 correct?

19 A Yes, it is.

20 Q And then the row for years 20-30 to 20-35, or
21 10 to 15 years from the start of the development, that
22 shows 100 connections in Nassau and 200 connections in
23 Baker County, who or what would be connected in those
24 counties representing those 100 and 200 connections for
25 the 2030 to 2035 phase?

1 A When I gave my testimony, prefiled testimony,
2 I did not know.

3 Q And would the answer be the same for the rows
4 below 2035 to 2040 and so on, that you would not know
5 what the Nassau and Baker County connections were to
6 include?

7 A My report shows a very preliminary site plan
8 that only includes property in Duval County.

9 Q So I will take that as no, there is no
10 understanding of what those connections for the
11 subsequent rows would mean for Nassau and Baker County?

12 A Not at the time I gave my prefiled testimony.

13 Q If I could turn your attention back to page
14 six of the feasibility report that's attached to your
15 testimony.

16 A Okay.

17 Q Page six of the feasibility report refers to
18 2,800 connections, 28 -- 2,500 residential connections
19 and 300 low-intensity commercial connections, is that
20 correct?

21 A That's correct.

22 Q And those 2,800 connections are all in the
23 Villages portion of the development?

24 A That's correct, except the commercial is in a
25 commercial strip along Route 301.

1 Q Would that be -- if we were to look back at
2 the absorption schedule, that would be in the Commercial
3 Village portion?

4 A Yes, it would.

5 Q And so if the feasibility report talks about
6 2,800 connections, if we look back at the absorption
7 schedule, can you reconcile that 2,800 to the absorption
8 schedule and --

9 A Yes.

10 Q Certainly, please continue.

11 A Yes. My direction was to consider Phase I to
12 be the first 10 years of the development, and so the --
13 that was the 2,500 ERCs -- I am sorry, the -- it was to
14 do the North Village and the Commercial Village. That
15 was what was to be in Phase I. And that was what was
16 shown in the report, and that was the reason that I came
17 up with 2,800 ERCs.

18 Q So none, now just to clarify, none of those
19 2,800 connections are in Baker or Nassau Counties,
20 correct?

21 A That's correct.

22 Q Next I would like to ask you a few questions
23 about plant capacity. And, again, looking at phase six
24 of the feasibility assessment.

25 At the top of that page, it says, in the very

1 first paragraph, it says, that the land that's the
2 subject of this report is a 5,000-acre parcel that is
3 located, quote, "southwest of Jacksonville in Duval
4 County." Do you see that?

5 A Yes, I do.

6 Q You would agree, though, that the reference
7 5,000-acre parcel is not southwest of Jacksonville but
8 is, instead, entirely within the City of Jacksonville?

9 A I am sorry?

10 Q The question is: You would agree, though,
11 that the reference 5,000-acre parcel where, in your
12 report, you say is southwest of Jacksonville, is, in
13 fact, within the City of Jacksonville, Duval County?

14 A I would consider that a splitting hairs
15 question, but yes.

16 Q And similarly, where it refers on page six to
17 Duval County Ordinance 2010-874E, that would be the City
18 of Jacksonville ordinance rather than Duval County
19 ordinance --

20 A Yes.

21 Q -- is that correct?

22 Does your feasibility assessment consider the
23 feasibility of constructing on-site plant that extend
24 beyond the City of Jacksonville?

25 A It considers the siting, and the sizing of the

1 site, and the considerations of being able to expand the
2 plant into those two counties, yes, as far as the
3 actual -- the actual design and costing of the plant in
4 the feasibility report is limited to Phase I, which is
5 in Duval.

6 **Q Is there a place in the report that talks**
7 **about the plant extending to those counties, the**
8 **specific plant that was discussed in the report?**

9 A No, because this, as I stated before, this
10 report was written for Phase I.

11 **Q I would like to next turn your attention to**
12 **page 16 of the report.**

13 A Okay.

14 **Q Am I correct that this page at the top,**
15 **starting with 5.2, discusses and describes conceptual**
16 **water and wastewater treatment plants, is that correct?**

17 A Yes, it does.

18 **Q Conceptual plant to serve Phase I in the City**
19 **of Jacksonville and Duval County?**

20 A Yes.

21 **Q So am I correct, then, that the feasibility**
22 **assessment shows no plant capacity even on a conceptual**
23 **basis for Nassau County?**

24 A That's correct.

25 **Q And similarly, am I correct that the**

1 **feasibility assessment shows no plant capacity even on a**
2 **conceptual basis for Baker County?**

3 A Not in the first phase.

4 Q **Finally I have some questions about your**
5 **comparison of a potential First Coast Regional Utilities**
6 **providing service versus JEA providing service.**

7 So part of the report is a comparison between
8 the conceptual on-site plant to be owned and operated by
9 First Coast in what you call the JEA interconnection
10 alternative, is that correct?

11 A I am looking now at the -- there may be some
12 confusion between the two April and June copies of the
13 report, and that's what I want to make sure that what I
14 am looking at I answer correctly.

15 Okay. So this report that's in the exhibit
16 is, the alternative that it compares to is a
17 interconnection between lines from Normandy Boulevard to
18 across two CSX railroad tracks, across 301, U.S. 301,
19 and then north to the FCRU point of connection. That's
20 what this report that's in front of me that is Exhibit
21 BAB-2 compares.

22 Q **And that's on page 13 of 33, where it says JEA**
23 **interconnection?**

24 A What page?

25 Q **On page 13 of 33.**

1 A 13 of 33?

2 Q Correct.

3 A Yes, that's a depiction of that alternative.

4 Q And then on the following page, page 14 of 33,
5 describes JEA constructing an off-site regional water
6 reclamation facility approximately four miles from the
7 Villages, is that correct?

8 A Okay. I think I know what's going on here.
9 My report that's entered into the exhibit compares the
10 on-site alternative to JEA's written alternative that
11 was presented to the JEA partners in an April 9th, 2019,
12 meeting, all right --

13 Q For now, Mr. Beaudet --

14 A -- my report. Now, I have to correct myself
15 because I answered your question wrong, okay.

16 What you are seeing here, this -- these
17 figures are also repeated in an exhibit in its entirety
18 in this report, which is the minutes of the meeting --

19 MR. CRABB: Mr. Chairman --

20 THE WITNESS: -- maps that JEA.

21 MR. CRABB: -- I would like to ask my question
22 to the witness.

23 COMMISSIONER GRAHAM: Well, it sounded to me
24 like he answered your question incorrectly the
25 first time, so he was trying to correct himself so

1 he doesn't come across incorrect.

2 THE WITNESS: Right, I have to correct myself
3 if you want the correct information.

4 COMMISSIONER GRAHAM: If you want to withdraw
5 the question, that's fine.

6 MR. CRABB: I will withdraw the question and
7 try to rephrase it and make it a little bit more
8 clear. I apologize.

9 BY MR. CRABB:

10 Q So what I want to understand is, by JEA
11 interconnection alternative in this version of the
12 feasibility report, what exactly that means --

13 A Okay.

14 Q -- and so --

15 A Here's what I am comparing it to, on-site
16 facilities versus the written alternative that was
17 presented to the partners in an April 9th, 2019,
18 meeting, the entire minutes of which, and the entire
19 written proposal from JEA, are included as an exhibit to
20 this report. And that means -- and what that
21 alternative was, was the regional wastewater plant built
22 east of 301 having to go under the railroad tracks right
23 by the rail yard under 301 for water and reuse water;
24 building of a water treatment plant on-site, and then
25 future connecting it, the water main only, between the

1 site and Normandy Boulevard.

2 That was the option that I used in this
3 report. I had to rewrite my report because of that
4 meeting and that option in writing that was given. And
5 that's why there -- I am sorry, Commissioners, that's
6 why I have a little confusion as to the versions of
7 these reports.

8 **Q Mr. Beaudet, do you know why this comparison**
9 **was included in the application filed in this docket?**

10 A Because that was the only one -- only option
11 that was on the table at the time that the docket was
12 filed.

13 **Q But that was in August of 2019, when the**
14 **application was filed, was some four months before JEA**
15 **ever filed its objection in this docket, is that**
16 **correct? My question is why you would have had a**
17 **comparison of alternatives to JEA within your**
18 **application document?**

19 A Well, that was the only one on the table.
20 There was no other option delivered to me certainly, or
21 my clients, to the best of my knowledge, that would
22 change this report as being appropriate to be filed for
23 a certificate authorization.

24 **Q Do you believe that the comparison completely**
25 **and accurately describes the service alternatives that**

1 JEA had presented to the developer at the time the
2 application was filed?

3 A It presents those alternatives in JEA's exact
4 written words, including the price.

5 Q Did you receive any direction from your client
6 about what information about JEA to include in your
7 report?

8 A My client did not give me such direction. He
9 left it up to my professional judgment.

10 Q I would like to turn your attention to page 13
11 of the report. At the top it says, "JEA
12 Interconnection." That interconnection alternative was
13 one alternative provided by JEA, which included an
14 on-site water treatment plant and connection to a
15 regional wastewater plant; is that correct?

16 A You are talking about page 13?

17 Q Oh, I am sorry, page 14.

18 COMMISSIONER GRAHAM: Repeat the question,
19 please.

20 BY MR. CRABB:

21 Q Oh, I am sorry. On page No. 13, I just want
22 to be sure that I understand what exactly the
23 interconnection alternative was.

24 Well, let me skip ahead to what your -- what
25 your conclusion was on page 15 of 33. Cost of the JEA

1 interconnection alternatives to 301 Capital Partners, as
2 presented by JEA staff, are \$39 million, do I understand
3 that correctly?

4 A Correct. And that was exactly what was
5 presented in their letter proposal at that April 9th
6 meeting.

7 Q And this was compared to your conceptual plant
8 that could be constructed for \$27.5 million --

9 A That's correct.

10 Q -- do I understand that correctly?

11 And so it being \$11.5 million cheaper than the
12 JEA interconnection alternative, that was what made it
13 more feasible, do I understand that correctly?

14 A That was one reason it made it more feasible.

15 Q And do you believe that \$27.5 million cost
16 projection for the on-site water and wastewater plant is
17 still accurate today, almost three years later?

18 A No, I don't. Very clear that the bidding
19 environment and the supply chain disruptions have
20 increased construction for everyone across the board,
21 including JEA, if I were to compare this alternative
22 again.

23 Q And since your April 2019 report, have you
24 calculated an updated cost projection for an on-site
25 water and wastewater plant, same Phase I with a capacity

1 **of one million gallons a day?**

2 A Yes, I did, very preliminarily. It's almost
3 impossible. If you talk to any engineer or any
4 contractor today, one of the huge problems that they
5 have is trying to estimate the cost of their facilities.
6 So in another discussion held with JEA, it was agreed by
7 JEA's engineer and myself to increase the construction
8 values by 40 percent.

9 Q So have you developed an estimate -- since
10 this feasibility assessment report had a projected cost
11 of 27.5 million, have you developed a cost since then?

12 A No, only that 40 percent increase, which is
13 essentially an anecdotal number. No.

14 Q So just to be clear, you have not calculated
15 an update beyond the 40 percent?

16 A No. It hasn't been necessary to do so. And
17 as I mentioned, the only way today to totally understand
18 what's what something is going to cost is to bid it, and
19 then be ready to clean yourself up.

20 Q And when the feasibility assessment report
21 references costs, those are costs to who exactly?

22 A I am sorry, I don't understand that question.

23 Q Your feasibility assessment report, like at
24 the top of page 15 of 33, says, cost of the JEA
25 interconnection alternative. Elsewhere in the report

1 you refer to cost of plant, so my question is, cost to
2 who exactly?

3 A Well, it was very clear, if you look at the
4 memorandum that was submitted by JEA at the meeting,
5 it's extreme clear that's costs to my client, because
6 they say that it will be paid for, 39 million, by
7 \$13,000 connection fees, which are more than the 3,300,
8 in order -- that difference being required to pay for
9 that 39 million. And that, also stated in that
10 memorandum, that JEA is considering raising their
11 connection fees, and that would adjust this proposal if
12 they did so; and, in fact, they've done so.

13 Q Okay. So just to be clear, 39 million cost to
14 the developer versus 27.5 million cost to the developer,
15 correct?

16 A Yes, and I believe that to be a very accurate
17 estimate.

18 Q In addition to the cost the developer, did
19 your feasibility assessment also consider cost to
20 ratepayers of connecting to JEA versus a new utility
21 called First Coast?

22 A No, it did not.

23 Q And why is that? Why were impacts to
24 ratepayers not included?

25 A Well, it's certainly assumed and discussed

1 between the parties that the connection fees would go,
2 if the alternative was selected to JEA, that it would go
3 to JEA. If FCRU built on-site facilities, the
4 connection fees would go to FCRU.

5 There was no other discussion held with JEA
6 that I was involved in, or that I have seen in writing,
7 that would change that.

8 **Q So to be clear, there was never a point in**
9 **time where you were considering who are the -- who are**
10 **the folks that are going to live in these neighborhoods,**
11 **what would the impacts to them be? What would the**
12 **feasibility to them be of JEA interconnection versus a**
13 **new utility called First Coast?**

14 **A** I think that's a very poor question. Of
15 course we would consider it. We consider the fact that
16 if we did FCRU on-site, that our customers would pay
17 those connection fees, it would be required by a cost of
18 those facilities. And if they were -- if my client were
19 to accept this written proposal, very detailed written
20 proposal with maps, that they would be paying 13,000.
21 So I don't understand what you mean, I didn't consider
22 that. Of course I did.

23 **Q My question is just simply you -- in this**
24 **docket, First Coast has proposed rates and charges and**
25 **tariffs that the residents will ultimately be**

1 responsible for. My question is: In considering the
2 alternatives reflected in your report, did you consider
3 the impacts to ratepayers in addition to impacts to the
4 developer?

5 A I can't answer that because I am not the
6 financial person.

7 Q The service alternatives compared in your
8 report, the JEA interconnection alternative is one that
9 was discussed in the April 9, 2019, meeting between JEA
10 and Capital Partners, is that correct?

11 A Yes.

12 Q Were you present at that meeting?

13 A I was not.

14 Q Instead, you relied on the meeting notes that
15 are attached as, I believe, Appendix A to your report?

16 A Yes, that's correct.

17 Q Did you ever contact anyone at JEA to discuss
18 the alternative that was presented at that meeting?

19 A No, I did not.

20 Q Are you aware that JEA presented other
21 alternatives to the developer, both before and after
22 April 9 of 2019?

23 A I was told that there was a verbal
24 presentation of the seven-mile pipeline interconnect. I
25 have never seen anything in writing on that.

1 During discovery, several other options came
2 up. During the discovery, I did analyze those options
3 and they do not change my conclusion that the public
4 interest would be best served by an on-site utility.

5 **Q Okay. I would like to turn your attention to**
6 **the exhibit that we've marked now No. 69, our Tab No. 2**
7 **in our cross-examination exhibits.**

8 A Okay.

9 **Q Do you recognize this document?**

10 A I am sorry?

11 **Q Do you recognize this document?**

12 A No, I do not.

13 **Q I will give you a moment to review it.**

14 A This looks to be the, in writing, a proposal
15 that I did not know was in writing, about the
16 interconnect of the pipelines.

17 **Q And then on page two, if you would take a look**
18 **at that for a moment. And what I am getting at is I am**
19 **asking you whether it appears to you that, at this**
20 **meeting, JEA suggested a direct connect alternative, a**
21 **cost of approximately \$10 million, 5.3 million for water**
22 **and 4.75 million for sewer?**

23 MR. WHARTON: I would object, Commissioner.

24 He said he doesn't know anything. He hasn't seen
25 the document. All he can do is just read that

1 that's what it says. That's going to be --

2 COMMISSIONER GRAHAM: Then he can say so, as
3 it indicates here on this sheet.

4 BY MR. CRABB:

5 Q And what I am getting at is, my question is:
6 Why was this alternative not included in your
7 feasibility assessment report?

8 A I was not aware of it.

9 Q 301 did not tell you of this alternative that
10 had been presented by JEA?

11 A Again, I was not given this document.

12 Q Next I would like to turn your attention to
13 the exhibit that we've marked No. 70, behind Tab 3.
14 Again, I will give you a moment to take a look at that.

15 Have you seen this document before?

16 A No, I have not.

17 Q Again, I will give you another moment to
18 review it.

19 301 Capital Partners did not make you aware of
20 this document?

21 A They did not.

22 Q And so I won't -- I won't ask you to analyze
23 this document as you sit here in realtime. But if I
24 represent to you that this is an on-site alternative by
25 which JEA purchases the real estate for the plant and

1 waives the connection charges, again, my question for
2 you is: Was this included in your feasibility report?

3 A No, it was not.

4 Q And so your feasibility report included one
5 alternative presented by JEA, but you would agree that
6 there had been at least two other alternatives presented
7 by JEA?

8 A I was not aware of that at the time.

9 Q So as you sit here today, the 2019, August
10 2019 letter to Paul Harden, and also the 2018 meeting
11 notes, you have not seen those before today?

12 A Again, I have not seen this document. There
13 isn't anything else I can say.

14 Q In fact, in thinking about this alternative or
15 that alternative, on-site plant versus connecting by
16 pipes or regional plant, isn't it the truth that every
17 alternative that would be available to First Coast would
18 also be available to JEA?

19 A Well, I am not sure. For one reason, the
20 service to Baker and Nassau County I don't know would be
21 something that JEA would be able to do, and that a
22 certificated utility could do for sure. That's one
23 thing I think would be a difference there.

24 Secondly, the -- everything I ever saw in my
25 working on this project, and most of what I have seen in

1 discovery, is no, no, you build the plant, you pay for
2 it and you give it to us. That's what I have seen. And
3 suddenly I see this today when I am testifying. I
4 haven't had a chance to review it. I don't really know
5 how practical it is, but I think the major issue is
6 service outside Duval County, and whether or not JEA
7 could accomplish that.

8 **Q And when you refer to the ordinance and the**
9 **idea that First Coast would have -- or the developer,**
10 **301, would have to build the plant capacity and dedicate**
11 **it to JEA, as Mr. Wharton, I believe, discussed in his**
12 **introduction, that was part of the PUD ordinance that**
13 **had been attached to this property from 2010 until just**
14 **a few months ago; is that correct?**

15 **A Well, I am not sure that that ordinance**
16 **actually said that. In my opinion, when you read the**
17 **language in that ordinance, it's very vague. It says,**
18 **would build the plant and dedicate it for operation to**
19 **JEA. It does not say for ownership and operation. So**
20 **therefore, I don't necessarily agree with the way you**
21 **are going with this.**

22 **Q Well, I -- let me tell you where I am going.**
23 **And certainly the parties have disagreed significantly**
24 **over that language, that 2010 PUD language and what that**
25 **means. But I think that we would all agree that today**

1 that language is no longer in effect?

2 A That's correct.

3 Q Okay. And so under the new ordinance, there
4 is certainly no question, in JEA's mind or anyone else,
5 that there is no obligation to build an on-site plant
6 and dedicate it to the developer?

7 A That's correct.

8 Q Okay. So we are in agreement on that point.
9 So my question is: Is there any technological
10 alternative -- we've talked about on-site plant,
11 connecting by pipes, a regional alternative, anything
12 that would be available to First Coast would be
13 available to JEA as well, am I correct about that?

14 A In terms about what could be constructed --

15 Q Right.

16 A -- is that what you are talking about?

17 Q Correct.

18 A In terms of what could be constructed, if the
19 parties were in agreement, I do agree that JEA would
20 have the ability to do what FCRU does, with the
21 exception of serving outside Duval County.

22 Q And what do you mean by that, with the
23 exception of serving outside Duval County?

24 A Well, the application in front of this
25 commission is for a regional utility that would serve

1 three counties. And I am not an expert at all on any
2 agreements that are back and forth between these other
3 counties, but as far as I know, you have no existing
4 agreement to serve Baker County.

5 Q And let me try to finish it up this way. So
6 First Coast can construct on-site plant to serve this
7 development, correct?

8 A Correct.

9 Q JEA can construct on-site plant to serve this
10 development, correct?

11 A Correct.

12 Q JEA also has the additional alternatives of
13 being able to pipe in to its existing system
14 infrastructure, is that correct?

15 A That's correct.

16 Q And JEA would also have the alternative of
17 being able to construct a regional plant outside the
18 borders of this development and connect it to that
19 plant, is that correct?

20 A Yes, they could.

21 Q Last question that I have got, I wanted to go
22 back to something that you said as far as a correction
23 or update in your testimony, where you said that JEA had
24 increased its connection fees significantly, and was
25 wanting you to point out in your testimony where you may

1 have testified about what JEA's capacity fee or
2 connection fee was at the time that you completed the
3 report, or rather that you prefiled --

4 A Yes, I did. It's in my report the connect --
5 the current connection fees -- or actually -- okay, no,
6 they are not in this report because this is the one that
7 was done for the new option. In my original draft
8 report, it did contain that. And then in discovery, I
9 was asked a question under the interrogatories about
10 that, and I did present my entire calculation, including
11 the connection fees that were in existence at the time
12 and how they would impact the -- my comparison.

13 Q Okay. That's what I wanted to clarify and
14 just make sure there was not a discussion of JEA's
15 connection fees at the time this prefiled direct was put
16 in in this testimony as opposed to your rebuttal or some
17 other document?

18 A I don't understand that. I am sorry.

19 Q I believe that you said that one of your
20 corrections, or updates, is that JEA had increased its
21 connection fees significantly since you prefiled your
22 testimony in 2019 --

23 A Yes.

24 Q -- is that correct?

25 A That is one of the differences.

1 **Q** And so my question is: Where in this prefiled
2 **direct testimony do you talk about JEA's connection**
3 **fees?**

4 **A** I talk about it in attaching the Exhibit 2 to
5 my report, where JEA talks about their connection fees,
6 and they say that they are going to charge FCRU \$13,000
7 to pay for this regional plant concept, which is more
8 than their \$3,300 existing connection fee, so -- and
9 that was part of the prefiled testimony. So that --
10 there was some discussion of their -- JEA's existing
11 connection fees in the prefiled testimony.

12 **Q** Okay. And is that on page 33 of 33 of Exhibit
13 **BAB-2? I just want to make sure that I am clear about**
14 **this, where, under financing, it refers to,**
15 **three-quarters of the way towards to the bottom,**
16 **capacity fees for the 301 property is 39 million for the**
17 **first 3,000 units?**

18 **A** Yes, I see that.

19 **Q** And that \$13,000 per unit, was that a
20 **development specific capacity fee?**

21 **A** Well, it says per unit. I assume that it was.

22 **Q** Okay. So that was -- that was not JEA's
23 **traditional capacity fees of 3,300 at the time?**

24 **A** Yes, well that's what JEA is saying in their
25 own words in writing to my client.

1 **Q So my question is: The 39 million has not**
2 **increased by the result of JEA's regular capacity fees**
3 **increasing?**

4 A Well, first of all, they haven't updated this
5 proposal. Second of all, it would be incredulous to me
6 if they could make that same proposal at 39 million now
7 that their connection fees have almost quadrupled.

8 **Q Okay. But since then, have there been no**
9 **discussions with JEA about this development specific**
10 **13,000 per unit capacity fee and that increasing?**

11 A Yes. I mean, that's what they put in writing
12 in this proposal, and there was nothing here said about
13 -- in fact, it is not so. They actually said in here
14 that they are looking at increasing their connection
15 fees. It hasn't been decided. And words to the effect
16 of, if that happens, we are going to have to take a look
17 at it. It says that in here. I could try to find it if
18 I could go through it, but that's basically what it
19 says.

20 So I took that as being that they would
21 increase their -- that \$13,000 if, in fact, they
22 increase their overall connection fees. That was my
23 assumption based on what JEA wrote and what is put in
24 this exhibit.

25 **Q I understand. Thank you.**

1 MR. CRABB: No further questions at this time.
2 Would it be appropriate to move in our
3 cross-examination exhibits at this time?

4 COMMISSIONER GRAHAM: Let's do that after we
5 go through redirect.

6 Staff.

7 MS. LHERISSON: Staff has no questions at this
8 time.

9 COMMISSIONER GRAHAM: Commissioners?
10 Okay, redirect?

11 MR. WHARTON: Thank you, Commissioner.

12 FURTHER EXAMINATION

13 BY MR. WHARTON:

14 Q Mr. Beaudet, take a look at the documents that
15 have been marked as 69 and 70. That's the two
16 memorandums.

17 A Okay. I am sorry, now which is it I am
18 looking at?

19 Q One is the memorandum dated 1/23/18. The
20 other is the memorandum that is -- has the proposal --
21 or has the -- that is dated August 9, 2019.

22 A Okay. So I have the 1/23 memorandum here.

23 Q And the August 9, 2019?

24 A Yeah, the August 29 is -- I have that in the
25 report, yes.

1 Q Well, I thought it was your testimony that the
2 August 9, 2019, you had not previously seen?

3 A I had not what?

4 Q Previously seen.

5 A Okay. I am sorry, I am getting confused here.

6 Q Well, the cover page --

7 A Okay. Okay. I am sorry. I am sorry. Hold
8 on, please.

9 Okay. I thought you were talking about the
10 April 9th. When you get my age, dates go around in your
11 head.

12 Q But you now have those two reports in front of
13 you?

14 A Yes, I do.

15 Q All right. And those are reports you said you
16 had not previously seen?

17 A That's correct.

18 Q So is it true that if these reports were just
19 for the purpose of discussion, you would not know that?

20 A Yes.

21 Q What about if they were just conceptual, is
22 that something you would know?

23 A No.

24 Q What if they were withdrawn the next day, is
25 that something you would know?

1 A No.

2 Q What about if they were immediately determined
3 not to be accurate or feasible, is that something you
4 would know?

5 A No.

6 Q Let me ask you about the other exhibit that
7 they -- that JEA showed you, and that is the preliminary
8 absorption schedule. Can you put that in front of you?

9 A Yes. I have that.

10 Q And do you recall whether you were asked
11 whether service to Nassau County would not occur for 10
12 years?

13 A I really didn't get into the details with my
14 client of anything beyond Phase I.

15 Q Okay.

16 A And they identified Phase I to me as the two
17 North Village and 300 ERCs of commercial. That's the
18 direction that my client gave me. The client did not
19 discuss with me, or explain to me the reasons or the
20 timing on anything else on this absorption schedule.

21 Q Well, let me just ask -- let me ask you this
22 question: You were the utility director for Palm Beach
23 County for 13 years was it, or 16?

24 A A total of 20.

25 Q All right. Is -- based on your knowledge of

1 **this particular project, do you believe that the**
2 **developer is planning out the utility facilities and**
3 **service area prematurely, or too far in advance?**

4 A Well, first of all, the client wants to -- is
5 entitled property and wants to get building on it, okay.
6 In order to get building on it, he has to have a utility
7 -- utilities, okay. So the next thing is he wants the
8 most practical and timely ability to do that. So we
9 know we are going to start building this first phase.
10 So that first phase has to be planned in detail.

11 But in my, not only experience as a utility
12 director, but as my consulting engineering experience
13 for developers, the long-term phasing is always unclear.
14 You can't plan -- you are not going to plan on building
15 a 4 mgd plant now because you don't know when you are
16 going to need that demand.

17 Does that answer your question, sir?

18 **Q All right. Do you recall a series of**
19 **questions about -- to the effect of couldn't JEA do**
20 **anything that First Coast is saying it proposes to do?**

21 A I recall those, yes.

22 **Q All right. Could JEA serve all three**
23 **counties?**

24 A Not to my knowledge, no.

25 **Q Would JEA be able to have the benefits to the**

1 **ratepayers and to the customers that oversight by the**
2 **Public Service Commission provides?**

3 A No, they would not.

4 Q **Do you believe JEA could do it as quickly as**
5 **First Coast could?**

6 A Absolutely do not believe that.

7 MR. CRABB: Commissioner Graham, I am going to
8 object as exceeding the scope of cross at this
9 point.

10 MR. WHARTON: I think it's right on. I am
11 demonstrating the differences, and there were
12 several questions about we can do anything you can
13 do.

14 MR. CRABB: The cross was about technological
15 alternatives, on-site plant versus piping in. It
16 was not a wholesale discussion of all the
17 distinctions.

18 COMMISSIONER GRAHAM: If I remember correctly,
19 the questions were, do you think JEA can do the
20 same things that those guys do. I think he is
21 trying to get more specifics. I will allow the
22 question.

23 BY MR. WHARTON:

24 Q **Now, you -- do you recall saying that the cost**
25 **difference between JEA and First Coast providing service**

1 was one reason why First Coast was the more feasible of
2 the two, does that correctly characterize your
3 testimony?

4 A Was one reason, yes.

5 Q Okay. What are the other reasons?

6 A The other reason is from a time -- timing
7 point of view. A private entity, like a private
8 utility, can move a project much quicker than a public
9 entity.

10 I had a long discussion about that in my
11 interrogatories, I was asked in detail about how that
12 works. And there is no question in my mind, having been
13 on both sides of the procurement fence for government,
14 that it would take much longer for JEA to do their
15 procurement and do their project than it would for a
16 private entity to do.

17 MR. CRABB: Mr. Chairman, I didn't ask any
18 questions about procurement processes, time, those
19 kinds of things. I just need to renew my objection
20 on that basis.

21 MR. WHARTON: But he asked a lot about the
22 feasibility review, the comparison between the two
23 utilities.

24 COMMISSIONER GRAHAM: Let's move on.

25 MR. WHARTON: Okay.

1 BY MR. WHARTON:

2 Q Mr. Beaudet, you were asked a lot of questions
3 about what options you compared in your feasibility
4 report versus perhaps some other options that you did
5 not include; do you recall that?

6 A Yes, I do.

7 Q As we sit here today, do you know what
8 proposal JEA has on the table to provide service?

9 A No, I don't.

10 Q Other than that First Coast would build and
11 pay for, and then dedicate the facilities?

12 A Going through the discovery in preparation for
13 this hearing and in discussions with my client, it's my
14 understanding that all options are off the table at this
15 point. And I have seen that in writing.

16 Q And you understand -- well, let me ask. Is it
17 your understanding that the development will be phased
18 over time?

19 A Yes, I do.

20 Q And under that circumstances for a development
21 of this size, do you believe it is appropriate that the
22 facilities would be phased over time?

23 A Yes, I do.

24 MR. WHARTON: That's all we have.

25 COMMISSIONER GRAHAM: Okay.

1 MR. WHARTON: Yeah, we want to move the
2 exhibits, Commissioner.

3 COMMISSIONER GRAHAM: Okay, which exhibits?

4 MR. WHARTON: BAB-1, BAB-2 and BAB-3.

5 MS. CRAWFORD: That's 6, 7 and 8 on the CEL.

6 COMMISSIONER GRAHAM: Okay.

7 MR. WHARTON: Yes.

8 COMMISSIONER GRAHAM: We will move Exhibit 6,
9 7 and 8.

10 (Whereupon, Exhibit Nos. 6-8 were received
11 into evidence.)

12 MR. CRABB: And we would like to move our
13 exhibits 68, 69 and 70 as well.

14 MR. WHARTON: We object to all three. They
15 certainly don't speak for themselves. This witness
16 has never seen them before. There is a lack of
17 foundation.

18 MR. CRABB: The purpose of these is to point
19 out that they were not included in the feasibility
20 assessment report, that he hadn't seen them, they
21 weren't included, and that was the only reason that
22 he were offered.

23 MR. WHARTON: That's in the testimony.

24 COMMISSIONER GRAHAM: I can allow 69 -- I am
25 sorry, 68, the absorption one. 69 and 70, as far

1 as I know, the witness said he had never seen them
2 before and basically wasn't able to answer any
3 questions off of them. So you can reintroduce them
4 somewhere else if you care to, but right now we are
5 just going to put 68 in.

6 (Whereupon, Exhibit No. 68 was received into
7 evidence.)

8 COMMISSIONER GRAHAM: Staff, anything else?

9 MS. LHERISSON: Nothing from staff.

10 COMMISSIONER GRAHAM: Okay. Would you like to
11 excuse this witness for the time being? Yes?

12 MR. FRIEDMAN: He asked if you want to
13 excuse --

14 MR. WHARTON: We did -- he already excused
15 himself.

16 COMMISSIONER GRAHAM: All right. We are close
17 enough to the bewitching hour. I don't think there
18 is any sense to bring Ms. Swain up now. So we are
19 going to break for lunch now. We will reconvene at
20 two o'clock. We will take a recess.

21 (Lunch recess.)

22 COMMISSIONER GRAHAM: Okay. Good afternoon,
23 everybody. We will call this meeting back to
24 order.

25 I think out of fairness, I need to say this

1 publicly. I apologize for not budgeting naptime
2 for after lunch. Seriously, I spoke to counsel for
3 JEA because I know this is the first time he came
4 before us, to be clear about if you are
5 cross-examining a witness you can ask the question,
6 as I said before, a simple yes or no, and they are
7 allowed to give an answer to on top of that simple
8 yes or no.

9 If you ask a question like, in your
10 professional opinion, what do you think, that
11 allows them to articulate a little further. But if
12 you just want them to ask and to stay a short
13 answer, you can always object to it, and I will
14 make sure I speak to the witness that. And I want
15 to make sure both sides understand that. I know
16 you are new for this, in front of me at least, as
17 well. So I just wanted to be clear on that before
18 I move forward.

19 If there is nothing before we get started
20 again, Mr. Wharton, your witness, or Mr. -- Marty.

21 MR. FRIEDMAN: Thank you very much,
22 Commissioners.

23 Whereupon,

24 DEBORAH D. SWAIN

25 was called as a witness, having been previously duly

1 sworn to speak the truth, the whole truth, and nothing
2 but the truth, was examined and testified as follows:

3 Deborah

4 EXAMINATION

5 BY MR. FRIEDMAN:

6 Q Would you please state your name?

7 A Deborah Swain.

8 Q Your business address?

9 A 2025 Southwest 32nd Avenue, Miami, Florida,
10 33145.

11 Q And, Ms. Swain, did you prefile direct
12 testimony in this case?

13 A Yes, I did.

14 Q And if I asked you the questions in your
15 prefiled testimony, would your answers remain the same?

16 A Yes, they would.

17 Q Did you also author Exhibits DDS-1, 2 and 3,
18 which are listed as 2, 3 and 4 on the comprehensive
19 exhibit list?

20 A Yes, did I.

21 Q Do you have any changes or corrections to your
22 testimony?

23 A I do have one change to my Exhibit DDS-1.

24 There was a exhibit that I didn't include in the -- in
25 DDS-1. It's a schedule that was subsequently provided

1 in response to staff's fifth production -- fifth request
2 for production of documents, No. 17. And I know I saw
3 it included on the staff's list of exhibits but I don't
4 recall which number it was.

5 Q Is that the only change that you would have?

6 A Yes, it is.

7 Q Would you provide a brief summary of your
8 prefiled testimony, please?

9 A Yes.

10 The purpose of my direct testimony is to
11 present the financial information for the determination
12 of initial rates portion of the original certificate
13 application, including sponsoring the water and
14 wastewater tariffs. These schedules were prepared by me
15 based on information provided to me by the utility's
16 team. The schedules reflect Mr. Beaudet's report
17 regarding construction costs, flows, ERCs and expenses.

18 Other than that, that's all I have as my
19 summary.

20 MR. FRIEDMAN: We tender Ms. Swain for cross
21 examination.

22 CHAIRMAN CLARK: JEA.

23 MS. CLARK: Mr. Chairman, that is me.

24 EXAMINATION

25 BY MS. CLARK:

1 Q I just want to be clear that if you are -- if
2 you were asked the same questions today as are in your
3 testimony, your answers would be the same, is that
4 correct?

5 A Yes.

6 Q With that one update?

7 A I am sorry?

8 Q With that one update you mentioned?

9 A Yes, I -- just an update to my exhibit.

10 Q I have another question. In your -- is that
11 the update you referred to in your rebuttal testimony?

12 A Yes, it is.

13 Q Okay. Thank you. I just want to make sure.

14 A Oh, I am sorry. I don't believe I gave that
15 in my rebuttal testimony. In my deposition, I stated
16 that, but not in my rebuttal.

17 Q And let me just take a moment to look at it.

18 A Sure.

19 Q Let me ask you this: Isn't there something in
20 your rebuttal where you made a change?

21 A I -- no, I presented an alternative in my
22 rebuttal, and that's not what I am referring to. There
23 is a -- there is a schedule that's part -- should have
24 been part of the application that's a detailed listing
25 of plant by NARUC account --

1 **Q Okay.**

2 A -- and the depreciation. I neglected to
3 include that, but it was provided subsequently.

4 MS. CLARK: Mr. Chairman, I think I
5 understand, and if I don't, I will catch it on
6 rebuttal.

7 COMMISSIONER GRAHAM: Okay. Do you have
8 exhibits?

9 MS. CLARK: I don't have any -- I don't
10 believe I have any exhibits for the direct
11 testimony.

12 CHAIRMAN CLARK: Okay.

13 BY MS. CLARK:

14 **Q Before I start off, I would like to follow up**
15 **on a statement that Mr. Beaudet said, and he indicated**
16 **that there was a connection charge of 13,000?**

17 A I heard that testimony.

18 **Q And what is your understanding of what that**
19 **is?**

20 A I have none of that information. What I
21 evaluated was First Coast utility's -- Regional
22 Utilities costs, not any information about JEA or JEA's
23 costs.

24 **Q So it is not the same thing as what you call a**
25 **service availability charge, is that correct?**

1 A Well, from what I understand from what Mr.
2 Beaudet testified to today, I believe that he was
3 talking about some sort of service availability charge.

4 COMMISSIONER GRAHAM: Ms. Swain, I think the
5 people in the back can't hear you. I need you to
6 speak directly into that mic.

7 THE WITNESS: Okay. I heard the testimony
8 today from Mr. Beaudet, and it appeared from his
9 testimony he was talking about a service
10 availability charge, but I have not looked at any
11 of those details, or seen any of that information.
12 I have specifically focused on First Coast Regional
13 Utilities' costs, not JEA's costs, for my direct
14 testimony of.

15 MS. CLARK: Okay.

16 MS. CRAWFORD: Commissioner Graham, I am sorry
17 to interrupt. It appears that we did not enter the
18 prefiled testimony for Ms. Swain, and just so the
19 record --

20 MR. FRIEDMAN: I apologize.

21 MS. CRAWFORD: -- reads as cleanly and, you
22 know, as logically as possible, perhaps we could go
23 ahead and do that. I do apologize for interrupting
24 counsel.

25 COMMISSIONER GRAHAM: I don't remember anybody

1 asking me to enter into the record.

2 MR. FRIEDMAN: I'm retroactively asking you to
3 do it put it before her summary.

4 COMMISSIONER GRAHAM: We will enter Ms.
5 Swain's prefiled testimony into the record as
6 though read.

7 (Whereupon, prefiled direct testimony of
8 Deborah D. Swain was inserted.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original Certificate of
Authorization and initial Rates and Charges for
Water and Wastewater Service in Duval, Baker,
and Nassau Counties, by First Coast Regional
Utilities, Inc.

Docket No.: 20190168-WS

DIRECT TESTIMONY
OF
DEBORAH D. SWAIN
ON BEHALF OF
FIRST COAST REGIONAL UTILITIES, INC.

1 **Q. Please state your, name profession and address.**

2 A. My name is Deborah D. Swain. I am Vice President of Milian, Swain & Associates, Inc. and
3 head up the firm's finance, accounting and management team. My business address is 2015
4 SW 32nd Avenue, Suite 110, Miami, Florida 33145.

5 **Q. State briefly your educational background and experience.**

6 A. I have a Bachelor of Science degree in Accounting from Florida State University. I have over
7 35 years of experience in utility management, accounting, finance, rate regulation, rate design
8 and system development. I have prepared and supervised cost of service studies for over 300
9 water and wastewater systems, calculated revenue deficiencies and revenue requirements,
10 and designed rates.

11 **Q. Have you previously appeared and presented testimony before any regulatory bodies?**

12 I have prepared and presented expert testimony in the areas of regulatory accounting, rate
13 regulation and utilities in general, before various federal, state, county, courts and regulatory
14 agencies, including the Florida Public Service Commission, Collier, Hillsborough, St. Johns
15 and Washington Counties, the Circuit Court in Palm Beach County, the Town of Jupiter, the
16 City of Miami, and the US Bankruptcy Court.

17 **Q. On whose behalf are you presenting this testimony?**

18 A. I am presenting this testimony and appearing on behalf of First Coast Regional Utilities, Inc.
19 ("First Coast"), the applicant for original certificate of authorization and initial rates and
20 charges for water and wastewater service in the present docket.

21 **Q. What is the purpose of your direct testimony?**

22 A. The purpose of my direct testimony is to present information supporting the financial basis
23 for First Coast's request for initial rates and charges as presented in its Application, and to
24 provide supporting schedules to show the basis for the requested rates and charges.

25 **Q. Are you sponsoring any exhibits?**

1 A. Yes, I am sponsoring three exhibits. Exhibit DDS-1 (Exhibit H to the Application) contains
2 Accounting Information dated June 2019. Exhibit DDS-2 (Exhibit I to the Application) is
3 the proposed Water Tariff for First Coast and Exhibit DDS-3 (Exhibit I to the Application) is
4 the proposed Wastewater Tariff for First Coast.

5 **Q. Were these Exhibits prepared by you and your staff?**

6 A. Yes, they were. As is customary, they were prepared from financial and engineering
7 information provided to me and my staff by First Coast and its consultants.

8 **Q. Have any changes been made subsequent to the filing of your exhibits?**

9 A. No, however further clarification related to the development of the rates was provided in First
10 Coast's response to Staff's First Data Request of November 7, 2019.

11 **Q. Does that conclude your direct testimony?**

12 A. Yes, it does.

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1 COMMISSIONER GRAHAM: Please continue.

2 BY MS. CLARK:

3 Q Let me -- then let me follow up. I would like
4 to get some clarity from you on what you are
5 recommending as a service availability charge if First
6 Coast would build this facility?

7 A Correct.

8 Q And can you tell me what that number is, and
9 where I would find it?

10 A Yes. The number is on DDS-1, page 20 of 24
11 and page 21 of 24. There are -- it's the calculation of
12 the service availability charges for First Coast
13 Utilities.

14 Q And would you tell me what they are?

15 A Yes. The plant capacity fee is \$752 for
16 water, and the main capacity fee is \$3,158 for water.

17 For wastewater, the plant capacity fee is
18 \$1,250, and the main capacity fee is \$4,833.

19 Q Okay. Thank you.

20 You recall I took your deposition a couple
21 weeks ago?

22 A Yes, I recall.

23 Q And you recall you stated that you were not
24 involved in securing the financing for the proposed
25 utility?

1 A Correct.

2 Q So in terms of developing the financial basis
3 for the utility, you just worked with the financing
4 scheme you were given, correct?

5 A I am sorry, I worked with what?

6 Q You worked with the financing scheme you were
7 given?

8 A I was provided a -- that the utility would be
9 funded through equity, and that's what I incorporated in
10 this schedule.

11 Q So you have answered my next question. The
12 financing, at least in the initial application, was
13 going to be 100 percent equity?

14 A Correct.

15 Q And I need a little education from you. I
16 understand you have plant in service, and that sort of
17 is listing of all the property you currently have that
18 is used to provide service. It's not the same as rate
19 base, would that be correct?

20 A What are you -- what are you asking me again,
21 please?

22 Q In the accounts labeled plant in service --

23 A Right.

24 Q -- it would be all the plant that is currently
25 operating and providing service to customers?

1 A No. It's actually the plant that will be in
2 place when the utility is at 100 percent capacity.

3 Q Okay. All right. And when it is at 100
4 percent capacity, will any part of that amount of plant
5 in service be supported by CIAC?

6 A Yes, it will.

7 Q And how much are you proposing of that plant
8 in service be supported by construction -- contributions
9 in aid of construction?

10 A For water, I proposed 75 percent, which is the
11 maximum allowable by the rules; and for wastewater, I
12 proposed 55.24 percent.

13 Q And is that consistent with the Commission's
14 rules?

15 A Yes, it is.

16 Q Okay. Now, the rest of that investment, as I
17 understand it, is going to be supported by 100 percent
18 equity?

19 A The rate base is going to be supported by 100
20 percent equity.

21 Q Yeah. And as I understand it, First Coast is
22 asking for a rate of return on that of 8.12 percent, is
23 that correct?

24 A Yes, that's based upon the leverage formula in
25 place at that time.

1 Q And you would agree, wouldn't you, that
2 because First Coast is planning to be a C corporation,
3 that return on equity would have to be grossed up for
4 taxes?

5 A That is the return on equity after taxes.

6 Q The return on equity after taxes is 8.12
7 percent?

8 A Correct.

9 Q But there is some amount of money in there
10 that ratepayers will have to pay in terms of taxes
11 because it is equity --

12 A Yes.

13 Q -- would that be correct?

14 A Yes, that's correct.

15 Q All right. And as I understand it, there --
16 you were provided with an alternative financing scheme
17 that would be 100 percent debt?

18 A That's in my rebuttal testimony, not in my
19 direct testimony.

20 Q Okay, but stay with me for a minute.

21 A Okay.

22 Q You would agree with me that from a
23 ratepayer's perspective, it is better to use debt
24 financing -- financing because it's lower in cost and the
25 interest on the debt would not have to be grossed up for

1 **taxes, correct?**

2 A If that's available. It does generally result
3 in a lower cost. However, what I found for original
4 certificate cases, it's virtually impossible for the
5 owner to obtain financing prior to getting a certificate
6 to operate from the Public Service Commission. So I --
7 my clients often have 100 percent equity until they get
8 the certificate, and then they could potentially seek
9 some other type of financing, but it's premature to do
10 that.

11 I mention in my rebuttal that I did look at an
12 option or the opportunity and what the impact would be
13 if they did get financing. But as of -- as we sit here
14 today, right now the plan is 100 percent equity.

15 **Q I understand that, but from a ratepayer's**
16 **perspective, it is beneficial to have some of that**
17 **investment supported by debt?**

18 A Generally, and I say that generally because,
19 yes, in today's market, yes, that's the case. In 10
20 years from now, and if you have been around as long as I
21 have, many, many years ago that wasn't the case.

22 **Q I hate to say it, but that was more than two**
23 **decades or three decades ago, wasn't it?**

24 A I don't want to give -- I don't want to talk
25 about it. I think it was in the mid-'80s.

1 **Q Yeah, so we could agree on four decades ago I**
2 **guess.**

3 MS. CLARK: Mr. Chairman, that's all I have.

4 COMMISSIONER GRAHAM: Okay. Staff.

5 MS. LHERISSON: No questions from staff.

6 COMMISSIONER GRAHAM: Commissioners?

7 Redirected.

8 MR. FRIEDMAN: No redirect. Wait a minute.

9 COMMISSIONER GRAHAM: I was going to say
10 exhibits.

11 MR. FRIEDMAN: Okay. Why didn't you do that
12 in the prefiled and remind me instead?

13 COMMISSIONER GRAHAM: Because I was assuming
14 that you were on top of your game.

15 MR. FRIEDMAN: You beat me to the punch. Yes,
16 I would like to move exhibits on the CEL, Exhibits
17 3, 4 and -- I am sorry, 2, 3 and 4.

18 COMMISSIONER GRAHAM: That's DDS-2, DDS-3 --

19 MR. FRIEDMAN: DDS-1, 2 and 3.

20 COMMISSIONER GRAHAM: DDS-1, 2 and 3.

21 MR. FRIEDMAN: Which are 2, 3 and 4 on the
22 CEL.

23 COMMISSIONER GRAHAM: Okay.

24 (Whereupon, Exhibit Nos. 2-4 were received
25 into evidence.)

1 COMMISSIONER GRAHAM: There is no other
2 exhibits. Would you like this witness excused?

3 MR. FRIEDMAN: That's all that she has, is the
4 three exhibits?

5 COMMISSIONER GRAHAM: Yes. Would you like her
6 to be excused? Would you like her excused?

7 MR. FRIEDMAN: Did you admit my exhibits?

8 COMMISSIONER GRAHAM: Yeah.

9 MR. FRIEDMAN: Yes, then, thank you, yes, I
10 would like -- she will -- you will see her again in
11 rebuttal. Thank you.

12 COMMISSIONER GRAHAM: Okay. Next witness.

13 MR. WHARTON: We would call Mr. Robert
14 Kennelly.

15 Whereupon,

16 ROBERT KENNELLY

17 was called as a witness, having been previously duly
18 sworn to speak the truth, the whole truth, and nothing
19 but the truth, was examined and testified as follows:

20 EXAMINATION

21 BY MR. WHARTON:

22 Q Sir, would you statement your name and
23 business address for the record?

24 A Yes. My name is Robert Kennelly, and my
25 business address is 12469 West State Road 100, Lake

1 Butler, Florida, 32054.

2 Q Did you cause prefiled direct testimony to be
3 filed in this case?

4 A Yes, I did.

5 Q And if I asked you those same questions as you
6 were asked in your prefiled direct testimony, would your
7 answers be the same?

8 A No, they would not.

9 Q Do you have any corrections or modifications
10 to your testimony?

11 A Yes, I do.

12 A lot of what my direct testimony dealt with
13 was responding to the, what we felt like, the parameters
14 of the now superseded ordinance 2010-874E, which has now
15 been superseded by 2021-693E, and there was a couple
16 changes as a result of that change in ordinances.

17 First and foremost, it eliminated the
18 requirement of building a plant on-site, and which has
19 been a big part of the discussions today. The other
20 thing it did is it enhanced our entitlement. So it
21 added hotel rooms, light industrial, hospital and
22 medical to our entitlements that we had before. And it
23 actually changed our zoning from a rural village zoning
24 to a mixed use, which allows us more flexibility in the
25 development of the project. So we -- so a lot of my

1 testimony that's based upon a now out-of-date superseded
2 ordinance has changed.

3 Some other things have changed in that
4 testimony in addition to the ordinance, and that is that
5 in the discussion of financing of the project, we have
6 gotten a letter from Ag America that's offered us to
7 borrow about \$40 million against our property using our
8 property as collateral. So we would have about \$40
9 million, based upon that letter, to fund the utility;
10 although, we expect that the funding of a utility would
11 be part equity and part debt at the utility level.

12 Those are the changes.

13 **Q Sir, did you sponsor any exhibits?**

14 A Yes, I did.

15 **Q All right. And that would be RK-1 of staff**
16 **comprehensive Exhibit 5, the application?**

17 A Yes.

18 MR. WHARTON: We would request that Mr.
19 Kennelly's prefiled testimony be inserted into the
20 record as though read.

21 COMMISSIONER GRAHAM: We will insert Mr.
22 Kennelly's testimony into the record as though
23 read.

24 (Whereupon, prefiled direct testimony of
25 Robert Kennelly was inserted.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original Certificate of
Authorization and initial Rates and Charges for
Water and Wastewater Service in Duval, Baker,
and Nassau Counties, by First Coast Regional
Utilities, Inc.

Docket No.: 20190168-WS

DIRECT TESTIMONY
OF
ROBERT KENNELLY
ON BEHALF OF
FIRST COAST REGIONAL UTILITIES, INC.

1 **Q. Please state your, name profession and address.**

2 A. My name is Robert Kennelly, and my business address is 12469 West State Road 100, Lake
3 Butler, Florida 32054. I am the President of First Coast Regional Utilities, Inc. (“First Coast”)
4 and chief financial officer of BHK Capital, a real estate investment firm. I am also a member
5 of 301 Capital Partners, LLC (“301 Capital”), the developers of the proposed service area
6 and owners of the Applicant in these proceedings.

7 **Q. State briefly your educational background and experience.**

8 A. I earned an MBA and law degree from Emory University and I am a licensed CPA and
9 active member of the State Bar of Georgia. Prior to entering the real estate development
10 industry, I was a tax partner at KPMG.

11 **Q. What are your primary duties with First Coast?**

12 I am basically responsible for the coordination and oversight of all aspects of the operations
13 of First Coast. My primary duties at present are assisting with financings and accounting
14 projects, overseeing construction projects, and directing the Florida Public Service
15 Commission proceedings.

16 **Q. Does First Coast have the technical ability to serve the proposed territory?**

17 A. Yes. 301 Capital has retained the following professionals with regard to engineering,
18 financial and accounting, and legal representation, respectively:

19 Bevin A. Beaudet, P.E., LLC, 316 Plymouth Road, West Palm Beach, FL 33405 (561) 373-
20 4442; Milian, Swain & Associates, Inc., 2025 SW 32nd Avenue, Miami, FL 33145 (305) 441-
21 0123 and Sundstrom & Mindlin, LLP, 2548 Blairstone Pines Drive, Tallahassee, FL 32301
22 (850) 877-6555.

23 With regard to the engineering, design, permitting, construction and operations of its water
24 and wastewater and reuse water systems, Applicant shall engage a well-known utility design-
25 build-operations contractor such as, Globaltech Design Builders and/or Jacobs Engineering

1 and its subsidiary OMI. These entities or their primary personnel have been involved in the
2 development of numerous utility systems throughout the State of Florida.

3 **Q. Was the application for authorization and original certificates for water and wastewater**
4 **service in Duval, Baker and Nassau Counties, Florida (the “Application”) prepared by**
5 **you or under your direction and control?**

6 A. Yes, it was prepared under my direction and control. A copy of the Application is attached
7 hereto as Exhibit RK-1.

8 **Q. Is there a need for water and wastewater service in the territory?**

9 A. Yes. The land which is the subject of the Application consists of approximately 11,800 acres.
10 301 Capital either owns or has exclusive purchase rights to 10,000 acres of contiguous
11 property located in Duval, Nassau and Baker Counties. An additional 1,800 acre property
12 included in the Application is located in Baker County and is currently owed by Chemours
13 Company FC, LLC. These property owners have contacted the utility requesting service to
14 their respective properties. These requests are attached to the Application as Exhibit D.

15 **Q. Are there any competing providers of water or wastewater services in the proposed**
16 **territory who could provide such services in a timely and economically feasible manner?**

17 A. No. There is currently no water or wastewater service in the proposed territory and no plans
18 on the part of Duval, Nassau or Baker Counties or any other utility service entity to provide
19 such service in a timely and economically feasible manner.

20 **Q. Does First Coast have the financial ability to serve the proposed territory?**

21 A. Yes. First Coast is an affiliated party of 301 Capital, the developer of the proposed service
22 area and has the financial ability to render reasonably sufficient, adequate and efficient
23 service to the proposed territory. 301 Capital will provide the necessary start-up funding as
24 well as the funds sufficient to cover the operational shortfalls during the utility’s initial years
25 of operation. Evidence that such funding will be available is shown by the Application’s

1 Exhibit "G", a letter from the developer committing the necessary financial support, including
2 a copy of a current balance sheet (for which a request for Confidential Classification is being
3 sought).

4 **Q. Will First Coast have sufficient capacity to serve the proposed territory?**

5 A. Yes. First Coast proposes to provide the water and wastewater service within the entire
6 proposed service territory, along with reuse for irrigation purposes. The proposed treatment
7 facilities will be constructed and expanded to serve the development as it is constructed and
8 expanded. A feasibility study prepared by Bevin Beaudet, P.E., LLC, in conjunction with
9 Globaltech Design Builders, is attached to the Application as Exhibit "E".

10 **Q. Please describe the envisioned developments in the proposed territory.**

11 A. The territory to be served will consist of residential, commercial and industrial development.
12 The residential units will consist of single-family homes, multi-family units, commercial
13 space, and office space. Specifically, Duval County Ordinance 2010-874-E, as revised and
14 amended, rezoned and reclassified the Duval property to Planned Unit Development –
15 Satellite Community with the following development entitlements: (a) 11,250 single family
16 units; (b) 3,750 multi-family units; (c) 750,000 square feet of commercial space; and (d)
17 300,000 square feet of office space. The Nassau County property is currently classified as
18 Commercial and Industrial, while the Baker County parcel is currently classified as
19 Agricultural while the owners determine how best to develop the property.

20 **Q. Will the proposed service territory duplicate or compete with any other water or
21 wastewater system?**

22 A. No. There are no water or wastewater facilities in proximity to the proposed territory. With
23 specific reference to Duval and Nassau Counties, prior to filing our Application, I attended
24 meetings with representatives of the JEA. We were informed that JEA does not currently
25 have water or wastewater lines or facilities in proximity to the proposed territory; nor does it

1 have any present plans to timely and economically provide water or wastewater service to the
2 proposed territory. Neither the JEA nor anyone else can construct facilities and provide
3 service to the proposed service territory as efficiently or cost effectively as First Coast.

4 **Q. Is the provision of water and wastewater service to the proposed territory consistent**
5 **with the Duval, Nassau and Baker County Comprehensive Plans?**

6 A. Yes. The portion of the proposed territory that lies in Duval County specifically complies
7 with that County's Comprehensive Plan. Ordinance 2010-874-E not only entitles the
8 development of the property as described earlier, it directs us to construct on-site water and
9 wastewater facilities.

10 At this time, we know of no plans by Nassau County, or JEA in Nassau County, to timely or
11 economically serve the proposed territory. Nassau County requires that developments in the
12 unincorporated areas of the County shall be compatible with the County's adopted levels of
13 service. The provision of utility services by First Coast will comply with the Nassau County
14 2030 Comprehensive Plan.

15 With regard to Baker County, we know of no plans by Baker County to timely and
16 economically serve the proposed territory. Baker County's Comprehensive Plan states that
17 development requiring water and sewer facilities may construct facilities compliant with
18 adopted County Utility Standards. First Coast's facilities will comply with the Baker County
19 Comprehensive Plan.

20 Additionally, it is my understanding that Section 367.045(5)(b) of the Florida Statutes allows
21 the Commission to grant the Application for the proposed service territory notwithstanding
22 any inconsistent provisions of a County's Comprehensive Plan.

23 **Q. Would granting of the proposed expansion weaken the effectiveness of Duval, Baker or**
24 **Nassau Counties' planning and guidelines for future development and growth?**

25 A. No. The availability of service to the proposed territory does not reduce the Counties'

1 authority to control development and growth as each sees fit.

2 **Q. Please summarize why the granting of the Application would be in the public interest.**

3 A. First Coast has shown (1) that there is a need for water and wastewater services in the
4 proposed territory and that the need for such services will likely grow in the future, (2) that
5 the proposed territory will not be in competition with, or a duplication of, any other system,
6 and (3) that it has the financial and technical ability to provide water and wastewater services
7 to the proposed territory and has the ability to expand capacity as needed in the most efficient
8 and cost effective manner when compared to any other alternatives. Granting this application
9 will not deprive Duval, Baker or Nassau Counties of their ability to control development
10 under their Comprehensive Plans. For these reasons, the application for water and wastewater
11 service in Duval, Baker and Nassau Counties by First Coast is in the public interest.

12 **Q. Does that conclude your direct testimony?**

13 A. Yes, it does.

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1 MR. WHARTON: We would tender for cross.

2 COMMISSIONER GRAHAM: Cross-examination --

3 MR. WHARTON: Oh, I am sorry. Yeah, let me
4 back up. We didn't do the summary.

5 COMMISSIONER GRAHAM: I am sorry?

6 MR. WHARTON: With your leave, we need to do
7 the summary.

8 COMMISSIONER GRAHAM: Okay.

9 BY MR. WHARTON:

10 Q Mr. Kennelly, do you have a summary of your
11 testimony?

12 A I do.

13 Q All right. Why don't you proceed with that.

14 A My direct testimony talked about, and parts of
15 the application talked about the fact that we control a
16 considerable amount of property, not only in Duval but a
17 significant amount in Nassau and Baker County. And we
18 have plans to develop all of that property, not just the
19 Duval property. It's going to be phased in. It's going
20 to be phased in over an extended period of time as we
21 get to property. We are starting in Duval and we are
22 going to move into Baker and Nassau County.

23 Now, that said is Nassau County is ready right
24 now. There is no entitlement issues. There is no
25 development issues. All we need is utilities to

1 actually find a buyer, or for us to develop that
2 property.

3 Now, we tried to work with JEA, but there is a
4 number of reasons why JEA didn't work out. We went
5 through three administrations, one trying to sell a
6 utility and one that I was trying to, I hate to say
7 tread water, but it was an interim administration.
8 Nothing was going to happen.

9 JEA is prohibited against investing in
10 wastewater facilities in a rural area. And that stands
11 today. And we are in a better position to provide a
12 utility that not only corresponds to our need that but
13 can stay with us as we develop. If we know our
14 development plans, we know what our utility plans are.

15 We have an operational capability by hiring
16 experts, like we have done in this case, to help us run
17 a utility, and would likely outsource the operation of
18 that utility.

19 As I have said, we have the financial ability
20 to fund and operate that utility. And really, it's in
21 the public interest to allow us to move forward to
22 develop that area because JEA can't, and I would like to
23 say JEA won't in the sense that it just takes them -- in
24 all the time we dealt with them, we didn't ever get from
25 them a sense of urgency or timing that would work for

1 our development of that area. And because they haven't
2 worked with us on that area, we really had to pursue
3 this application.

4 MR. WHARTON: Now I would request that the
5 prefiled testimony be inserted into the record as
6 though read.

7 COMMISSIONER GRAHAM: We've already done that.

8 MR. WHARTON: Okay. I would tender the
9 witness.

10 CHAIRMAN CLARK: Cross-examination?

11 MR. LUNNY: Commissioner, before we start
12 that, there was a exhibit that was provided over
13 the course of the weekend. I think you may recall,
14 in the prehearing we talked about a valuation that
15 was done, and there was a pending motion by the
16 applicant to have that valuation deemed
17 confidential. I intend to use that as a
18 cross-examination exhibit. In compliance with the
19 orders, I have red envelopes for that.

20 So if there is no other objection, then I
21 would like to do is pass around my intended
22 cross-examination exhibits with the one in red that
23 we were going to have deemed confidential.

24 COMMISSIONER GRAHAM: Okay.

25 MR. LUNNY: I would say also I have the

1 application as Exhibit 1, which was sort of in an
2 abundance of caution, so you probably don't need to
3 label that. But if we can distribute these, that
4 would be great.

5 COMMISSIONER GRAHAM: I don't think I -- never
6 mind. I will just take your package. Thank you.

7 MR. LUNNY: May I proceed?

8 MR. WHARTON: Is it possible, Commissioner,
9 that, while this is being passed out, we can talk a
10 little bit about what the process is, what's about
11 to happen with regard to the confidential
12 treatment? I know there is a section in the
13 prehearing order. I have just never done it before
14 and --

15 COMMISSIONER GRAHAM: I will let Ms. Helton
16 walk both people -- both sides through it so we
17 make sure there is no misunderstandings.

18 MS. HELTON: First, I realize this information
19 was just provided to JEA, and I am not clear, is --
20 who is the owner of this information?

21 MR. WHARTON: We are the owner. We first
22 filed for confidential treatment with PSC, and then
23 over the weekend we worked out a nondisclosure
24 agreement, but that request for confidentiality was
25 still pending, and now it's to be used as an

1 exhibit in the hearing, or in cross.

2 MS. HELTON: Okay. So even though no one
3 has -- the prehearing officer has not ruled on the
4 confidentiality, under our rules we will treat the
5 information as confidential pending a ruling, and
6 then waiting 30 days to see if there is an appeal
7 of that ruling or not. So we maintain the
8 confidentiality of the information because you
9 filed it with a request even though there has been
10 no ruling on it.

11 The red -- so the confidential information
12 will be in the red folders, as is requested in the
13 Order Establishing Procedure and the Prehearing
14 Order. I am hoping that the confidential
15 information is also highlighted in yellow so that
16 it is clear what is confidential and what is not
17 confidential.

18 So for the confidential information, we would
19 ask that you ask your questions in such a way so
20 that the confidential information is not revealed,
21 so that -- that creates lots of issues for
22 everyone.

23 MR. WHARTON: We have requested that the
24 entire document be held as confidential.

25 MS. HELTON: Okay.

1 MR. WHARTON: We do not -- we do not object, I
2 am looking at my client, in terms of references to
3 paragraph so and so, number seven, if that provides
4 a helpful point of reference, without actually
5 revealing the substantive information that is
6 contained in there.

7 MS. HELTON: Well, we will see how it goes.

8 MR. WHARTON: Okay. And then my only other
9 question would be the fact that we are -- I know
10 that under the confidentiality rule there is no
11 limit on the number of PSC employees who can see
12 it, but we are handing out a lot of confidences.

13 MS. HELTON: Well, and our practice is to
14 gather back up the copies once the exhibit is no
15 longer needed. And even not all PSC employees can
16 see it, if that gives you any comfort.

17 MR. WHARTON: Okay.

18 MS. HELTON: It's only those employees who are
19 assigned to the docket, the employee who works with
20 the information in the Clerk's Office, or the
21 employees who work with the information in the
22 Clerk's Office and the Commission management. So
23 for instance, even though I am not on the docket, I
24 can see it.

25 MR. WHARTON: Thank you very much.

1 MR. LUNNY: May I proceed, Commissioner?

2 COMMISSIONER GRAHAM: Any other questions
3 about how to handle confidential documents --
4 confidential information, rather?

5 Okay, sir, please proceed.

6 MR. LUNNY: Thank you.

7 EXAMINATION

8 BY MR. LUNNY:

9 Q Mr. Kennelly, you are the President of the
10 applicant, First Coast Regional Utilities, correct?

11 A Yes, I am.

12 Q Always have been, from the point that that
13 company was made, until the point we are speaking today?

14 A Yes.

15 Q And your primarily duties in your direct were
16 described as assisting with financial and accounting
17 projects, overseeing construction projects, and
18 directing essentially this litigation, is that correct?

19 A Yes.

20 Q Now, you were selected for this position as,
21 quote, the person with the most appropriate skill set to
22 oversee the companies engaged to construct, operate and
23 manage the provision of utilities to First Coast
24 customers, is that correct?

25 A Yes.

1 **Q And you have never worked a single day in your**
2 **life in a utility, is that correct?**

3 A I have never worked for -- no, I have never
4 worked -- I'm sorry. Yes, I have never worked for a
5 utility.

6 **Q Nor have you held any kind of a leadership**
7 **position in a utility, whether voluntary or compensated,**
8 **correct?**

9 A I have not held a leadership position in a
10 utility.

11 **Q Whether voluntary or not?**

12 A Whether voluntary or not.

13 **Q And the last time were you a W-2 earner was**
14 **2013, is that correct?**

15 A Yes.

16 **Q Now, in addition to your interest in this**
17 **proceeding, you are currently a member in five different**
18 **LLCs, is that correct?**

19 A Yes.

20 **Q Each of which has its own separate real estate**
21 **interest, correct?**

22 A Yes.

23 **Q And you also serve as a chief financial**
24 **officer for BHK Capital, which you would describe as**
25 **your primary venture; is that correct?**

1 A Yes.

2 Q Now, let's talk about your vice-president.

3 Your vice-president for this applicant is a
4 lady named Denise Howard, right?

5 A Correct.

6 Q As of January 19th, 2022, you had absolutely
7 no idea what her education or background was, is that
8 correct?

9 A That is correct.

10 Q And as of January 19th, 2022, you do not even
11 know if your vice-president graduated from college, is
12 that correct?

13 A That is correct. Although, I don't believe
14 that's relevant.

15 Q I understand. I am just saying your
16 vice-president that you --

17 A I understood the question.

18 Q Let me finish, Mr. Kennelly.

19 You are the president, and this is the
20 vice-president. And the vice-president, as of January
21 19th, 2022, is somebody you had no idea what her
22 background or education was at all; is that correct?

23 A That is correct.

24 Q And there are no other officers for this
25 applicant, is that right?

1 A There are no other officers for this
2 applicant.

3 Q Now, the applicant has absolutely no bank
4 accounts whatsoever, correct?

5 A The applicant has no bank account.

6 Q Has no payroll?

7 A No payroll.

8 Q Has no current financial statement, whether
9 audited or not?

10 A It does not.

11 Q Now, there has been some discussion in this
12 proceeding -- you are a lawyer, right?

13 A I am -- I am an active attorney in the state
14 of Georgia, not in Florida. I do not hold myself out as
15 an attorney in the state of Florida.

16 Q Okay. Let's say this: There has been
17 discussion in this case between an affiliate and a
18 wholly owned subsidiary. And this morning, I heard Mr.
19 Wharton describe the applicant as an affiliate, and I
20 was under the impression it was a wholly owned
21 subsidiary, so which is it?

22 A It's a wholly owned subsidiary.

23 Q Okay. And so this applicant has absolutely no
24 financial agreement whatsoever with the parent right
25 now, correct?

1 A No, I don't believe that's correct. I believe
2 in our discussions among the owners of 301 Capital
3 Partners that we have a commitment to First Coast
4 Regional Utilities.

5 **Q Say that one more time.**

6 A Among the partners of 301 Capital group,
7 Capital Partners, we have -- we have an agreement to
8 fund First Coast Regional Utilities as part of our
9 development of the property.

10 **Q You remember I took your deposition on January**
11 **19th, correct?**

12 MR. WHARTON: Objection. There was no notice
13 of the intent to use the deposition prior to the
14 prehearing conference, which is expressly required
15 under the procedure order, notice of intent to use
16 the deposition. Not only that, they have fought
17 like cats and dogs to keep these depositions out,
18 now they are going to bring them in and use them.

19 We have three days to respond once a notice to
20 use a deposition is filed, and they never filed
21 one. We were the only ones who filed one. That's
22 been denied. And we should not be using this
23 deposition now -- in fact, there as different
24 section under there for impeachment, for giving
25 notice on impeachment. They did not give a notice

1 of intent to use a deposition, did not give intent
2 that they would be using anything for impeachment,
3 and that's what's occurring now.

4 MR. LUNNY: This witness just provided a
5 completely different answer to what he testified to
6 on January 19th under oath. We would ask that we
7 would be allowed to ask him -- I don't have to
8 enter it. I can read him the question and answer
9 and see if he agrees that was his answer at the
10 time. That's all I am trying to do.

11 COMMISSIONER GRAHAM: So you are just using it
12 for impeachment?

13 MR. LUNNY: Yes, sir.

14 MS. CRAWFORD: I would happily speak to this.

15 Actually what Mr. Wharton stated is not quite
16 correct. If you look at the OEP on page eight, it
17 provides that, absent agreement by all parties
18 concerning introduction of depositions into the
19 record at hearing, any party wishing to introduce
20 all or part of a deposition at hearing for any
21 purpose other than impeachment must file the notice
22 as he described.

23 Depositions do not require a notice pursuant
24 to page eight of the OEP if they are being used to
25 impeach a witness' testimony.

1 CHAIRMAN CLARK: Continue.

2 BY MR. LUNNY:

3 Q Sir, can you answer the question whether you
4 were deposed on January 19th, 2022?

5 A I am sorry, say that again.

6 Q Were you deposed by me on January 19th, 2022?

7 A I was.

8 Q At that time, did I ask you, quote, "well,
9 that raises an issue that I want to talk to you about,
10 which is, is there a contract that exists today between
11 First Coast and 301 Capital Partners?" Do you remember
12 that question?

13 A I do.

14 Q And was your answer, quote, "well, since 301
15 Capital Partners owns First Coast Regional Utilities,
16 there is no need for a contractual relationship,"
17 unquote?

18 A I didn't -- when you asked me a question was
19 there a contractual relationship earlier -- or I should
20 say you did not ask me about a contractual relationship.
21 Now, when we run our business, we --

22 Q It's a yes/no. Is that your testimony before
23 or not?

24 A You --

25 MR. WHARTON: It's not impeachment --

1 objection, it's not impeachment. He never said --
2 it's not inconsistent with his prior statement on
3 the stand.

4 COMMISSIONER GRAHAM: Let's let him answer the
5 question yes or no.

6 MR. WHARTON: Okay.

7 COMMISSIONER GRAHAM: If we need to go back to
8 have the court reporter read it, we can do that as
9 well.

10 THE WITNESS: I would like to hear the
11 question again.

12 MR. LUNNY: Mr. Chairman, I just wanted him --
13 I simply asked if that was his testimony.

14 COMMISSIONER GRAHAM: Read it again and he
15 will say yes or no.

16 MR. LUNNY: All right.

17 BY MR. LUNNY:

18 **Q Sir, on January 20th, 2022, was your response**
19 **to my question, quote, "well, since 301 Capital Partners**
20 **owns First Coast Regional Utilities, there is no need**
21 **for a contractual relationship," unquote?**

22 A You are reading from the deposition. I assume
23 it's correct. Yes.

24 **Q Now, let's talk about 301 Capital Partners,**
25 **which is the parent company of this wholly owned**

1 **applicant, correct?**

2 A Correct.

3 **Q In your direct testimony, you said: I am a**
4 **member of 301 Capital Partners LLC; isn't that what you**
5 **testified to on the prefiled direct?**

6 A I probably should have said a limited
7 liability company which I control is a member in 301
8 Capital Partners. It was probably a little loose
9 speaking.

10 MR. LUNNY: Commissioner, I appreciate the
11 witness admitting that he is loose in his prefiled
12 direct, but I wanted a yes or a no.

13 COMMISSIONER GRAHAM: Sir, if you could answer
14 the question -- if it's a specific question like
15 that, answer yes or no, and I allow you to add a
16 sentence or two on to it.

17 THE WITNESS: All right. Repeat your
18 question, please.

19 BY MR. LUNNY:

20 **Q In your direct testimony, you indicated,**
21 **quote, "I am a member of 301 Capital Partners LLC,"**
22 **unquote, did you not?**

23 A If you are reading accurately from the
24 deposition, yes, I did.

25 **Q And you are not personally a member of 301,**

1 are you?

2 A No, I am not.

3 Q You own an LLC called Cattail Capital
4 Partners, LLC, and that entity has some percentage of
5 ownership in 301, correct?

6 A It does.

7 Q What approximate percentage does Cattail
8 Capital Partners, LLC, own in 301?

9 A About five percent.

10 Q Is it correct that as of today, in addition to
11 Cattail Capital Partners, the other entities which own a
12 membership interest in 301 Capital Partners are, one,
13 Roberts Development & Management, LLC; two, Roberts
14 Swift Creek Holdings, LLC; three, Swift Creek Land &
15 Timber, LLC; four, Magnolia Southern Ventures, LLC;
16 five, JCH Land, LLC; six, Lagoon Capital Partners, LLC;
17 and seven, John F. White personally?

18 A You are asking, in addition to Cattail Capital
19 Lagoon Partners?

20 Q Yes.

21 A Yes.

22 Q Okay. So what we are talking about is seven
23 LLCs and Mr. White personally, and he is somebody who
24 you have described is not involved in personal
25 decision-makings for the company, is that correct?

1 A Yes.

2 Q Now, the application in this case, on page
3 eight, which I think is Exhibit 1 to your prefiled
4 direct, says, quote, "the majority of the officers of
5 applicant are members of the developer 301," unquote.
6 That's not true, is it?

7 A Ask me that again.

8 Q Yep. In your application you said: The
9 majority of the officers of the applicant are members of
10 the developer 301 Capital, but that is not true, is it?

11 A No. They own the LLCs that are the members.

12 Q I am sorry, I need you to repeat it. I didn't
13 hear you.

14 A Are you referring to an ownership in 301
15 Capital Partners or in First Coast Regional Utilities?
16 I am just asking you to clarify the question.

17 Q Let me have you turn to page eight of Exhibit
18 1 to your prefiled.

19 A And is that under which tab? Is it Tab No. 1?

20 Q Yep.

21 A Okay. Page eight?

22 Q Yes, sir.

23 A And you are looking where on the page?

24 Q Under No. 2, technical ability. Would you
25 read in the second sentence there, the majority of

1 **officers of the applicants?**

2 A Majority of the officers of the applicant are
3 members of developer, slash, 301 Capital.

4 Q **And that statement is not true, correct?**

5 A You could -- no, it's not accurate.

6 Q **Okay. Because you are not a majority owner?**

7 A I never said I was a majority owner.

8 Q **Okay. And your vice-president certainly has
9 no ownership interest at all, right, in 301?**

10 A Not that I know of.

11 Q **In fact, this statement has never been true,
12 isn't that correct?**

13 A Well, this is talking about 301 Capital
14 Partners. The owners of First Coast Regional Utilities
15 is 301 Capital Partners. We have established that. The
16 majority of the officers of the applicant, the applicant
17 would be First Coast Regional Utilities, are members of
18 the developer 301, it's not accurate, no.

19 Q **Yeah. And my question was: It's never been
20 accurate, right?**

21 A Okay, it's never been accurate.

22 Q **Okay. And you were the one who -- this
23 application was prepared under your direction and
24 control, correct?**

25 A Yes, it was.

1 Q Now, let's talk about your parent entity, 301.
2 It has no audited financial statements, correct?

3 A Correct.

4 Q And it has not even an audited profit and loss
5 statement, correct?

6 A Correct. There is no need for it.

7 Q And 301 has never secured an independent
8 appraisal of the property that it owns, correct?

9 A No, that's not correct.

10 Q 301 has never secured an independent
11 appraisal, right?

12 A Of the property, no, that's not correct.

13 Q That's not correct?

14 A No. In fact, I think there is a staff exhibit
15 that shows an appraisal of the JEA parcel that we sold
16 shortly after we purchased the property.

17 Q Okay. So setting aside the JEA property that
18 was acquired -- that's not a part your application in
19 any way, is it?

20 A No, it's not.

21 Q Okay. So the property that's the subject of
22 this application --

23 A There is an appraisal on it too.

24 Q You are getting ahead of me.

25 The property that is the subject of this

1 application, has 301 ever secured its own independent
2 appraisal of that parcel?

3 A Yes, we did.

4 Q Do you remember you and I discussing this
5 topic in your deposition on January 19th?

6 A No, I don't. Maybe you could refresh my
7 recollection.

8 Q I would be happy to.

9 Did I ask you, quote, "since January 1, 2018,
10 has there been a third-party appraisal retained to
11 evaluate the fair market value of these parcels?" And
12 you are answer was: Not by 301. Is that still correct?

13 A I believe that appraisal was done maybe before
14 January 1st, 2018. We could look at exhibit -- the
15 exhibit to see what the date was on the appraisal.

16 Q All right. Let me ask it this way: Since
17 January 31 of 2018, have y'all had an independent
18 third-party appraisal of this property?

19 A Subject to looking at the date on that
20 appraisal.

21 Q Meaning you don't know?

22 A It was somewhere in the first part of 2018,
23 the appraisal was done.

24 Q Now, as of your deposition on January 19th,
25 you had no letters of commitment from any banks,

1 correct?

2 A Correct.

3 Q Now, did I understand you correctly this
4 morning in your summary to say that y'all finally do
5 have a letter?

6 A We do.

7 Q And so you filed this application in August of
8 2019, right?

9 A Correct. Yes.

10 Q All right. And you are the person who has
11 been spearheading this litigation on behalf of the
12 applicant, right?

13 A Right.

14 Q And it's fair to say that you are keenly aware
15 of the fact that JEA has been vocal about the fact that
16 there wasn't even a single letter of intent from any
17 bank at all supporting financing in this case, is that
18 fair to say?

19 A I think it's fair to say that JEA counsel has
20 been vocal about it, yes.

21 Q Well, you can blame us for that. And now we
22 have a letter, right?

23 A We do.

24 Q And what's the late -- the date of the letter?

25 A Sometime last week. The letter is available

1 if you would like to put it in the record.

2 Q What -- what -- just give me a ballpark.
3 Sometime last week. Beginning of last week? End of
4 last week? You don't know?

5 A Yeah. It's last week.

6 Q When did y'all start trying to get that
7 letter?

8 A After the deposition.

9 Q And because I asked you in the deposition if
10 you had any letters, and your answer was no, right?

11 A Correct.

12 Q So that was the time we decided it would be a
13 good time to go get the letter?

14 A I thought it would be important information
15 for the PSC to know that we had the financial ability to
16 fund and pay for the utility, yes.

17 Q Now, in your deposition I also asked you about
18 whether there were other valuations of your company
19 between the time that you prepared the evaluation, which
20 was Exhibit G in your application, and the end of last
21 year. Do you remember those questions?

22 A Yes.

23 Q Okay. And at first you said: There might
24 have been, yes; is that right?

25 A If you are reading from the deposition, those

1 are the words I used, and I will agree, yes.

2 Q Okay. And is it fair to say that after that
3 deposition, when we asked to get ahold of this
4 valuation, that the applicant resisted producing the
5 document; is that fair to say?

6 A Yes, it's fair to say because we didn't think
7 it was relevant.

8 Q Okay. And the document that was produced,
9 which we've marked as confidential, is 75 pages in
10 length; is that right?

11 A That sounds correct. Yes.

12 Q Okay. Did you prepare it?

13 A Yes.

14 Q So can we agree it's -- without getting into
15 too much confidentiality, can we agree it's a detailed
16 document?

17 A Yes.

18 Q So in your deposition, you are in possession
19 of a 75-page document that you had prepared, and when I
20 asked you if you are aware of any other documents, your
21 answer was: There might have been; right?

22 A I think we would have to look at what your
23 question asked, and then whether this fit what I thought
24 you were asking. I don't really believe it does fit
25 what you were asking in the context of the deposition,

1 but was, in fact, a computation.

2 **Q Let me ask you this: The valuation --**

3 MS. HELTON: Mr. Chairman, can I interrupt for
4 just one minute? And I am sorry to do that. I
5 know you are on a role here, but I am concerned
6 about the clarity of the record.

7 So we've talked about what he has behind Tab
8 No. 1, and I understand that that's part of, you
9 know, that's the application that was filed, so
10 that's already in the record, but I don't know
11 that's ever been clearly identified. And now I
12 think he is going to what's behind Tab No. 6, but
13 we have not really identified that yet.

14 So if we could maybe ask everybody to make it
15 clear what we are talking about, and let's go ahead
16 and identify them, we will have a much better
17 record upon which you can make a decision.

18 COMMISSIONER GRAHAM: Okay. The first one
19 that he had mentioned, which was the application,
20 which is RK-1, which is also Exhibit 5. And the
21 next one he is talking about now, which is the
22 confidential, is behind Tab No. 6, and we can call
23 that Exhibit 71.

24 (Whereupon, Exhibit No. 71 was marked for
25 identification.)

1 MR. LUNNY: Call it what, Mr. Chairman?

2 COMMISSIONER GRAHAM: We will call it Exhibit
3 71.

4 MR. LUNNY: 71. All right. Thank you.

5 COMMISSIONER GRAHAM: No worries.

6 BY MR. LUNNY:

7 Q Could you open the red packet there, Mr.
8 Kennelly?

9 Let me ask this predicate question: There was
10 a partner in 301 called Florida Frankens, LLC, correct?

11 A I am a little concerned that we are now
12 starting to disclose confidential information. That is
13 part of the information I think we were trying to
14 protect.

15 COMMISSIONER GRAHAM: Is that information
16 somewhere other than this red packet?

17 MR. LUNNY: Well, he testified to it before he
18 ever talked about this FMV. So in his deposition
19 that we took in the case, he started about this
20 valuation was prepared at the buyout of the
21 partner. And so at this point, I simply want to
22 ask whether there was a partner who got bought out,
23 and then I want to know where that obligation is.
24 If 301 agreed to absorb that obligation as well.

25 COMMISSIONER GRAHAM: Was that partner named

1 in that deposition?

2 MR. LUNNY: Sure was.

3 COMMISSIONER GRAHAM: Okay. Then answer the
4 question.

5 BY MR. LUNNY:

6 Q Mr. Kennelly, there was a partner for a
7 membership interest in 301 Capital Partners called
8 Florida Frankens, LLC, correct?

9 A Correct.

10 Q And as we just went through the list of the
11 partners today, there -- you didn't mention Florida
12 Frankens, LLC, right?

13 A I did not.

14 Q Okay. So can we all safely assume that that
15 entity has now been bought out, its interest has been
16 purchased?

17 A They are no long part of 301 Capital Partners.

18 Q Okay. So who agreed to buy that interest?

19 MR. WHARTON: Object to --

20 BY MR. LUNNY:

21 Q Let me ask it this way. Let me try this. Let
22 me try this.

23 Did 301 Capital Partners, LLC, agree to buy
24 back that member's interest?

25 A No.

1 MR. WHARTON: I object to the relevance of
2 this line of questioning.

3 COMMISSIONER GRAHAM: Well, let's follow and
4 see where he is going.

5 BY MR. LUNNY:

6 **Q Did the existing members agree to purchase**
7 **that independently?**

8 COMMISSIONER GRAHAM: **Sir, can you tell us**
9 **what the relevancy is?**

10 MR. LUNNY: Yeah, this is the relevance.

11 COMMISSIONER GRAHAM: The witness said that
12 they are no longer part of all of this.

13 MR. LUNNY: Right.

14 CHAIRMAN CLARK: He didn't say if somebody
15 bought them out or they just walked away. So I
16 guess my question is what is the relevance?

17 MR. LUNNY: And I appreciate you asking that.
18 And the relevance is that this was one of the
19 largest financial interests, and if that obligation
20 is owned by 301, then it's an undisclosed liability
21 in this case. And so I am simply asking, you know,
22 who's purchased that membership interest.

23 COMMISSIONER GRAHAM: What is your objection?

24 MR. WHARTON: I stand by the objection. I
25 don't think it goes -- I don't it goes to the

1 point, and --

2 COMMISSIONER GRAHAM: I think it's relevant.
3 I don't know if it's in somewhere other than this
4 red folder, but if this is the only place it is in
5 the red folder, then it's confidential.

6 MR. LUNNY: The red folder doesn't say who
7 bought it, Mr. Chairman. It just simply says
8 here's the valuation of the interest, but it
9 doesn't say who absorbed that obligation. I think
10 the Commission is entitled to know.

11 COMMISSIONER GRAHAM: I think it's a fair
12 question.

13 THE WITNESS: The interest was purchased by
14 some of the existing partners in 301.

15 BY MR. LUNNY:

16 Q Now, we talked about in your deposition, and
17 in your prefiled direct you have talked about the
18 financial strength of the applicant, right? In your
19 deposition -- your prefiled testimony, you have
20 talked --

21 A Yes.

22 Q -- your prefiled direct, excuse me, you talked
23 about the financial strength, okay.

24 And when you and I, in your deposition, were
25 talking about this 75-page valuation, I asked you: Can

1 you give the Commission a sense of what the liabilities
2 and equities were on the balance sheet that was prepared
3 for that buyout; do you remember that?

4 A No, I don't. I don't remember a discussion of
5 a balance sheet.

6 MR. WHARTON: I think the witness should be
7 given a copy of his deposition so we don't have
8 this kind of second generation, do you remember the
9 question and answer?

10 COMMISSIONER GRAHAM: Sure.

11 MR. LUNNY: I would like to hand the witness
12 pages 29 through 33.

13 MR. WHARTON: I also object on the basis that
14 constantly using the deposition to get him to
15 repeat the exact thing that he said in the
16 deposition, or the exact answer, is not
17 impeachment. They did not notice their intent to
18 use the deposition.

19 MS. HELTON: I am sorry, Mr. Chairman, I was
20 not paying attention to the comments that came
21 before this, so I am a little bit off. But if the
22 issue is that he is asking him a question from his
23 deposition without first asking him a question on
24 the stand, and then taking the deposition and using
25 that to show that he made a different argument, or

1 a different statement in the deposition, then I
2 think the appropriate process is for the attorney
3 for JEA, counsel for JEA, to ask the witness a
4 question. If the counsel for JEA thinks that his
5 deposition reflects a different answer, then he can
6 ask questions about the deposition.

7 COMMISSIONER GRAHAM: I think he has been
8 doing that.

9 MS. HELTON: Okay.

10 BY MR. LUNNY:

11 **Q Mr. Kennelly, looking at the Exhibit 71, can**
12 **you give the Commission a sense of the total liabilities**
13 **and equities on the calculation that you did for this**
14 **entity before you reduced it to present value?**

15 A With all due respect, Mr. Lunny, I don't think
16 there is a balance sheet --

17 **Q I did not use the term balance sheet.**

18 A -- in this. So you would like to know the
19 date that -- when -- on the date in which this was
20 prepared, you want to -- you want me to tell you what
21 the balance sheet looked like for 301 Capital Partners,
22 is that the question?

23 **Q The question I am asking you, no surprise, is**
24 **the question I asked you in the deposition, and that is:**
25 **Can you give the Commission a sense of what the total**

1 liabilities and equities were on the balance sheet that
2 was prepared for is that buyout?

3 A And I guess I am saying to you I don't recall
4 a balance sheet being prepared for that buyout.

5 Q In your deposition on page 32, lines 12
6 through 13, did you say, quote, "I came up with a number
7 of about 300 million," end quote?

8 A That was reflecting the value of entitlements.
9 That was not reflecting balance sheet items. In other
10 words, you wouldn't list entitlements on a property as a
11 balance sheet item. And I think I need to correct that,
12 because when I was preparing this, I think the correct
13 number was 226 million. I am not sure where that 300
14 million came from.

15 Q All right. Let's start there.

16 You agreed that when you testified that the
17 number was about 300 million, that was also false, it
18 was not 300 million, right?

19 A In an effort to be accurate, I looked at a
20 spreadsheet on my computer, which I was later instructed
21 not to do, and I looked at the wrong line item. And
22 this -- and I corrected it here. The number is, for the
23 value in entitlements, 226 million, not 300 million. So
24 I may have misspoken. I may have been mistaken. But
25 for the purposes of this exercise, the value of the

1 entitlements was \$226,756,044.

2 Q Let me change gears for you.

3 In your summary, you were talking about
4 changes from the recently enacted ordinance, correct?

5 A Yes.

6 Q And you said that one of the developments was
7 that it no longer needed to be built on-site, correct?
8 That was one of the changes?

9 A We didn't have to build a utility. I think
10 the ordinance -- the new ordinance says we provide a
11 site for a utility.

12 Q Okay.

13 A A lawful utility.

14 Q Do you agree that the PUD, at the time you
15 filed the application, said that you would be the one
16 that had to build the facility?

17 A At the time the application was filed, yes, we
18 would be building the utility.

19 Q And do you agree that as of today, that
20 requirement is lifted, that the applicant doesn't have
21 to be the one to build the facility?

22 A I would agree with that, yes.

23 Q And do you agree that as of today, it doesn't
24 have to be built on-site?

25 A It may not have to be built on-site. There is

1 a provision in the -- in the master plan that says we
2 will provide a site.

3 Q What's the zoning for the property today,
4 mixed use?

5 A Mixed use.

6 Q And do you agree that JEA is permitted to
7 establish a non-regional wastewater facility in a mixed
8 use location?

9 A No, I wouldn't agree with that at all.

10 Q Do you agree that JEA is permitted to invest
11 in a sanitary sewer facility in a mixed use location?

12 A Is -- no, I don't agree -- no, I don't agree.

13 Q Okay. And what's the basis of your
14 disagreement with that statement?

15 A Because you can have a mixed use area in a
16 rural area and they are prohibited from investing in
17 wastewater treatment plants in a rural area.

18 Q Did the classification change from rural to
19 mixed use?

20 A The zoning application, but not the
21 comprehensive plan maps. We are still in a rural area.
22 That prohibition still exists.

23 MR. LUNNY: Mr. Chairman, I would like to ask
24 the witness about Exhibits 69 and 70 we marked in
25 the prior --

1 COMMISSIONER GRAHAM: Does the witness have
2 those two?

3 MR. LUNNY: I don't think so. We can give it
4 to him.

5 THE WITNESS: Thank you.

6 COMMISSIONER GRAHAM: 69 being JEA Planning
7 Development Meeting Minutes.

8 MR. LUNNY: Yes, sir.

9 CHAIRMAN CLARK: 70 being August 9th letter to
10 Paul Harden.

11 MR. WHARTON: So these are the two exhibits
12 that were not admitted previously?

13 COMMISSIONER GRAHAM: That's correct.

14 BY MR. LUNNY:

15 **Q Start with No. 70. As the president of the**
16 **applicant, is No. 70 a true and correct copy of a letter**
17 **sent by Mr. McInall to Mr. Harden on your behalf on**
18 **August 9th, 2019?**

19 A Yes.

20 **Q And fair to say that you evaluated this offer**
21 **at the time it was received, whether you agreed or**
22 **disagreed with it?**

23 A We would have evaluated the offer, yes.

24 **Q Okay. And as the president of the applicant,**
25 **you are likely aware that there were meetings between**

1 JEA and representatives of 301 in January of 2018,
2 correct?

3 A Are you referring to Exhibit 69?

4 Q I am getting there. I was laying a
5 foundation.

6 A Well, I had already looked at the exhibit, and
7 my name is not on the attendee list.

8 Q Okay.

9 A It is likely that the 301 Development Partners
10 met with JEA as part of our effort to get utility
11 services on the property.

12 Q And can we assume that, as the president of
13 the applicant, you are aware of the discussions that
14 were happening in January of 2018?

15 A Generally aware, yes.

16 Q Were you ever provided this document by any of
17 your partners?

18 A I have not seen this document, no.

19 Q But you saw it in your deposition?

20 A I don't recall saying that in my deposition.
21 I am looking at it now. I don't recall it, but it's
22 possible I have seen it before.

23 Q Okay. Well, I am -- I showed it to you in the
24 deposition, but, I mean, we briefly talked about it, so
25 I guess all I am asking is -- let me ask it this way:

1 **Were you aware that in January of 2018, JEA was meeting**
2 **with your partners and offering ideas on how to handle**
3 **sanitary sewer and water to the property?**

4 A There were likely meetings among my partners
5 with JEA, yes. There were a number of meetings all
6 along with JEA to try to resolve this utility issue.

7 Q **Do you have any reason to believe one didn't**
8 **happen in January of 2018?**

9 A I have no reason to believe it didn't happen.

10 Q **It was no? You have no reason to believe it**
11 **didn't --**

12 A I have no reason to believe it didn't happen,
13 no.

14 MR. LUNNY: Mr. Chairman, I would like to move
15 in 69 and 70.

16 COMMISSIONER GRAHAM: First Coast?

17 MR. WHARTON: I am sorry, what?

18 COMMISSIONER GRAHAM: We --

19 MR. WHARTON: We object on the same basis.

20 He's never seen 69. It can't speak for itself.

21 Object on the basis of relevancy and the same issue
22 on the Harden letter.

23 COMMISSIONER GRAHAM: We need to do this at
24 this end, so let's bring this up at the end. I
25 don't see a problem with 70. 69, I just don't

1 think you reached your burden. I said, we'll enter
2 these things into the record at the end of the
3 testimony. As it is right now, I see 70 is fine.
4 69, I don't think he has reached burden.

5 BY MR. LUNNY:

6 Q The application in this case is seeking to
7 establish service for 2,500 residential ERCs and 300
8 commercial, correct?

9 A This application, I think, is to get
10 certification so we can operate a utility over all our
11 properties, isn't it? I think you are referring to the
12 ERCs in Phase I of a multiphase development.

13 Q Thank you, Mr. Kennelly. Let me clarify that.
14 As of the time you filed this application,
15 Phase I was going to include 2,800 ERCs and 2,500 --
16 that would be 2,500 residential and 300 commercial,
17 correct?

18 A Correct.

19 Q And are you now looking at numbers that are
20 significantly higher in Phase I?

21 A Well, the engineers are still designing Phase
22 I, but I think those numbers are representative of Phase
23 I. And sorry, and when I mean engineers, I mean the
24 Prosser firm, not Bevin.

25 Q Help me out with this Baker property, you have

1 an entitlement or an option with a company called
2 Cemours or Chemours?

3 A Chemours.

4 Q Chemours. Is this fair to say that Chemours
5 does not have to turn the property back to you until at
6 least 2030 --

7 A Yes.

8 Q -- at the outer window?

9 A 2030 is when that option is exercisable by us
10 to recover the property.

11 Q Okay. So if they wanted to hold on to that
12 property and not do anything by 2030, they have every
13 right to do so?

14 A Well, from a business perspective they may
15 want to give it back to us sooner.

16 Q I am not asking that.

17 A When they are done mining, they want to turn
18 the property back.

19 Q For the sake of Commission looking at when the
20 service is needed in Baker County, can you agree that
21 Chemours has the right to tell you that they don't want
22 to give this to you until at least 2030?

23 A I think if you are talking perspective for the
24 PSC in your question, I think it's fair to say that it
25 could occur earlier as well.

1 MR. LUNNY: Commissioner, it's a yes/no.

2 COMMISSIONER GRAHAM: Restate the question.

3 BY MR. LUNNY:

4 Q Isn't it our understanding that Chemours is
5 not obligated to you in any way to turn over the
6 property in Baker County to you until 2030?

7 A That's an outside date, yes.

8 MR. LUNNY: That's all, Commissioner. I will
9 move in my exhibits at the right time.

10 COMMISSIONER GRAHAM: Okay. Staff?

11 MS. LHERISSON: No questions from staff.

12 CHAIRMAN CLARK: Commissioners?

13 Redirect?

14 MR. WHARTON: Thank you.

15 FURTHER EXAMINATION

16 BY MR. WHARTON:

17 Q Mr. Kennelly, let's talk about the line of
18 testimony -- the questions you had about your experience
19 in the utility business. Do you recall those?

20 A I am sorry, I didn't hear the last part.

21 Q Yeah, the questions that you had about your
22 personal experience in the utility business.

23 A Yes, sir.

24 Q And you recall those questions?

25 A I do.

1 **Q Do you think that the First Coast will be able**
2 **to operate successfully with you in your present**
3 **position despite the fact that you don't have experience**
4 **in utilities?**

5 A Absolutely.

6 **Q How so?**

7 A There is no question, because we are going to
8 put a team around us that knows how to operate a
9 utility. We are likely to outsource the actual
10 operation and billing of the utility. We are going to
11 use a design build firm to build the utility. And it's
12 not going to be like JEA. When you look at the Board of
13 Trustees of JEA, I think there is one utility
14 experienced person on that board. And so when you are
15 in the role of an oversight of a business, I don't think
16 you have to know how to -- how many pounds of pressure
17 to put on a pump bowl, but I think you do need to
18 understand the direction of the business and how you
19 achieve your business objectives, and I think we can do
20 that, yes.

21 **Q Who is Denise Howard?**

22 A Denise Howard is an assistant to Avery
23 Roberts.

24 **Q And if the utility is certificated, will you**
25 **retain other officers?**

1 A Absolutely.

2 **Q Do you anticipate that they will have**
3 **experience in the utility business?**

4 A Absolutely.

5 **Q Can you describe the backing -- the financial**
6 **backing of 301 Capital behind First Coast?**

7 A Yes. As you can see on the 12/31/2021 balance
8 sheet, there is an awful lot of value on that balance
9 sheet. I recall something in the \$190 million range of
10 land value. There is some other assets on there. But
11 if you just want the big picture, there is about \$190
12 million worth of land value. There is about \$12 million
13 worth of debt. So there is an incredible amount of, not
14 only borrowing capacity to pay for the utility, but it
15 is a collection of properties that you could sell off
16 parcels as you are going along, Nassau, something like
17 that. So you can actually fund this utility out of
18 parcel sales. It wouldn't mitigate the need for the
19 utility, because obviously anybody buying off that tract
20 of land would want and need a utility.

21 We can also raise money from other investors.
22 We have -- and, of course, there is the bond market for
23 financing the utility as well, that may give it, you
24 know, a lower rate to customers.

25 So there isn't just one way to fund this

1 utility, but based upon the letter we got from Ag
2 America, we are fit -- we are adequately -- we've got
3 adequate collateral value to fund -- fully fund the
4 utility.

5 **Q And do the owners remain committed, to your**
6 **knowledge, to fund the utility as needed?**

7 A Absolutely.

8 **Q Do the owners have a substantial investment in**
9 **the development?**

10 A We have a substantial investment in the
11 development, as we do in this utility.

12 **Q Is making the utility work and be constructed**
13 **and in place in a timely manner part of that investment?**

14 A It's absolutely essential for the development
15 to be developed out for us to have utility services, and
16 part of that is ensuring that we can be in control of
17 the development -- the development and the expansion of
18 the utility as we move through multiple phases.

19 We, in all of our discussions with JEA, never
20 felt comfortable that they could be timely in providing
21 that kind of capacity that we would need and so we
22 believe that it is in our best interest to be fully in
23 control of the development of that utility, so that it
24 cannot only serve Duval, which seems to get the brunt of
25 this conversation, but we have substantial holdings in

1 Nassau and will in Baker, and Chemours has also shown an
2 interest for their property to actually have a utility
3 that can serve that area. And I guess more importantly
4 was when you look at the uniqueness of this property,
5 there is a mitigation bank that needs to be crossed.
6 There is --

7 MR. LUNNY: Mr. Chairman, this is beyond the
8 scope. I didn't ask anything about mitigation
9 banks and all this.

10 COMMISSIONER GRAHAM: I agree.

11 Continue.

12 BY MR. WHARTON:

13 Q Have the principals in 301 Capital just sat
14 around and done nothing since the prefiled testimony was
15 filed in this case with regard to securing the financial
16 backing for the utility?

17 A No. No. We have been active, not only in the
18 development, but in the financing of the utility by
19 contacting lenders, like MB -- sorry, underwriters like
20 MBS Capital Services, and testing the bond market for a
21 bond issuance to fund part of this utility cost.

22 Q Have you continued to have discussions among
23 yourselves about the financial capital that would need
24 to be committed?

25 A Yes.

1 Q Does this administrative proceeding represent
2 a substantial expense that the members have stepped up
3 and obeyed?

4 A Yes.

5 Q Let's take a look at page eight of Exhibit 1,
6 where you were asked about this statement under
7 technical ability. It's actually Bates-stamped page
8 nine of 236, but it's page eight in the application, No.
9 2. Do you see that?

10 A I do.

11 Q It says: The majority of the officers of
12 applicant are members of the developer 301 Capital. You
13 had said, I believe, that that was inartfully worded.
14 Just tell us -- state it more accurately right now so
15 that the record is clear.

16 A We have a tendency to talk and treat ourselves
17 as owners even though we are owners through LLCs. And
18 when we plan, we plan like we are owners. And we have a
19 tendency to think of ourselves as having direct
20 ownership. Yes, we do have LLCs that stand between us
21 in the actual ownership of the property. And the reason
22 I thought that was inartful is I was trying to decide
23 whether this officer concept referred to developer,
24 since it was developer slash 301. And we all -- we --
25 you know, again, we think of ourselves in a very

1 personal context when we talk about our interest in 301.

2 MS. HELTON: And, Mr. Chairman, just to be
3 clear, that's not actually been marked as Exhibit
4 1. That is the actual --

5 THE WITNESS: Application.

6 MS. HELTON: -- it's Exhibit 5 in the record.

7 MR. WHARTON: True. I think when we put it
8 in, we put it in both ways. But right, to be
9 clear, thank you, Exhibit 5 in the record.

10 BY MR. WHARTON:

11 Q So let's talk about the confidential document.
12 And maybe I misunderstood, but it sounded like the tenor
13 of the questions was that you somehow resisted or didn't
14 reveal the existence of the confidential document. Did
15 you discover the existence of the confidential document
16 during the deposition?

17 A I put some thought into about whether we had
18 other valuations and thought that maybe that buyout
19 calculation might have been that kind of evaluation, but
20 it's actually on a completely different basis.

21 Q And I realize what you're touching upon what
22 you -- you found this document during the course of the
23 deposition, right?

24 A Right.

25 Q And in retrospect, you have determined that

1 perhaps the document wasn't exactly what you thought it
2 was in your attempt to answer the question; is that a
3 fair statement?

4 A That's a fair statement.

5 MR. LUNNY: That's very leading.

6 COMMISSIONER GRAHAM: I agree.

7 MR. WHARTON: It is.

8 BY MR. WHARTON:

9 Q Let me just put it this way: As soon as --
10 you found the document in your computer at the time of
11 the deposition in an attempt to answer a question?

12 A I did.

13 Q And when you were informed by your lawyers
14 that a request for production for that document had been
15 granted past the discovery deadline, did you immediately
16 produce it within 24 hours to your lawyers?

17 A Yes, I did.

18 Q All right. And did we -- do you know whether
19 or not it was put into the Commission's files within
20 those 24 hours?

21 A Once I handed it off to you all, I am not
22 exactly sure what the timeframe was, but I think it was
23 pretty close to 24 hours.

24 Q But there was no attempt to hide it on your
25 part? That's my point.

1 A No.

2 MR. LUNNY: Leading.

3 BY MR. WHARTON:

4 Q Did you attempt to hide it?

5 A No, I did not.

6 Q Let's -- you talked a little bit about the
7 PUD, and what the language used to say and what it says
8 you in. To your knowledge, is the property fully
9 entitled under the PUD --

10 A Absolutely.

11 Q -- and by the City of Jacksonville?

12 A It is.

13 Q You talked a little bit about the Harden
14 letter, Exhibit 70, which was let into evidence. Why
15 were you engaging back at the time of the Harden letter,
16 which was in 2019, with conversations with JEA?

17 A We had been having -- as developers, you need
18 utilities. And so you -- you -- you approach your
19 utility provider, or nearby provider, to see if you can
20 get services. Our attorney, Paul Harden, was -- had
21 always been very helpful in dealing with City and JEA
22 related matters, and so he was part of that process
23 early on.

24 Q And do you have that exhibit in front of you,
25 Exhibit 70?

1 A Yes.

2 Q Do you see that first bullet dotted reference
3 in this letter, honor the approved PUD language?

4 A I do.

5 Q What does that mean?

6 A It means build and give JEA a utility --

7 Q Okay.

8 A -- in their minds.

9 Q Design, permit, construct and build contribute
10 to free to JEA?

11 A Yes.

12 Q Is 301 partners confident that JEA will be
13 able to construct these facilities in a timely manner?

14 MR. LUNNY: Well beyond the scope.

15 MR. WHARTON: Certainly there were discussions
16 about the dealings with JEA and the decision not to
17 use them.

18 COMMISSIONER GRAHAM: I think his questions
19 were if 301 Partners or Florida -- First Coast has
20 the ability to do that.

21 MR. WHARTON: Let's try that again.

22 BY MR. WHARTON:

23 Q Is First Coast confident that JEA will be able
24 to construct facilities in a timely manner?

25 A No.

1 **Q Why not?**

2 MR. LUNNY: That's beyond the scope. I didn't
3 ask anything about a JEA timeline.

4 MR. WHARTON: First of all, we went through
5 letters from JEA. He can't say he didn't ask
6 anything about JEA. You testified about JEA,
7 proposals JEA made back in 2019.

8 COMMISSIONER GRAHAM: From what I recall, the
9 questions were all about their ability to put the
10 utility in.

11 MR. WHARTON: We will probably deal with the
12 same area in rebuttal with the same witness.

13 COMMISSIONER GRAHAM: Okay.

14 MR. LUNNY: Commissioner, can we strike the
15 witness' answer to that last question?

16 COMMISSIONER GRAHAM: I don't have a problem
17 with that. I don't think the question was actually
18 asked, so we can strike that --

19 MR. LUNNY: Thank you.

20 COMMISSIONER GRAHAM: -- question and the
21 partial answer.

22 BY MR. WHARTON:

23 **Q Do you have any doubt, as you sit here today,**
24 **whether or not First Coast will be able to finance the**
25 **utility that it has proposed to construct in the**

1 **application?**

2 A No doubt we will be able to finance that
3 utility.

4 MR. WHARTON: That's all we have.

5 COMMISSIONER GRAHAM: Okay. Exhibits. I
6 assume Exhibit 5.

7 MR. WHARTON: Yes. We would like to move
8 them -- move it.

9 COMMISSIONER GRAHAM: Which is the
10 application.

11 (Whereupon, Exhibit No. 5 was received into
12 evidence.)

13 COMMISSIONER GRAHAM: And JEA?

14 MR. LUNNY: We ask for 69 and 70 and 71.

15 COMMISSIONER GRAHAM: I don't think you have
16 hit your burden for 69, I believe it was.

17 MR. LUNNY: So for 69, I think there was
18 independent evidence in the form of testimony from
19 Mr. Kennelly that there were meetings, and that he
20 was apprised of the content of those meetings, so
21 we would ask that 69, even though hearsay, be
22 admitted as corroborating his independent
23 testimony.

24 MR. WHARTON: I don't think that's enough to
25 corroborate a document he said that he didn't

1 recall seeing.

2 COMMISSIONER GRAHAM: I think the witness says
3 he doesn't -- he wasn't at this meeting, and he
4 doesn't doubt that the meeting didn't happen, but
5 it's kind of hard to get him to verify these
6 minutes of that meeting.

7 MR. LUNNY: Okay.

8 CHAIRMAN CLARK: But we will add -- we will
9 allow 70 and 71.

10 Any objections? Other than what you already
11 stated?

12 MR. WHARTON: 71 is --

13 COMMISSIONER GRAHAM: It's the confidential
14 document.

15 MR. WHARTON: No, there is no objection.

16 CHAIRMAN CLARK: Okay.

17 (Whereupon, Exhibit Nos. 70 & 71 were received
18 into evidence.)

19 COMMISSIONER GRAHAM: All right. Do you want
20 to excuse this witness?

21 MR. WHARTON: We can release this witness.

22 MS. HELTON: And, Mr. Chairman, do we need to
23 gather back up at least the red folders, or will
24 this be used again this afternoon?

25 MR. LUNNY: I don't think JEA is going to use

1 it again.

2 CHAIRMAN CLARK: Okay, so yes.

3 Okay. So we have the first JEA witness coming
4 up. Let's take a five-minute break. So it's 3:30
5 at the clock in the back, and we'll start with Ms.
6 Crawford.

7 (Brief recess.)

8 (Transcript continues in sequence in Volume
9 2.)

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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 14th day of February, 2022.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024