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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 3

PAGES 342 - 427

PROCEEDINGS: HEARING

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

DATE: Wednesday, February 2, 2022

TIME: Commenced: 9:00 a.m.
Concluded: 9:58 a.m.

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

REPORTED BY: DEBRA R. KRICK
Court Reporter

APPEARANCES: (As heretofore noted.)

PREMIER REPORTING
112 W. 5TH AVENUE
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I N D E X

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NUMBER:		ID	ADMITTED
37	As identified in the CEL		375
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1 P R O C E E D I N G S

2 (Transcript follows in sequence from Volume
3 2.)

4 COMMISSIONER GRAHAM: Good morning. My iPhone
5 11 says it is nine o'clock on 2/2/22, and we are
6 going to reconvene the hearing.

7 If I remember correctly, we had just finished
8 with witness Swain and entered exhibits, and now we
9 have two witnesses left, so --

10 MR. WHARTON: First Coast would call Mr.
11 Robert Kennelly.

12 Whereupon,

13 ROBERT KENNELLY

14 was called as a witness, having been previously duly
15 sworn to speak the truth, the whole truth, and nothing
16 but the truth, was examined and testified as follows:

17 EXAMINATION

18 BY MR. WHARTON:

19 Q Good morning, sir.

20 A Good morning.

21 Q Would you state your name for the record?

22 A Robert Kennelly.

23 Q And did you cause prefiled rebuttal testimony
24 to be filed in this case?

25 A I did.

1 **Q** **And if I asked you the same questions in your**
2 **prefiled rebuttal testimony, would your answers today be**
3 **the same?**

4 A No, they would not.

5 **Q** **Do you have any corrections or modifications**
6 **to your testimony?**

7 A It's almost a global change to the rebuttal
8 testimony in the sense that we spent a lot of time
9 talking about an ordinance that no longer exists, that
10 there is a new ordinance in place, and so that changes a
11 significant amount of that testimony.

12 COMMISSIONER GRAHAM: Sir, I don't mean to cut
13 you off, but you have previously been worn sworn,
14 right?

15 THE WITNESS: Yes, I was yesterday.

16 COMMISSIONER GRAHAM: Okay. I just wanted to
17 make sure that was on the record.

18 BY MR. WHARTON:

19 **Q** **Continue.**

20 A Okay. So a good part of that rebuttal
21 testimony dealt with things that came out of the old
22 ordinance that's no longer in effect.

23 **Q** **Did you sponsor any exhibits in this case?**

24 A Yes.

25 **Q** **And that would be what was originally**

1 identified as RK-2, now Exhibit 37, which are some maps?

2 A Yes, sir.

3 Q All right. Have you prepared a summary of
4 your rebuttal testimony?

5 A Yes, I have.

6 Q Please summarize your testimony.

7 A We are in a hot market in Jacksonville.
8 Zillow showed us as the second hottest real estate
9 market in the country. This property is in the path for
10 growth, and we actually have home builders now going to
11 the west of us. People think our property is remote.
12 It's not remote at all.

13 We spent a lot of time in depositions and
14 hearings focusing on Duval and JEA. This is a
15 three-county project, and none of the proposals put
16 forth today by JEA can serve Baker County. JEA
17 proposals don't consider Nassau and Baker County. Our
18 proposal does.

19 We've heard discussion of the development of
20 Baker being so far in the distance that maybe it should
21 be ignored. That's not the case. If you assume in 2030
22 we acquired the property, we would have started our
23 development planning in 2028.

24 MR. LUNNY: Commissioner, I have to object.

25 This isn't a summary of his rebuttal. This is now

1 Mr. Kennelly rebutting anything said in this
2 hearing.

3 COMMISSIONER GRAHAM: Mr. Kennelly, can you
4 point to your rebuttal where any of this is in
5 there?

6 THE WITNESS: I think the rebuttal comes from
7 the direct testimony, which includes the
8 application, so I saw this as all-encompassing.

9 COMMISSIONER GRAHAM: Let's just stick to
10 whatever you have written in your rebuttal.

11 THE WITNESS: Okay. Then with respect to the
12 rebuttal testimony, I think the ability to develop
13 in Nassau and Baker County is probably relevant,
14 and it's not so far in the distant future, even
15 though JEA would lead us to believe that. And, in
16 fact, we would start in 2026 working on Baker. As
17 soon as we had utilities we could work on Nassau
18 County.

19 Other than that, I think that covers the
20 rebuttal testimony.

21 COMMISSIONER GRAHAM: Thank you, sir.

22 MR. WHARTON: We would move Mr. Kennelly's
23 rebuttal testimony in the record as though read,
24 and tender the witness for cross.

25 COMMISSIONER GRAHAM: We will enter his

1 rebuttal testimony as though read.

2 (Whereupon, prefiled rebuttal testimony of

3 Robert Kennelly 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

REBUTTAL 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 I am the Robert Kennelly that provided direct testimony in
3 this case.

4 **Q. Is your plan to build water, wastewater and refuse facilities on-site to serve your
5 proposed development contrary to the Comprehensive Plan?**

6 A. No, it is my understanding that the Comprehensive Plan prohibits JEA from investing in
7 facilities in that part of the County where our development is to be located. The planned
8 unit ordinance passed by the City of Jacksonville (“Ordinance”), as amended, specifically
9 requires that *we* build water, wastewater and reuse facilities *on-site to serve the needs of*
10 *the development*. Moreover, the comprehensive plan specifically allows for nonregional
11 utility facilities, so long as certain conditions are met. *See* Exhibit SRW-4, pages 32 and
12 50. Accordingly, building on-site, non-regional facilities is not only in compliance with
13 the Comprehensive Plan, it is mandated by the Ordinance.

14 **Q. Is JEA’s demand that JEA provide water and wastewater service to the development in
15 compliance with the Ordinance and/or the Comprehensive Plan?**

16 A. No. JEA’s proposed off-site regional facilities plans, to be located in the vicinity of
17 Cecil Field, violate the Comprehensive Plan if JEA finances and builds it as JEA proposed
18 in our April 9, 2019 meeting, that proposal also violates the Ordinance if we finance and
19 build it, or both. JEA is prohibited from investing in facilities in our area. Consequently,
20 in order to skirt this prohibition, and the lack of any demonstrated need other than that
21 within the proposed territory, JEA wants First Coast to build regional water, wastewater
22 and reclaimed water facilities and give them to JEA. In so doing, we would be in
23 violation of significant conditions of the Ordinance granting our development
24 entitlements. Further, building regional facilities in the area is, according to JEA,

1 completely unnecessary. In its Response to FCRU's First Set of Admissions, Request 3,
2 JEA denied that there was any need for water and wastewater services in the Cecil Field
3 area yet they want us to violate the Ordinance to build unnecessary regional facilities for
4 them. The fact is that JEA is seeking to do through an impermissible exaction what it
5 cannot legally do under the Comprehensive Plan or the Ordinance.

6 **Q. Does your plan conform to the conditions set forth in the Comprehensive Plan?**

7 Yes. The facilities will meet all federal, state, regional, and local environmental
8 regulations; we will, through subcontractors, operate and maintain the facilities; we have
9 offered to sell the facilities to the City, specifying the date and manner of transition; we are
10 willing to reimburse the City for costs of enforcement of violations of water quality standards
11 and effluent limitations; and our facilities will provide at least 1.0 MGD of capacity.

12 **Q. Does the Ordinance require that the developer gift the water, wastewater and reuse**
13 **facilities to JEA?**

14 A. No, definitely not. The language in the Ordinance is different from dedication language.
15 Typically, dedication language basically states that the developer build and give certain
16 utility assets to the utility serving the area. In our case, the language does not require that
17 we dedicate the fee interest in the facilities to JEA. Instead, it provides that JEA could
18 enter into some sort of a contract operation arrangement with First Coast. Contrary to
19 JEA's contention, it was never the intention of the parties to dedicate the ownership of
20 the facilities to JEA. During our due diligence prior to purchasing the subject properties
21 we discussed this language with representatives of ICI, the previous owner of the
22 property, who negotiated this provision. We were informed that it was never the intent
23 or understanding of either of the parties that the legal title would be transferred to JEA.
24 It was always the intent and understanding of the parties that JEA would have the option

1 to bid on a contract for operation of the subject facilities, should it desire to do so. Think
2 about it, if we were required to turn the facilities' ownership over to JEA why would JEA
3 specifically negotiate for the options to enter into either an operation and maintenance
4 agreement or a contract operations agreement? If JEA expected to own the facilities they
5 would not need to enter into a contract with themselves to operate it. JEA's interpretation
6 of the Ordinance language just doesn't make sense. That said, we are still open to JEA
7 bidding on an operations contract with FCRU.

8 **Q. Would it be possible to gift the utility facilities to JEA as they claim?**

9 A. No. As is customary, the facilities will be financed utilizing revenue bonds which will require
10 that the bondholders have a first lien on both the revenues of the facilities and the assets.
11 Gifting the facilities to JEA prior to amortization of the debt would result in default on the
12 debt.

13 **Q. Has 301 Capital Partners ("Partners") tried to work with JEA to resolve these issues?**

14 A. Yes. We attempted to resolve this matter both before we began work on the FPSC
15 Application and since we filed the Application. The discussions have thus far been fruitless.

16 **Q. Why do you believe that is so?**

17 A. In addition to the disagreement surrounding the dedication language and other issues
18 discussed in my direct and this rebuttal testimony, JEA has been in a state of flux the entire
19 time. When we initially approached JEA, they were in the process of trying to sell their water
20 and wastewater utility systems. When that fell through both the JEA Board of Directors and
21 all of the senior management were either fired or resigned. Now, the current senior
22 management is operating in an interim status and, unless something changes, will be gone or
23 replaced by the end of this year. Consequently, we never know who really has the authority
24 to negotiate and make final decisions on these matters as the players keep changing. In short,
25 JEA has been in a chaotic state and not conducive to coming to any sort of timely negotiated

1 resolution.

2 **Q. JEA claims that it can provide service to your development that benefits from their**
3 **economies of scale due to their ownership of numerous other water, wastewater and**
4 **reuse facilities. Do you agree?**

5 A. I don't see how. First, our utility facilities are required to be built on-site, to specifically
6 serve our development. JEA has no treatment facilities even close to our development.
7 According to Joseph Orfano, JEA provides service within the urban and suburban areas of
8 Jacksonville, Florida, primarily the eastern portion of Duval County. Our property is located
9 in the far northwest part of the County. The nearest interconnect point to JEA's pipelines is
10 over seven miles away and requires that lines cross under some of CSX's busiest tracks.
11 Thus, as a stand-alone utility, without any feasible nearby interconnect possibilities, I don't
12 see how we could benefit from JEA's distant wells and treatment facilities.

13 **Q. JEA claims that it has the necessary stability and financial resources to benefit the**
14 **utility customers of your development. Do you agree?**

15 A. JEA is in turmoil, both financially and organizationally. I will defer to our consultants to
16 cover the specifics with regard to the financial aspects. However, it is common knowledge
17 that since we began this process the members of the senior management team and board of
18 directors have either been fired or resigned, and there is an ongoing federal grand jury
19 investigation into the previous management's activities. The current senior management is
20 primarily serving on short-term interim status. Because of this, and JEA's legal efforts to
21 negate its commitment to a nuclear plant under construction, JEA's debt has been
22 downgraded and may be downgraded further. In June, 2020, Moody's Investor Service
23 assigned an A2 rating to the issuance of JEA's Water & Sewer Revenue Bonds and stated
24 that the outlook for JEA is negative citing governance and social risks relating to pending
25 litigation and significant ongoing organizational changes, and exposure to nuclear

1 construction risk and its power purchase agreement.

2 **Q. Have you considered the Prefiled Testimony of JEA Witness Julia E. Crawford?**

3 A. Yes, I have. I understand the purpose of Witness Crawford's testimony was to compare the
4 rates of First Coast to those of the JEA and her conclusion was that First Coast customer rates
5 are more than double those of JEA.

6 **Q. How would you address this disparity?**

7 A. I will defer to the analysis of our rate consultant. I will say, however, that during our meeting
8 on April 9, 2019, we were told that JEA had just completed a Rate Study and that, while JEA
9 did not at that time have an action plan to implement the Study's recommendations, capacity
10 fees would likely be increased from the traditional \$3,300. At the meeting, JEA
11 representatives were unable to say how much those fees would increase nor when the increase
12 would be implemented. They did, however, state that the capacity fees for the proposal
13 requiring an offsite wastewater plant and the dedication of an onsite water plant would be
14 \$13,000. Consequently, relying on their current rates does not seem reasonable.

15 We have been informed that by financing the facilities with tax exempt utility revenue bonds
16 we can structure the financing at an interest rate and under such terms as would permit a
17 reduction in the proposed rates by approximately 25 percent.

18 **Q. We have been told by JEA in their pleadings, by Mr. Zammataro, and others that JEA**
19 **has exclusive franchise agreements with the City of Jacksonville and Nassau County.**
20 **First, do you agree with that assessment, and second, how do these franchise agreements**
21 **influence the current proceedings?**

22 A. I don't know if the JEA has exclusive franchise agreements with the City of Jacksonville
23 ("City") and Nassau County ("County"). I know that JEA has a contractual agreement with
24 the County to provide services under certain conditions. As a related entity to the City, I do
25 not know whether JEA has a franchise or some other arrangement to provide services within

1 the City. Our proposed development will contain contiguous properties in Duval, Nassau and
2 Baker Counties. It is my understanding that under Florida law, because the proposed service
3 territory will include areas in the three Counties, the Florida Public Service Commission
4 (“Commission”) has exclusive jurisdiction over our Certificate Application. Consequently,
5 JEA’s agreements with the County and the City might be relevant to these proceedings to
6 extent that the JEA can and will provide service to all of our properties in a timely and
7 economically feasible manner, which they cannot. JEA has no service agreement with Baker
8 County so it cannot serve that property. In fact, we believe that Baker County supports our
9 provision of service to the northeastern portion of its territory. With regard to Duval and
10 Nassau Counties, as noted earlier JEA has no facilities in the area, is prohibited from investing
11 in facilities in such area, and it cannot provide services to these areas in a timely fashion.

12 **Q. You say that JEA cannot provide services to the proposed territory in a timely fashion.**
13 **What do you mean by that?**

14 A. As we have noted in the Application and various interrogatories, we have substantial
15 entitlements to develop the proposed territory. We have also been approached by significant
16 homebuilders with interest to purchase the lots and build homes in phase one of the project.
17 However, homebuilders will not act on this interest until there is certainty that utility services
18 will be available when the homes are built. This can be accomplished if we can deliver the
19 utility services in 30 months. If we inform them that it will be five or more years before
20 utility services may be available, they will go elsewhere.

21 **Q. Do you have any additional thoughts that you wish to offer concerning JEA’s “Comp**
22 **Plan” argument?**

23 A. Yes, I do. JEA is prohibited under the Comp Plan from investing in facilities in rural areas.
24 The proposed territory is in the far western rural area of Duval and Nassau Counties. See the
25 two maps attached hereto as RK-2, which graphically depict this fact and the distances to

1 proposed JEA facilities. JEA has no facilities within miles of the proposed territory. Rather
2 than have the Comp Plan amended, JEA in one of its proposals is attempting to have the
3 Partners make the investment and then turn over the facilities to JEA. JEA's management
4 and leadership disarray could very well limit its ability to serve the subject property and
5 maintain the facilities, even if the initial phase of the facilities is financed and built by the
6 Partners.

7 JEA's earlier demands to relocate the proposed First Coast wastewater facilities off-site and
8 turn over ownership to the JEA are in contravention of the Ordinance. JEA is attempting to
9 override the Ordinance through their Objection to the Application. This seems at best to be
10 improper.

11 JEA is unconstitutionally exacting property (the water and wastewater plants) from the
12 Partners by building and paying for plants that the JEA could not finance and construct on its
13 own. Also, aside from our development, Mr. Orfano has testified that there is insufficient
14 current demand in the area to justify JEA building a regional plant, and this creates a windfall
15 to the JEA to the extent that it receives a wastewater plant at no cost and connection fees from
16 third-party customers who would not otherwise have service but for the forced exaction from
17 the Partners.

18 **Q. In your direct testimony, you outlined your educational experiences and training, and**
19 **the fact that you are a lawyer. Do you have any thoughts that you wish to offer on the**
20 **“dedication” comments made by the JEA’s witnesses in their direct testimony?**

21 A. Yes, I do. First, however, I want to point out that I am only licensed to practice law in
22 Georgia. I am not acting as an attorney in Florida.

23 JEA's proposal to serve the applied for service area presumes that First Coast must give up
24 property rights that it has no duty to do so. That would be a taking, in the constitutional sense.
25 It is a fundamental principle of property rights law that one cannot be forced to give up one

1 constitutional right in order to enjoy another. The line of cases including *Nollan v. California*
2 *Coastal Commission* and *Dolan v. the City of Tigard*, both stand for the proposition that when
3 government demands something that it is not otherwise entitled to as a condition of doing
4 business or going forward with an endeavor, a “forced exaction” can occur. Here, the City
5 of Jacksonville has told the Partners that they can develop their land but now an entity of the
6 City of Jacksonville, the JEA, is conditioning the development of that land upon the Partners
7 building utility facilities which the JEA will eventually utilize to serve others without fully
8 compensating the Partners for that construction. There is no doubt but that the FPSC can
9 grant to the Partners’ utility, First Coast, territorial service rights within its property to build
10 its own utility to serve itself. Duval County granted to the FPSC jurisdiction over the
11 privately-owned utilities in the county long ago, and, although few are left, Jacksonville is
12 saying with one hand “here is a mechanism by which you can own and operate private utilities
13 in Duval County” and yet on the other, its wholly-owned entity, the JEA, is saying “not so
14 much”.

15 Our predecessors agreed to give the JEA first rights of operation and maintenance or contract
16 operations. No more, no less. The Ordinance 2010-874-E directs the Partners to build on-
17 site water and wastewater facilities. The Ordinance also provides that the Partners must
18 designate JEA as the operator of the facilities. JEA, on the other hand, seeks to have the
19 Partners build the water and wastewater facilities and then turn over ownership to JEA. JEA
20 is, therefore, attempting to rewrite the Ordinance through their objection to the Application.
21 Under the “Bert J. Harris, Jr. Private Property Protection Act” (Section 70.001, *et. seq.*,
22 Florida Statutes), the burden placed on property owners by government actions or inactions
23 must be roughly proportionate to the benefit conferred. Stated otherwise, there must be a
24 rationale nexus between the benefit and the burden. The Comp Plan provides that the JEA
25 shall not invest in building utility facilities in the area of the Partners’ property. JEA’s

1 response to that prohibition, in part, is to require the Partners to build wastewater facilities in
2 the area *where they (JEA) are prohibited from doing so*, turn those facilities over to the JEA
3 for ownership and operation, and thus create an expanded utility service area for the JEA, at
4 the cost of the Partners. Under the case law and the Bert Harris Act, we would argue that this
5 is a “taking”.

6 **Q. Can JEA provide the service more economically than First Coast?**

7 A. No. All of JEA’s options are more expensive, require crossing environmentally sensitive
8 lands, and take much longer to complete than our own onsite facilities, unless we do it for
9 them and donate them to JEA, which we cannot do.

10 **Q. Do you have any further thoughts on the JEA’s position to share with the Commission?**

11 A. Yes, I do. JEA’s witnesses briefly acknowledge the idea of providing operation and
12 maintenance services but even a surface level examination of that testimony makes it clear
13 that their view of the matter is much broader than that. At best, JEA can operate our plants,
14 pumps, tanks, and appurtenances on a contract basis. Nowhere are we obligated to, and
15 certainly we would never allow, JEA to provide billing, collection, engineering, planning,
16 new construction contracts, or any of those services to our developers and future customers.
17 JEA will not be involved in our financing activities, our short or long range planning, our
18 selection and hiring of contractors, engineers, consultants, and so on and so forth. JEA has
19 stretched the definition of “contract operations” to mean something that we are not obligated
20 to, nor would we ever, agree to.

21 **Q. Does that conclude your rebuttal testimony?**

22 A. Yes, it does.

23

24

25

1 COMMISSIONER GRAHAM: Cross-examination?

2 MR. LUNNY: Thank you, Chairman.

3 EXAMINATION

4 BY MR. LUNNY:

5 Q Mr. Kennelly, there has been a suggestion in
6 this proceeding that you are being provided for expert
7 testimony. What is your understanding of what was the
8 scope of your expertise for the purposes of rebuttal?

9 A I think with respect to my appearance here,
10 that I cover both the First Coast Regional Utility
11 application for certification as well as a 301 Capital
12 Partners' perspective.

13 Q All right. Would you agree with me that that
14 is really fact testimony?

15 A Well, I think in terms of being a developer,
16 when we look in the future, we are contemplating future
17 events. I don't know if those are facts. We are in the
18 business of looking forward. We don't always use facts
19 to look forward. We sometimes make assumptions on
20 what's going to occur.

21 Q So let me clarify then. Is it your
22 understanding that, on rebuttal, the expert opinions
23 that you are offering is with respect to development and
24 timeline?

25 A Last word again? Development and --

1 Q Timeline. Timeline.

2 A Yes.

3 Q Okay. Is there anything else that you
4 understand that you are offering an expert opinion on in
5 your rebuttal?

6 A Well, I think I am offering in my rebuttal the
7 scope of development of this property.

8 Q Meaning what?

9 A The steps we would go through to develop the
10 property, the timeframes.

11 Q Okay. And I think we are still on the same
12 page with respect to the development and timeframe. And
13 I want to make sure I am understanding what else you
14 think you are qualifying as an expert to testify to?

15 A I think that would include the impact of
16 utilities on that property.

17 Q Okay. Anything else?

18 A Not that I can think of at the moment.

19 Q The applicant in this case does not intend to
20 build an interim facility, true?

21 A True. It's not in our current plans to build
22 an interim facility. It will be a phased facility.

23 Q As far as the comp plan, where it talks about
24 interim facilities being provided as long as there is a
25 phaseout and an agreement with the City or JEA, my

1 question is: It is not your intent to build an interim
2 facility as you come before the Commission and ask to be
3 certificated, correct?

4 A We are in front of the Commission right now
5 for certification so that we don't have to deal with
6 this comprehensive plan.

7 Q It's a yes or no. I just want to make sure
8 you are not -- you are not trying to build an interim
9 facility?

10 A Asked and answered -- sorry. I think I
11 answered that question.

12 MR. WHARTON: Asked and answered.

13 COMMISSIONER GRAHAM: I agree.

14 MR. LUNNY: Okay.

15 BY MR. LUNNY:

16 Q Your rebuttal testimony discussed the concept
17 of bonds. Are you still relying on bonds to help
18 finance this facility, or has that been corrected over
19 time?

20 A Bonds will be considered as part of financing
21 the facility if it makes sense. We have to get
22 certification first before we take those steps.

23 Q Well, what kind of bond would you -- are you
24 being -- I am sorry. You -- are you considering -- you
25 are considering them now, right, assuming that you get

1 **certificated?**

2 A Yes.

3 **Q All right. What kind are you considering?**

4 A Well, we would rely on the underwriter to tell
5 us the best combination of tax free and taxable bonds.
6 That would be their area of expertise.

7 **Q So you are not rendering any kind of an**
8 **opinion as to whether or not this should be an**
9 **industrial revenue bond, or otherwise? Your testimony**
10 **today is we would ask MBS or someone else to tell us?**

11 A We would look to experts to help us decide
12 what type of bonds to issue if we chose to issue bonds.

13 MR. LUNNY: May I have one minute,
14 Commissioner?

15 COMMISSIONER GRAHAM: Sure.

16 BY MR. LUNNY:

17 **Q Mr. Kennelly, to be clear. I know you -- in**
18 **some ways, you and I are both hampered because your**
19 **testimony is old and you are supplementing it. In the**
20 **scope of your supplement, is it your intention to**
21 **testify that JEA has not offered, in any way, to provide**
22 **the utility services to this property?**

23 A No, not at all. They have made offers.

24 **Q Okay.**

25 A Untenable offers.

1 **Q Untenable meaning?**

2 A A lot of those offers that they made were more
3 expensive. Any more expensive effort is going to be --
4 somebody is going to pay for it. We believe the most
5 economical approach to providing services to the folks
6 that will be in our development is by building and
7 operating our own utility.

8 **Q Is it true that when you say they offered**
9 **things more expensive, that they have offered to allow**
10 **you to build the facility, then buy the facility back at**
11 **your expense within five years, and pay you a 12 percent**
12 **management fee on top of your expense for this facility;**
13 **is that true?**

14 A May I speak to my counsel for a moment?

15 MR. WHARTON: Objection. It's outside the
16 scope of even of -- if it's not getting into the
17 present negotiations, it's outside the scope of
18 direct. This was filed a year-and-a-half ago.

19 COMMISSIONER GRAHAM: I don't disagree with
20 your objection. Let's take a five-minute break so
21 you can speak with your client.

22 MR. WHARTON: All right.

23 COMMISSIONER GRAHAM: We will take a
24 five-minute break.

25 MR. WHARTON: So that I can speak to my

1 client?

2 (Brief recess.)

3 COMMISSIONER GRAHAM: Okay. So the question
4 was about a deal that was offered on the table.
5 There was an objection. I agree with that
6 objection. Do you wish to withdraw that objection
7 or are we moving forward?

8 MR. WHARTON: I do not wish to withdraw that
9 question, but I am not sure if the question will be
10 withdrawn.

11 MR. LUNNY: I think there has been -- can I
12 respond to it?

13 COMMISSIONER GRAHAM: Sure. Sure. Sure.

14 MR. LUNNY: Okay. I think there has been a
15 suggestion in this proceeding that JEA's only offer
16 is you build it, you give it to us. And we've
17 heard testimony in this case how there is an
18 ordinance that came in and everything has changed.
19 And I can lay a predicate for it, because that
20 ordinance says that there is a tentative agreement
21 between JEA and this developer. And I think that
22 JEA is asking for the opportunity to explain that
23 we have -- you know, it's like he is allowed to say
24 that there is untenable offers being made, and yet
25 we can't even ask how is it untenable given, you

1 know, offers that we've made.

2 I mean, it's like, to me, I feel hamstrung by
3 that. I feel like he has opened the door, and I am
4 happy to lay the predicate with the ordinance where
5 it says there is a tentative agreement at least,
6 but I feel like JEA needs to respond to the
7 testimony that, you know, there is offers made,
8 it's all untenable and, therefore, we are stuck
9 doing it ourself, you know, please certificate us.

10 COMMISSIONER GRAHAM: Well, the offers being
11 untenable -- the offers being not acceptable is his
12 opinion. He can decide if it's acceptable or not
13 acceptable. It doesn't matter what facts you get
14 into, he can still say that's not acceptable.

15 I think anything other than that you can
16 probably handle in briefs, unless I am hearing
17 something different from my attorney.

18 MR. WHARTON: And if I may, Commissioner.

19 COMMISSIONER GRAHAM: Hold on. My attorney.

20 MS. HELTON: Can I confer with the General
21 Counsel real quickly?

22 COMMISSIONER GRAHAM: Sure. And I just have
23 an engineering degree.

24 MR. WHARTON: Okay. All right. First of
25 all --

1 COMMISSIONER GRAHAM: Actually hold on. They
2 probably need to hear this when they are done, so
3 hold on a second.

4 MS. HELTON: Thank you, Mr. Chairman.

5 I think there has been a lot of discussion in
6 the proceeding about the offers that have been made
7 and the offers that have not been accepted. In my
8 mind, there is some murkiness there that we really
9 don't understand the full picture, and it seems to
10 be important to both sides. So from my
11 perspective, I would appreciate a full
12 understanding. So I think that they should be able
13 to go forward with the question and get an answer.

14 MR. WHARTON: Well, a couple of things. One
15 is, I think there is a question of fundamental
16 fairness here. I have got a witness-and-a-half
17 left. I have conducted my activities
18 understanding, and I have said on the record that
19 we have an understanding with JEA. For all I know
20 there was a discussion last night.

21 These discussions are ongoing, but we are
22 going to get into why an offer in the current
23 discussions was unacceptable or acceptable? I
24 mean, there is a whole team of people who aren't
25 even before you still talking about whether this

1 case can be resolved. But in terms of some of the
2 rulings that you have made previously about the
3 prefiled testimony can be updated within reason.

4 I just think getting into the nature of these
5 discussions is fundamentally unfair. I think it's
6 a mistake. I think it's a mistake by JEA, and
7 also, it really violates one of the basic tenets of
8 trial that you really don't get into settlement
9 talks. You don't come in and say -- I mean, there
10 are things we've learned from those discussions
11 that I probably would have used in cross or
12 something. I just don't think we should be
13 changing the rules now.

14 I don't think it's a smart thing to do for JEA
15 and for First Coast, or 301 Capital. Those
16 discussions are going to continue. They are not
17 broken off. They are not at an impasse.

18 MS. HELTON: And that has been confusing to us
19 sitting over here, that no one has been objecting
20 about these discussions, so --

21 MR. WHARTON: I don't think anybody has really
22 gotten in -- what we've looked at was there was an
23 old round of intense discussions that were
24 literally mentioned in the petition, but pretty
25 much -- and Mr. Lunny will correct me if I am

1 wrong. Since November there has been another
2 intent -- as I understand it, at one point the
3 Mayor of the City of Jacksonville congratulated the
4 staff for working it out. I mean, it got close and
5 then it didn't work out, et cetera.

6 We are really going to get into that now? I
7 mean, we are going to get all the way into it I
8 guess if we are, but I don't think we should. And
9 I think that, really, under the way that the
10 prefiled testimony is stale, there has been
11 discussions about discussions, but bringing it
12 right up to the current discussions, I don't really
13 think adds much to the record that the Commission
14 will be deciding in this case.

15 MR. LUNNY: Commissioner, may I respond at
16 some point?

17 MS. HELTON: If we could hear from JEA, that
18 would be helpful.

19 MR. LUNNY: I mean, here's -- the pickle we
20 are in is the rebuttal from this witness, on page
21 four, lines 13 through 15, was asked: Has 301
22 tried to work with JEA to resolve the issues? And
23 yes, we attempted to resolve both before we began
24 work and since we filed the application, and the
25 discussions have, thus far, been fruitless.

1 So this was inserted into this rebuttal as
2 we've tried to work with JEA. We can't work with
3 JEA. And there is no other way for JEA to rebut
4 that, or to address it, than to start showing that
5 we've made significant offers to resolve this and
6 build a utility the way they want under our
7 standards. We would buy it. We would give them a
8 management fee. And I can even show them in the
9 valuation that they provided yesterday that they
10 included that fee as revenue when they bought out
11 their partner.

12 And so it sort of is what it is. I mean, we
13 are in it because if -- unless they want to retract
14 that from rebuttal, which is fine by me. If they
15 withdraw the testimony from this witness that there
16 have been fruitless negotiations, then I will stand
17 down; but otherwise, I have to address it.

18 COMMISSIONER GRAHAM: But the fruitless
19 negotiations were back during the time this
20 rebuttal was filed.

21 MR. LUNNY: But he updated it today, Mr.
22 Chairman. He said today that that -- that he was
23 asked to summarize it, and he explained it. I
24 asked him the scope of his testimony, and he was
25 talking about development, and why we are here, and

1 that it was untenable.

2 MR. WHARTON: I don't believe the witness'
3 intent was to get into the --

4 MS. HELTON: It sounds like Mr. Wharton has
5 said that --

6 COMMISSIONER GRAHAM: Mary Anne -- Mary Anne.
7 Okay, please.

8 MS. HELTON: It sounds like Mr. Wharton has
9 acknowledged that there are still ongoing
10 discussions. So maybe we can all stipulate that
11 there are ongoing discussions. And in my mind,
12 understand I am not a witness, but if there are
13 ongoing discussions, then it seems to me that both
14 sides do not think that those -- that is fruitless.

15 I am also sitting here wondering what is the
16 relevance? This is First Coast's application to
17 get a certificate within these three counties, so I
18 am struggling with how the discussions between JEA
19 and First Coast are relevant to y'all's decision
20 about whether to grant them a certificate or not.

21 COMMISSIONER GRAHAM: That's pretty much about
22 the position I was getting ready to get into.

23 Commissioner Clark.

24 COMMISSIONER CLARK: Yes, Mr. Chairman, I have
25 a legal question for staff in terms of the

1 testimony. We have prefiled testimony that we've
2 accepted, and the witness begins by stating that
3 there is nothing accurate or true about any or
4 everything about this, what do we do with this
5 prefiled testimony? Do we rely on it? Are we
6 questioning off of it, or are we questioning off of
7 the summary is that he made, that has nothing to
8 do, based on what he said, with this? How do we
9 treat that?

10 MS. HELTON: That is perhaps one of the
11 frustrations of the process that we use with
12 prefiling testimony. Things are going to always be
13 moving. Things are going to be changing from the
14 time that the testimony was actually filed.

15 I think we have, in the past, give a little
16 bit of leeway about bringing this up to the present
17 because you all want to have the most recent
18 information when you make a decision. The best
19 approach, I think, is to, if -- it seems to me that
20 one of the issues here today, and yesterday too,
21 was the timing of when the testimony was filed.

22 Perhaps a better practice would have been for
23 both sides to ask to update their testimony. Maybe
24 we should have pursued them updating their
25 testimony, because I do acknowledge, Commissioner,

1 that that has created a little bit of issue.

2 It's -- he has acknowledged that his rebuttal
3 testimony is stale, so it seems to me that maybe
4 you don't give that as much weight, and what we
5 talk about here today is maybe more relevant.

6 COMMISSIONER CLARK: But is his testimony
7 required to be based on his prefiled? Typically
8 the questions that the attorneys are going to ask
9 have to be related to what's in rebuttal. Like he
10 said, there is nothing -- there is nothing there.
11 So how do we allow any questions at all on the
12 rebuttal testimony?

13 COMMISSIONER GRAHAM: All right. This is what
14 we are going to do. We don't need to get into
15 details or any offers that are out there. I
16 believe your question was you have been offered
17 several things. And the witness' testimony was,
18 regardless of the offers that are out there, none
19 of them are tenable in my opinion, none of them are
20 acceptable in my opinion. I think we need to move
21 on from that point.

22 MR. LUNNY: Okay. I don't have anything else
23 for this witness, Mr. Chairman.

24 COMMISSIONER GRAHAM: Okay. Staff?

25 To answer your questions.

1 MS. LHERISSON: Staff has no questions.

2 COMMISSIONER GRAHAM: Commissioners? No
3 questions from the Commissioners.

4 Redirect?

5 MR. WHARTON: Thank you, Commissioner.

6 FURTHER EXAMINATION

7 BY MR. WHARTON:

8 Q Just so the record is clear, Mr. Kennelly, you
9 are a licensed attorney in the state of Georgia?

10 A In the state of Georgia.

11 Q With a current license?

12 A Yes.

13 Q You are a CPA whose license is current?

14 A Yes, it is.

15 Q And you are an experienced real estate
16 developer?

17 A I am.

18 Q All right. And just one other point, and that
19 is are you -- are you saying -- are you testifying here
20 today that all of your rebuttal testimony is incorrect,
21 or just specifically those items that you referenced?

22 A I tried to -- I tried to say that with respect
23 to the arguments in this rebuttal testimony that dealt
24 with the ordinance, that they are probably no longer
25 applicable.

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

2 COMMISSIONER GRAHAM: Okay. Exhibits?

3 MR. WHARTON: We would move Exhibit 37.

4 COMMISSIONER GRAHAM: Seeing no objections, we
5 will enter 37 into the record.

6 (Whereupon, Exhibit No. 37 was received into
7 evidence.)

8 COMMISSIONER GRAHAM: Would you like to excuse
9 this witness?

10 MR. WHARTON: We would call --

11 COMMISSIONER GRAHAM: Would you like to excuse
12 this witness?

13 MR. WHARTON: Oh, yes. We will release the
14 witness.

15 COMMISSIONER GRAHAM: Mr. Kennelly, thank you
16 very much for your testimony and rebuttal. Travel
17 safe.

18 (Witness excused.)

19 COMMISSIONER GRAHAM: We have already
20 stipulated Gandy's, correct?

21 MR. WHARTON: Okay. So Mr. Gandy's testimony
22 is already in?

23 COMMISSIONER GRAHAM: If I remember correctly,
24 at the prehearing we have already stipulated him
25 and entered his exhibits?

1 MS. LHERISSON: We stipulated to them, that is
2 correct, but it is First Coast that has to request
3 that all the testimony and exhibits be entered into
4 the record.

5 COMMISSIONER GRAHAM: Okay. So do you want to
6 enter Mr. Gandy's rebuttal testimony, testimony and
7 rebuttal testimony into the record -- rebuttal
8 testimony into the record?

9 MR. WHARTON: We would. Yes.

10 MS. CRAWFORD: And exhibits.

11 COMMISSIONER GRAHAM: And exhibits?

12 MR. WHARTON: Yes.

13 COMMISSIONER GRAHAM: Is there any objection
14 to that?

15 MR. CRABB: No objection from JEA.

16 COMMISSIONER GRAHAM: Okay. So we will enter
17 the testimony into the record as though read.

18 (Whereupon, prefiled rebuttal testimony of
19 Paul Gandy 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

REBUTTAL TESTIMONY

OF

PAUL GANDY, P.E.

ON BEHALF OF

FIRST COAST REGIONAL UTILITIES, INC.

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

2 A. My name is Bernard Paul Gandy, PE. My address is 6001 Broken Sound Parkway NW, Suite
3 610, Boca Raton, Florida 33487. I am a professional engineer, licensed in the state of Florida,
4 and am President and Chief Executive Officer of Globaltech, Inc., a design-build company

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

6 A. I graduated from the University of Florida with a Bachelor of Science in Mechanical
7 Engineering. I am a certified Professional Engineer, plumbing contractor, mechanical
8 contractor, general contractor and an underground utility and excavation contractor. I am
9 also a Designated Design-Build Professional by the Design-Build Institute of America
10 (“DBIA”).

11 **Q. What is your area of expertise?**

12 Globaltech is an integrated design-build company serving Florida with water and wastewater
13 utilities. I founded Globaltech in 1995, after successfully serving with a large international
14 consulting firm providing engineering and construction services for public and private
15 utilities nationally, and in Florida and the Caribbean. For over 25 years, we have provided
16 consulting engineering, construction management, design-build, and commissioning services
17 for small and large utilities alike. I can state with pride that I have pioneered the use of
18 continuing contract and progressive design build efforts in the south Florida utility market.
19 My years of expertise include planning, design, and construction of all facets of water and
20 wastewater treatment, as well as collection and distribution, hydraulics, fluids handling, and
21 pumping. In 2019, Globaltech was awarded the Design-Build Water/Wastewater Project of
22 the year by the DBIA, Florida Chapter, for a 3-year design-build contract with the Palm Beach
23 County Water Utilities Department.

24 **Q. How did you become involved with First Coast Regional Utilities, Inc.?**

25 A. I have known and worked with First Coast leading engineer, Bevin A. Beaudet, PE, for over

1 25 years. Mr. Beaudet asked me and my firm to serve on his team and to assist with the
2 Feasibility Study for First Coast, as regards meeting the water, wastewater and reuse utility
3 needs of the 301 Capital Partners, whose properties are located generally on the west side of
4 US 301 and the on south of Interstate 10 in the far western extremities of Duval County and
5 portions of Baker and Nassau Counties.

6 **Q. Tell us about some of your projects, particularly as they would relate to the needs of**
7 **First Coast.**

8 A. My project history includes designing, constructing, and commissioning water, wastewater,
9 and reuse (“Irrigation Quality”) treatment facilities for government, district, and private
10 utilities. Our projects are designed in strict compliance with local, state, and federal
11 environmental regulations. Treatment processes and materials selection, as well as
12 construction standards, are first rate and are selected based upon ability to meet treatment
13 objectives, a long view of the life cycle cost analysis, high level of reliability, and long-term
14 asset value. We count among our continuing clients the Palm Beach County Water Utilities
15 Department, Seacoast Utility Authority, Fort Pierce Utility Authority, City of Boynton
16 Beach, Coral Springs Improvement District, City of Lake Worth, City of Riviera Beach, and
17 Florida Power & Light, to name a few. For each of these clients, we have consistently met
18 their exacting standards and completed projects with elements similar to what is required for
19 the First Coast Utility project.

20 **Q. JEA Witness Robert Zammataro has testified in this matter to the effect that privately**
21 **owned water and wastewater utilities tend to be substandard. In that regard, please tell**
22 **us about the instructions that the principals of First Coast and Mr. Beaudet gave to you**
23 **as regards this project.**

24 A. We planned the First Coast system to the highest standards. Those standards are in every
25 way equal to and, in many cases, better than typical municipal or county governmentally-

1 owned utilities in the state of Florida. At no time have the principals of First Coast or Mr.
2 Beaudet asked us to reduce the quality of the facilities proposed in order to reduce the cost.
3 In fact, their instructions to us have been exactly the opposite. They want us to design and
4 build a first-class system in every way and manner. This is smart on the part of the principals
5 of First Coast, in that, in the long run, the system will last much longer, the renewal and
6 replacements costs will be lower, and the cost of operation and maintenance will be lower
7 than those of a typical developer-owned system. Additionally, asset value will be ensured
8 over the long term.

9 **Q. Did you work with Mr. Beaudet on the timeline for the proposed First Coast utility**
10 **facilities?**

11 A. Yes. We estimated that the facilities can be ready to provide services in approximately thirty
12 months from the granting of a Certificate to First Coast.

13 **Q. Do you believe that the thirty-month estimate is reasonable?**

14 A. I do.

15 **Q. What is the basis for your confidence in that estimate?**

16 A. Over twenty-five years of designing, permitting, constructing and commissioning private
17 sector water and wastewater facilities in the State of Florida that are not subject to the
18 extensive financing and bidding procedures, and other time consuming processes mandated
19 by law for municipal and county infrastructure projects. The processes and procedures that
20 must be followed by governmental entities generally extend the timeline for similar projects
21 by a factor or two or more compared to a private project. Additionally, while the cost to bring
22 the municipal facilities themselves online may be comparable, navigating the process
23 generates significant costs.

24 **Q. Are you sponsoring any Exhibits?**

25 A. Yes, I am. I have attached my resumé, which is labeled BPG-1, and 17 graphic examples of

1 our projects which are described thereon and which are symbolic of the kind and quality of
2 design and construction that we will utilize in the case of First Coast as BPG-2. These
3 exhibits are offered under the old adage that “a picture is worth a thousand words”.

4 **Q. Does that conclude your rebuttal testimony?**

5 A. Yes, it does.

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1 COMMISSIONER GRAHAM: And Exhibits 27, 28.

2 (Whereupon, Exhibit Nos. 27-28 were received
3 into evidence.)

4 COMMISSIONER GRAHAM: Is that all of his
5 exhibits?

6 MR. WHARTON: I believe it is. That is
7 Exhibit 27 and 28.

8 COMMISSIONER GRAHAM: Okay. All right, so
9 that is done.

10 Let's move on to the next witness.

11 MR. WHARTON: We would call Mr. Scott Kelly.

12 I am not sure Mr. Kelly -- he didn't testify
13 previously. I am not sure he has been sworn.

14 THE WITNESS: I was sworn in.

15 COMMISSIONER GRAHAM: Okay.

16 Whereupon,

17 SCOTT D. KELLY

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

21 EXAMINATION

22 BY MR. WHARTON:

23 **Q Sir, would you state your name and**
24 **professional address for the record?**

25 **A** Scott Kelly, 241 Ocean Walk Drive South,

1 Atlantic Beach, Florida, 32233.

2 Q And did you cause prefiled rebuttal testimony
3 to be 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 rebuttal testimony, would
7 your answers be the same?

8 A No.

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

11 A Yes, I have corrections.

12 First off, as has been brought up, there is a
13 new capital program of \$1.85 billion for phaseout of
14 wastewater effluent from the St. Johns River, and there
15 is also, I have testimony about the uncertainties
16 associated with that program.

17 Q Those are the two things that you would update
18 your testimony with?

19 A Yes.

20 Q All right. Did you sponsor any exhibits in
21 this case?

22 A Yes, two exhibits.

23 Q And that would be Exhibit -- what has been
24 market as Exhibit 29 and 30, which were maps?

25 A Yes.

1 **Q All right. Do you have a summary of your**
2 **testimony?**

3 A Yes, I do.

4 **Q Please present your summary.**

5 A Okay. I am going to talk about JEA's capital
6 program because I think it's very relevant.

7 JEA has a capital program that amounts to \$1.7
8 billion. It's over a four- to five-year time period,
9 but that's not all. As you heard already, there is
10 going -- they are going to layer on another \$1.85
11 billion to that program in order to phase out all the
12 effluent from the St. Johns River.

13 So it's significant. It's a massive program,
14 and they have not done final analysis of it; however,
15 they have talked in meetings about the impacts of that
16 program, the uncertainties associated with the program.
17 They really don't know what the costs are going to be.
18 There is uncertainty with it. There is uncertainty in
19 regard to whether they have the capability of executing
20 the program because there is no re -- because of the
21 lack of resources of engineers and contractors. They
22 also have concerns in regard to the cost.

23 So they have competing obligations in their
24 capital program, and that's why I feel that they will
25 not be able to meet the needs of this -- of 301 Capital

1 Partners in regard to service.

2 Their obligations, whether it be the fact that
3 they have a consent order with DEP that they are
4 obligated to fulfill, they have a consumptive use permit
5 that requires hundreds of millions of dollars of
6 investment with alternative water supply. They have
7 growth that they have to be able to serve that's already
8 committed to. They have multiple conflicting
9 obligations, and my opinion is that they will not be
10 able to serve this development, or other developments
11 like this, because their first priority would go to the
12 regulatory side, because they have such large regulatory
13 obligations.

14 Also, they are not able to provide reclaim
15 water without extensive facilities. They don't provide
16 reclaim water in the southwest district, where this
17 project, 301 Partners, Capital Partners exists. So it's
18 a real concern because it would require a 20-mile
19 extension and plant upgrades, more than \$50 million to
20 provide reclaim water to the -- to 301 Capital Partners
21 in order to be able to serve reclaim water.

22 So it's for those reasons that my concerns
23 stem out.

24 MR. WHARTON: We would move Mr. Kelly's
25 prefiled rebuttal testimony into the record as

1 though read.

2 COMMISSIONER GRAHAM: We will move his
3 prefiled rebuttal testimony into the record as
4 though read.

5 (Whereupon, prefiled rebuttal testimony of
6 Scott D. Kelly 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

REBUTTAL TESTIMONY

OF

SCOTT D. KELLY

ON BEHALF OF

FIRST COAST REGIONAL UTILITIES, INC.

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

2 A. My name is Scott D. Kelly. I am a licensed professional engineer in the state of Florida. My
3 address is 241 Oceanwalk Drive South, Atlantic Beach, Florida 32233.

4 **Q. Please summarize your education and professional experiences.**

5 A. I have a Bachelor of Science in Civil Engineering from Georgia Institute of Technology. I
6 have more than 40 years of experience in water, wastewater, solid waste and transportation,
7 engineering and operations.

8 **Q. Please tell us about your prior employment history, as it relates to the JEA.**

9 A. I worked for the City of Jacksonville and the JEA in water, wastewater, engineering, design
10 construction and operations for JEA and the City of Jacksonville.

11 **Q. How many years were you employed by the JEA?**

12 A. I was with the JEA for 16 years.

13 **Q. JEA is a large enterprise. What were your primary responsibilities for the JEA?**

14 A. I had several positions including Director of Water and Wastewater Systems, Vice President
15 of Construction and Maintenance and Vice President of Water and Wastewater Systems. In
16 these positions, I was involved directly in decision making relative to plant locations and
17 expansion of extension of lines and facilities, the acquisition of existing utilities, and in the
18 negotiations for expansion of the JEA into St. Johns and Nassau Counties.

19 **Q. When did you leave the employ of the JEA?**

20 A. I retired from the JEA in 2013.

21 **Q. Have you held any positions since your employment with the JEA?**

22 A. Yes, I was the Assistant City Administrator for the City of West Palm Beach responsible for
23 water, wastewater and stormwater utility, parking, public works, and engineering from the
24 fall of 2013 until I retired in March of this year.

25 **Q. What did you do next?**

1 A. Upon retiring, I formed Scott Kelly Consulting, LLC. It is in this regard that I agreed to
2 provide consulting services to First Coast Regional Utilities, Inc. (First Coast).

3 **Q. What is the purpose of your testimony before the Commission in this matter?**

4 A. I have reviewed the JEA's intervenor's testimony, the application of First Coast, and
5 attempted to familiarize myself with all aspects of this proceeding.

6 **Q. I am going to ask you several questions all relating to the prefiled testimony of JEA's**
7 **witness, Joseph Orfano, Robert Zammataro, Susan West and Julia Crawford. Have**
8 **you reviewed that testimony?**

9 A. Yes, I have.

10 **Q. What do you have to offer to the Commission?**

11 A. In the first place, JEA's witnesses gloss over JEA's intensive capital plan and operating
12 expenses. According to June 23, 2020 presentation to the JEA Board, JEA has existing water
13 and wastewater debt in excess of \$1.39 billion and has additional borrowings planned in order
14 to execute the new capital program in the amount of \$1.267 billion by fiscal year 2023. The
15 cumulative effect of JEA's existing debt and planned capital borrowings will, of necessity,
16 put pressure on the JEA to increase its rates and charges so as to remain cash positive.
17 However, my understanding is that at its Board meeting on Tuesday, July 28th, the JEA
18 Interim Chief Executive Officer recommended a reduction in the Capital Plan in order to
19 avoid additional borrowings in 2021 and, presumably, in order to avoid rate increases. It is
20 my view that, sooner or later, JEA's delays in the implementation of its Capital Plan will
21 come home to roost. You can only kick the can down the street for so long. Between the
22 time of the filing of my testimony and the actual hearing in this case, I expect additional
23 developments in this regard which may be of interest to the Commission.

24 **Q. Tell us about your understanding of JEA's capital needs.**

25 A. After reviewing the latest JEA water and wastewater capital plan, as well as their most recent

1 presentation to the bond rating agencies, I have confirmed that JEA has committed to building
2 extensive capital facilities on both the water and wastewater side to meet development
3 growth. This is necessitated by several factors including substantial growth in the southern
4 and northern areas of their service territory including St Johns and Nassau Counties. JEA is
5 also under significant pressure, both in terms of present and anticipated future growth to
6 expand its facilities in the area of the Jacksonville International Airport and the Cecil
7 Field/Cecil Commerce Center. Specifically, as of the June 23rd Board meeting, JEA was
8 committed to constructing the \$82 million Greenland Wastewater Treatment Plant and the \$4
9 million Nocatee South Water Repump Facility in the southern portion of Duval County.
10 Additionally, as of its June 23rd Board meeting, JEA was scheduled to undertake a \$36 million
11 expansion of its Nassau Regional Wastewater Treatment Plant. However, due to the ongoing
12 efforts of Nassau County to acquire JEA facilities in that county, that expansion may be in
13 jeopardy. In the Eastern portion of the JEA service area, JEA has \$17 million of capital
14 investments planned to provide capacity at the Arlington East Wastewater Treatment Plant
15 and in the western part of the JEA territory, JEA is committed to a \$65 million expansion of
16 the Southwest Wastewater Treatment Plant. None of these projects include the scheduled
17 transmission facilities that are associated with the various plant expansions. These projects
18 do not include the additional capital needed to meet the requirements of its Consumptive Use
19 Permit or to meet the extensive capital needs for replacement and rehabilitation of the aging
20 infrastructure.

21 **Q. In the JEA capital program, is there discussion concerning septic tank phase out costs**
22 **and social equity issues? If so, please describe that to us.**

23 A. Yes. The City and JEA are planning an extensive capital program to phase out failing septic
24 tanks. The next phases of this program have been estimated to exceed \$300 million.

25 **Q. In what part of the City is this occurring primarily?**

1 A. Primarily in the core of the City. This area can generally be described as economically
2 disadvantaged.

3 **Q. Is the funding for this program anticipated to be shared by all JEA rate payers,**
4 **generally?**

5 A. Yes, JEA has acknowledged that the Enterprise Fund is anticipated to have to pick up part or
6 all of this funding and has already funded more than \$30 million to the program to date. The
7 JEA Board has also acknowledged that their current rates do not cover the cost of this septic
8 tank phase out program.

9 **Q. What can you tell us about the JEA and alternative water supplies?**

10 A. The JEA is obligated or otherwise committed to pursue alternative water supply and
11 increasing its reclaimed water capacity.

12 **Q. Why?**

13 A. For two reasons: (1) JEA has committed to the St. Johns River Water Management District
14 to do so and, (2) JEA is running out of its fresh water supply to handle its growth needs.

15 **Q. Please elaborate.**

16 A. JEA's Consumptive Use Permit, conditions 43 and 44, require that JEA provide 32 million
17 gallons per day ("MGD") of alternative water supply by 2022 of reclaimed water, increasing
18 to 44 MGD by 2032. The current alternative water supply production is only 20 MGD.

19 **Q. Do you know the current state of JEA's Consumptive Use Permit?**

20 A. The JEA Consumptive Use Permit, under condition 44, states they are permitted to withdraw
21 140 MGD, and its flows have increased to the point that they are just 14 % below that limit.

22 **Q. Does that mean they are obligated under the terms of their Consumptive Use Permit to**
23 **begin construction now?**

24 A. Yes. JEA is obligated to either construct additional alternative water supply facilities or
25 reduce their demand, or a combination thereof so as to be less than the 140 MGD. Reclaimed

1 water includes the construction of costly potable reuse facilities which are currently in the
2 planning phase. A Pilot Program is under construction for the first phase of the potable reuse.
3 A summary of Supply Options Costs for Alternative Water Supplies as prepared by CDM
4 Smith last year estimated the cost at \$815 million in order to meet JEA long term water supply
5 needs by achieving 40 MGD of Alternative Water Supply by 2035. This equates to more
6 than \$20 per gallon capital cost in addition to the cost of the wastewater treatment plant.

7 **Q. You commented in the early part of your testimony that JEA has not only high existing**
8 **debt, but a large five-year capital program. In addition to what you have stated already,**
9 **are there any other similar factors that you wish to bring to the attention of the**
10 **Commission?**

11 A. Yes. The JEA infrastructure is aging. The JEA is, actually, an amalgamation of multiple
12 public and private utilities located primarily throughout Duval County, large portions of
13 which are at the end of their service lives. Multiple water and wastewater lines are under
14 sized, subject to frequent breaks, and the appurtenant pump stations and related facilities
15 require upgrades. JEA has a number of capital projects planned at their water and wastewater
16 treatment plants and pumping facilities. For example, JEA currently has more than \$100
17 million of improvements at their Waste Water Treatment Plants and more than \$80 million
18 of Delivery and Collection Piping of existing active rehabilitation and replacement projects.

19 **Q. Is JEA under enforcement actions due to the aging and inadequate infrastructure that**
20 **you referenced?**

21 A. The JEA is under a Florida Department of Environmental Protection (“FDEP”) Consent
22 Order due to inadequate infrastructure to sustain storm events such as experienced during
23 Hurricanes Irma and Mathew.

24 **Q. During Hurricanes Irma and Mathew, did JEA experience any violations of sewer**
25 **system overflows (SSOs)?**

1 A. Yes, they had well over 100 SSOs. During Hurricane Mathew, JEA overflowed more than
2 75 million gallons.

3 **Q. What has the JEA agreed with the FDEP to do about this?**

4 A. They have agreed to upgrade a number of the 1,478 wastewater pumping stations in order to
5 increase the standby onsite generators for continuity of operations during extended power
6 outages. This is an expensive undertaking. During recent discussions concerning the
7 potential sale of all of the JEA, this deficiency was highlighted by the JEA to the City Council.

8 **Q. In what way?**

9 A. The large amount of capital that JEA would need to raise as well as internally funded capital
10 would require the JEA to increase rates, which was a reason according to the JEA staff for
11 the City Council to consider selling its utility. Also, as of the June 23rd JEA Board meeting,
12 the JEA five-year capital plan anticipated that JEA will expend as much as \$376 million a
13 year in the design and construction of water and wastewater capital projects. However, there
14 has been concern that JEA is not able to execute capital projects in timely manner. For
15 instance, over the last 15 years, JEA has not been able to annually deliver the budgeted
16 amount of its projects other than last year when it delivered \$212 million.

17 **Q. Does the JEA have the financial wherewithal to provide water, wastewater and reuse
18 services for the area proposed for service by First Coast, the Applicant in this case?**

19 A. No. In light of the extensive capital deficiencies now facing the JEA and its large capital
20 plan, which is already behind schedule, JEA does not have the financial wherewithal to
21 provide water, wastewater and reclaimed water in the area described as generally south of
22 Interstate 10 and generally west of US 301, which is the area where First Coast proposes to
23 provide service to new development on a self-sufficient basis. The only way that JEA can
24 provide service to that area, in my opinion, is either by further stretching its capital plan or
25 by forcing the developers to build the necessary facilities on behalf of the JEA. In short, JEA

1 cannot provide service to the proposed area on a standalone basis, in my opinion.

2 In fact, JEA has not identified in any of its capital plans or planning documents for the
3 expenditure of any monies whatsoever to serve that area.

4 **Q. You commented in some depth about the JEA Consumptive Use Permit as issued by the**
5 **St. Johns River Water Management District. Please comment further as that relates to**
6 **reclaimed water.**

7 **A.** The JEA is required under the terms of its Consumptive Use Permit to develop additional
8 reclaimed water capacity from its existing wastewater plants.

9 **Q. Are there sufficient demands for that reclaimed water, when and if it is developed?**

10 **A.** There are demands within the existing area served for all of the reclaimed water that the JEA
11 can produce.

12 **Q. How does this impact the proposed First Coast service area?**

13 **A.** JEA will not be able to deliver reclaimed water to the First Coast service area for several
14 reasons, primarily of which is the cost of the approximate 20 mile length of pipe and
15 repumping facilities to the nearest wastewater treatment plant. A 20 mile reuse water
16 transmission main would need to be constructed from Southwest Wastewater Treatment Plant
17 to convey reclaimed water to the First Coast service area. In addition, the Southwest
18 Wastewater Treatment Plant would need to be upgraded to produce reclaimed quality water.
19 These upgrades would exceed \$50 million in construction costs including plant upgrades,
20 transmission costs and storage facilities. Finally, JEA has identified through its consultant
21 CDM Smith that if the reclaimed water is produced at Southwest Wastewater Treatment Plant
22 it should be directed via a river crossing under the St Johns River to the JEA South Grid to
23 provide alternative water supply on that Grid.

24 **Q. Does the First Coast wastewater plan include delivery of reclaimed water to its service**
25 **area?**

1 A. Yes.

2 **Q. What is the benefit of that?**

3 A. Well, the benefit is two-fold. Primarily, the utilization of reclaimed water for irrigation
4 purposes within the First Coast service area reduces the amount of water that it will need to
5 permit via the Consumptive Use Permit process at the St. Johns River Water Management
6 District and, second, it will allow First Coast to deliver lower quality water to its customers
7 for irrigation purposes in accordance with the goals of the City of Jacksonville and St Johns
8 River Water Management District.

9 **Q. Mr. Kelly, in JEA Witness Zammataro's testimony, there is a copy of the Interlocal
10 Agreement between Nassau County and the JEA, dated December 17, 2001. Are you
11 familiar with that document?**

12 A. Yes.

13 **Q. Why is that?**

14 A. I was a member of the core team responsible for the negotiation, drafting and approval of that
15 document. I was one of the principals at the JEA involved in the purchase of the assets of
16 United Water Florida in 2001, which was the largest private water and wastewater utility
17 acquisition in the history of the City of Jacksonville and/or the JEA, and, for that matter, to
18 my knowledge, the largest private to public water and wastewater utility system acquisition
19 ever consummated in the state of Florida.

20 **Q. What was the purpose of the adoption of that Interlocal Agreement?**

21 A. To create a vehicle, pursuant to the Florida Interlocal Cooperation Act, by which Nassau
22 County consented to the JEA providing water and wastewater utility services in that county.

23 **Q. What was the term of that Agreement and what generally did it provide for upon its
24 expiration?**

25 A. The term of the Agreement was for 30 years, meaning that it has nine years to run. The

1 Agreement provides that upon its expiration, Nassau County has the option of acquiring the
2 JEA system in the County according to a formula contained in that Agreement.

3 **Q. Mr. Kelly, in your opinion, does the JEA have the ability to provide service to the**
4 **portion of the First Coast service area that lies within Nassau County?**

5 A. No, it does not. JEA does not have any water and wastewater facilities anywhere near the
6 First Coast Nassau County lands, nor does it have any plans or budgeting to provide service
7 to that area.

8 **Q. You spoke in terms of the United Water acquisition. Have you been involved in any**
9 **other utility acquisitions, on behalf of the JEA, other than United Water?**

10 A. Yes. I was directly involved in the acquisition of the Florida Water Services system, the
11 Ortega system, the Mandarin system, the Nocatee system, the Canal system, and the Julington
12 Creek system among others.

13 **Q. What have you noticed about these acquisitions?**

14 A. They made sense for the JEA inasmuch as they paid for themselves out of the bonding
15 capacity of the net revenue of those utilities, meaning that they did not burden the existing
16 JEA customer base. In my view, it was beneficial for the developers to build the utilities to
17 serve their service areas and for the JEA to acquire those systems when they were mature,
18 rather than for JEA to have to invest and take the risk of the capital cost of extending services
19 to those areas before they were developed.

20 **Q. Mr. Kelly, are there other water and wastewater utilities in Duval County besides the**
21 **JEA and the few systems referenced in JEA's testimony?**

22 A. Yes, there are other water and wastewater utilities within the County, specifically those of
23 the Cities of Atlantic Beach, Jacksonville Beach, Neptune Beach, and the Town of Baldwin.

24 **Q. JEA Witness Susan West presented testimony concerning the Water and Sanitary**
25 **Sewer Sub-Elements of the City of Jacksonville 2030 Comprehensive Plan. Are you**

1 **familiar with that testimony?**

2 A. Yes.

3 Q. **Are you familiar with the Sanitary Sewer Sub-Element and, if so, why?**

4 A. Yes, I am familiar and the reason for that is that I was involved in writing it. I will set forth
5 below in italics substantial portions of the Sanitary Sewer Sub-Element of the City of
6 Jacksonville 2030 Comprehensive Plan and then will provide my comments.

7 **City of Jacksonville 2030 Comprehensive Plan**

8 **SANITARY SEWER SUB-ELEMENT**

9 *GOAL 1: JEA shall provide for economically and environmentally sound regional*
10 *wastewater collection and treatment systems which protect the public health and investment*
11 *in existing facilities, promote beneficial land use and growth patterns, and discourage urban*
12 *sprawl.*

13 *Objective 1.1 In order to discourage urban sprawl, and correct existing deficiencies, JEA*
14 *shall provide regional wastewater facilities in concert and conformance with the Public*
15 *Facilities Map as adopted in the Capital Improvements Element.*

16 ***Policies 1.1.1*** *JEA shall provide for regional wastewater facilities associated with*
17 *development within the Urban Area as defined in the Future Land Use and Capital*
18 *Improvements Element, excluding improvements within the service area of an investor-owned*
19 *public utility company of regional status.*

20 ***1.1.2*** *JEA shall provide regional wastewater facilities associated with development within*
21 *the Suburban Area as defined in the Capital Improvements Element excluding improvements*
22 *within the service area of an investor-owned public utility company of regional status.*

23 ***1.1.3*** *The JEA shall not invest in sanitary sewer facilities in the Rural Area as defined in the*
24 *Future Land Use and Capital Improvements Element, except where necessary to protect the*
25 *public health or safety, or encourage mixed use or regional economic development. The JEA*

1 *and the Department of Planning and Development shall coordinate on the placement of these*
 2 *lines to ensure compliance with the City’s Comprehensive Plan and its urban and suburban*
 3 *boundaries.*

4 ***1.1.4** Appropriate interim facilities will be permitted within the City as provided in Objective*
 5 *1.2 and associated policies.*

6 ***1.1.5** The City shall, through its Land Development Regulations, preserve utility corridors so*
 7 *that future development can be served in a cost-effective manner.*

8 ***1.1.6** All City owned wastewater facilities shall be constructed in accordance with the City’s*
 9 *Utility Standards and Specifications, Land Development Procedures Manual, FDEP*
 10 *regulations and other applicable requirements.*

11 ***1.1.7** The City shall incorporate incentives in its Land Development Regulations which*
 12 *encourage development, and redevelopment in areas where the public wastewater system has*
 13 *or will have adequate capacity. Developments which qualify for mixed use and/or regional*
 14 *economic development must also undergo land use amendments to expand the suburban*
 15 *boundaries to incorporate these areas.*

16 **Q. Mr. Kelly, is the future First Coast certificated service area located “in the Rural Area**
 17 **as defined in the Future Land Use and Capital Improvement Element” in Section 1.1.3**
 18 **above?**

19 **A. Yes.**

20 **Q. Mr. Kelly is, in your opinion, the certification by the Florida Public Service Commission**
 21 **of First Coast in compliance with and in furtherance of the City of Jacksonville**
 22 **Comprehensive Plan?**

23 **A. Yes.** For example, pursuant to subsection 1.2.10 nonregional wastewater facilities may be
 24 permitted as interim facilities, provided all of the following requirements are satisfied:

25 1. The facility meets all federal, state, regional, and local environmental regulations.

- 1 2. The developer shall operate and maintain the facilities.
- 2 3. The developer provides for phase out costs where appropriate.
- 3 4. The developer enters into an agreement with the City, specifying the date and manner of
- 4 phase out.
- 5 5. The facility operator will reimburse the City for costs of enforcement of violations of water
- 6 quality standards and effluent limitations.
- 7 6. Wastewater facilities must provide at least 1.0 MGD of capacity.

8 **Q. Mr. Kelly, what is the import of the portions of the Sanitary Sewer Sub-Element as set**
 9 **forth above?**

10 A. This section encourages non regional investor or community owned utility acquisitions based
 11 on existing and projected rate base of the utility and allows for interim nonregional
 12 wastewater facilities. Nonregional wastewater facilities is not a defined term in this section.
 13 This paragraph contemplates nonregional facilities as interim facilities as long as developer
 14 enters into an agreement with the City, specifying the date and manner of phaseout.

15 **Q. Are any of the definitions contained in the Comprehensive Plan of importance in this**
 16 **matter?**

17 A. Yes. In the definitions, we find the following terms which are of import:

18 ***DEFINITIONS***

- 19 • *Investor Owned Public Utility Company - A water or sewer utility which, except as provided*
 20 *in Section 367.022, F.S. is providing, or proposes to provide, water or sewer service to the*
 21 *public for compensation.*
- 22 • *Regional Wastewater Facilities - Those facilities identified in the WSBU Wastewater Master*
 23 *Plan*
- 24 • *Urban Sprawl – A land use pattern typically characterized by the following:*
 25 ○ *Premature conversion of agricultural areas beyond urban and suburban service*

1 *boundaries into urban uses beyond the planning time frame horizon covered in the*
 2 *City's Comprehensive Plan.*

- 3 ○ *“Leapfrog” development patterns*
- 4 ○ *Large areas of low-density, single-use development*
- 5 • *Development may occur beyond urban and suburban boundaries provided that it is mixed-*
 6 *use in nature. Otherwise, development beyond such boundaries is considered urban sprawl*
 7 *and is to be discouraged.*

8 **Q. Why are these definitions important?**

9 A. This section defines Investor Owned Public Utility Company even though the term is not
 10 used in the Sanitary Sewer Sub-Element, thus it envisions future privately owned utilities in
 11 Jacksonville. It also permits development beyond urban and suburban boundaries if it is
 12 mixed use.

13 **Q. Were you involved in the development of the Jacksonville Environmental Protection**
 14 **Board Rule 3, dealing with Water Pollution?**

15 A. Absolutely. I was intimately involved in the development of that rule which was developed
 16 pursuant to Chapter 360.108, City of Jacksonville Municipal Ordinance Code, as a local
 17 environmental rule.

18 **Q. Are the definitions under Rule 3 of any import?**

19 A. Yes. For example, the term “large wastewater facility means”:

20 *Large Wastewater Facility means: Any wastewater treatment facility and appurtenant*
 21 *sewerage of any privately owned water and sewer utility, now or hereinafter operated or*
 22 *constructed in territories covered by a certificate of public convenience and necessity issued*
 23 *by the Public Service Commission (PSC) or (2) any privately owned wastewater treatment*
 24 *facility and appurtenant sewerage with treatment capacities and customer base that would*
 25 *qualify it as a PSC certificated facility; which has the ability to provide for new connections*

1 *within existing capacity or via future construction of additional capacity, and which complies*
 2 *with sewage treatment and disposal regulations to attain water quality standards (i.e. this*
 3 *Rule 3 and FDEP rules adopted herein) and which is specifically operated and monitored in*
 4 *accordance with requirements of Chapters 62-600, 62-601, and 62-699, FAC, relating to*
 5 *frequency, methodology and operator class for facilities greater than 1 million gallons per*
 6 *day (mgd).*

7 **Q. Does the rule define a “regional sewer utility” or “regional sewerage”?**

8 A. Yes. For example, the term “regional sewer utility” or “regional sewerage” is defined below:

9 *Regional Sewer Utility or Regional Sewerage means:*

- 10 1) *JEA publicly owned treatment works and appurtenant sewerage, existing and future, and*
 11 2) *The publicly owned treatment work of the cities of Baldwin, Atlantic Beach, Jacksonville*
 12 *Beach, and Neptune Beach and appurtenant sewerage, existing and future, which*
 13 *conform to those cities’ Master Plan for Regional Sewerage Development: which comply*
 14 *with sewage treatment and disposal regulations to attain water quality to attain water*
 15 *quality standards (i.e., this Rule 3 and FDEP rules adopted herein).*

16 Thus, the Environmental Protection Board uses different terms and definitions for regional
 17 sewer facilities as compared to the Sanitary Sewer Sub-Element in the City of Jacksonville
 18 Comprehensive Plan. There is not any reference to non-regional facilities. It does define
 19 “Large Wastewater Facility” as a facility constructed or operated in territories covered by a
 20 certificate of public convenience and necessity issued by the Florida Public Service
 21 Commission. It includes a definition of a Regional Sewer Utility or Regional Sewerage as
 22 exclusively publicly owned by municipalities. It also includes a provision that the facility
 23 must be operated and monitored in a manner that meets the requirements of FDEP for a
 24 facility greater than 1 MGD.

25 Further, Rule 3.403 contains General Requirements, Design Standards and Performance

1 Considerations.

2 *Rules 62-604300 and 62.604.400, FAC, are hereby adopted and incorporated by reference*
3 *as the City's General Technical Guidance and Design and Performance Consideration*
4 *standards and requirements for wastewater collection/transmission systems in Duval County,*
5 *as well the specific requirements as otherwise set forth in this Rule.*

6 *A. Design requirements in this section shall apply to all sewerage systems for which a permit*
7 *application is received after the effective date of this Rule. In the event a violation of the*
8 *requirements of this Rule occurs at any wastewater collection/transmission system that*
9 *results in a discharge of untreated wastewater to the surrounding area, groundwaters or*
10 *surface waters, or any other bypass of the system is documented by the Division, the owner*
11 *shall repair or replace the system to meet current design and performance standards and*
12 *specifications. In addition, if such a violation or bypass is documented by the Division, copies*
13 *of all design drawings and engineering calculations and the operation and maintenance*
14 *manual must be produced to the Division within one business day of request by the Division.*
15 *If such drawings, calculations and manual cannot be produced, the Division may require that*
16 *the owner of the system submit a newly prepared Engineer Report with all necessary*
17 *drawings, calculations and statements of methods used in order to verify the system meets*
18 *current design and performance standards and requirements.*

19 *B. In addition to the requirements of Chapter 62-604, FAC, the following guidance*
20 *documents and manuals are hereby adopted and incorporated by reference as additional*
21 *requirements for permitting sewerage systems in Duval County, Florida:*

22 *1. JEA Water, Sewer and Reclaimed Water Design Standards, December, 2009 Edition and*
23 *subsequent revisions thereto, published by JEA; and*

24 *2. City of Jacksonville Land Development Procedures Manual, last revised November 9,*
25 *2010, and subsequent revisions thereto, published by the City's Development Services*

1 *Division; and*

2 *3. Recommended Standards for Wastewater Facilities - Policies for the Design, Review, and*
 3 *Approval of Plans and Specifications for Wastewater Collection and Treatment Facilities,*
 4 *2004 Edition, and subsequent revisions thereto, published by Health Research, Inc., Health*
 5 *Education Services Division, P.O. Box 7126 Albany, N.Y. 12224.*

6 *C. Upon petition to the Division, the substitution of regional utility specifications may be*
 7 *allowed by the Division.*

8 **Q. What is the import of all of this?**

9 A. It means facilities must be designed in accordance with JEA standards and the City of
 10 Jacksonville Land Development Procedures Manual. In accordance with the testimony of
 11 First Coast Lead Engineer Bevin Beaudet, First Coast will meet or exceed those standards in
 12 all respects.

13 **Q. What does Part V of Rule 3 state?**

14 A. It says: ***PART V, LARGE WASTEWATER TREATMENT FACILITIES AND***
 15 ***REQUIREMENTS FOR CONNECTION TO REGIONAL SEWERAGE***

16 *3.501 Permits*

17 *Chapters 62-4, 62-522, 62-620, and 62-660, FAC, are hereby adopted and incorporated by*
 18 *reference as the City's permitting requirements for wastewater collection/transmission*
 19 *systems and wastewater treatment facilities in Duval County.*

20 *3.502 Large Wastewater Treatment Facilities*

21 *Due to the past accelerated growth of the County, and because discharges from large*
 22 *wastewater treatment facilities with capacity greater than 1 million gallons per day (mgd)*
 23 *discharging to both groundwaters and surface waters which violate effluent limits and water*
 24 *quality standards still exist and cause or contribute to water quality violations, the Board*
 25 *finds and determines that, in cases of repeated noncompliance with state and local*

1 *regulations, regulation regarding continued permitted status is necessary and connection of*
2 *the large wastewater treatment facilities to the regional sewerage may be required in order*
3 *to improve, and to preserve as improved, the quality of water in the County for public health*
4 *and welfare and to protect the environment, including, but not limited to, the propagation of*
5 *fish and other marine and wildlife dependent thereon.*

6 *A. Alternative Requirements for Large Wastewater Treatment Facilities:*

7 *Large wastewater treatment facilities, those with a capacity of greater than 1 mgd, may*
8 *require additional monitoring frequency, methodology, operator class certification and*
9 *operator attendance than is required by Chapters 62-600, 62601, and 62-699, FAC, in order*
10 *to ensure the compliance with effluent limits and water quality standards. In such case where*
11 *the Division has established additional requirements, the large wastewater treatment facility*
12 *may apply, in writing, to the Division for approval of alternative monitoring methodology as*
13 *equivalent in reliability to the frequency, methodology, operator class certification and*
14 *operator attendance for large wastewater treatment facilities. However, the Division*
15 *approval may not reduce the requirements set forth in FAC rule without FDEP concurrence.*

16 *B. Special Requirements for Designation of Water Reuse Systems as a Large Wastewater*
17 *Treatment Facility:*

18 *1. Percolation ponds, absorption fields, overland flow, and other land application systems*
19 *describe in Chapter 62-610, F C, which do not reduce water consumption shall not be*
20 *considered as reuse systems for purposes of this Rule.*

21 *2. Where SJRWMD mandates reuse, any wastewater treatment facility which discharges*
22 *effluent by reuse may be approved by the Division as a large wastewater treatment facility*
23 *provided that the following criteria are met:*

24 *a. The large wastewater treatment facility complies with sewage treatment and disposal*
25 *regulations to attain water quality standards set forth in this Rule and in the rules and*

1 *regulations adopted herein, and*

2 *b. The large wastewater treatment facility is specifically operated and monitored in*
 3 *accordance with the requirements of Chapters 62601 and 62-699, FAC. relating to frequency,*
 4 *methodology and operator class certification for facilities with capacity greater than 1 mgd.*
 5 *and*

6 *c. The requirements of Rules 62-610.400 through 62- 610.426. FAC, or the requirements of*
 7 *Rules 62-610.450 through 62-610.491, FAC, are met. and*

8 *d. The implementation of water reuse systems shall be used for one or more of the following*
 9 *purposes:*

10 *(1) Irrigation of vegetated land surfaces as described in Chapter 62-610 Part II,*
 11 *FAC;*

12 *(2) Reuse systems as described by Chapter 62-610 Part III, FAC, including, but not*
 13 *limited to:*

14 *(a) Irrigation of residential lawns, golf courses, cemeteries, parks, landscape*
 15 *areas, or highway medians;*

16 *(b) Fire protection;*

17 *(c) Aesthetic purposes (decorative ponds or fountains);*

18 *(d) Toilet flush;*

19 *(e) Dust control on construction sites; and*

20 *(f) Irrigation of edible crops.*

21 **Q. What is the import of all of this?**

22 **A** This paragraph lays out conditions for connection of Large Wastewater Treatment Facilities
 23 to regional sewerage system where there are repeated water quality violations. There are also
 24 special requirements for designation of Water Reuse Systems as a Large Wastewater
 25 Treatment Facility. Under these definitions, the facilities of First Coast will qualify as “Large

1 Wastewater Treatment Facilities.”

2 **Q. Does the Comprehensive Plan have similar terms relating to potable water?**

3 A. Yes, it does. The Infrastructure Element of the Potable Water Sub-Element, Goals,
4 Objectives, and Policies, of Jacksonville Planning and Development Department as
5 essentially as follows:

6 ***INFRASTRUCTURE ELEMENT POTABLE WATER SUB-ELEMENT: GOALS,***
7 ***OBJECTIVES AND POLICIES, JACKSONVILLE PLANNING AND DEVELOPMENT***
8 ***DEPARTMENT***

9 *Objective 1.1 In order to discourage urban sprawl, to maximize the use of existing facilities,*
10 *and to coordinate the increase in the capacity of facilities to meet future needs of the City,*
11 *the JEA shall provide regional water facilities in concert and conformance with the*
12 *Development Areas Map (Map CI-1) as adopted in the Capital Improvements Element.*

13 *Policies 1.1.1. JEA shall provide for regional water facilities associated with development*
14 *within the Urban Area as defined in the Capital Improvements Element, excluding*
15 *improvements within the service area of an investor-owned public utility.*

16 *1.1.2 JEA shall provide for regional water facilities associated with development within the*
17 *Suburban Area, as defined in the Capital Improvements Element, excluding improvements*
18 *within the service area of an investor-owned public utility. The Suburban Areas should be*
19 *reviewed in the development of the 2030 Comprehensive Plan.*

20 **Q. Why is this important?**

21 A. It excludes JEA from providing regional wastewater facilities within the service area of an
22 investor-owned public utility. It further states in 1.1.4 , Investor-owned public utilities, and
23 all parties connecting to them, shall be required to install facilities in compliance with
24 Chapters 654 and 750, Ordinance Code.

25 **Q. Are you stating that the City of Jacksonville Comprehensive Plan envisions and**

1 **recognizes that investor-owned water utilities may also be created within the City**
2 **limits?**

3 A. Yes, this section recognizes that investor-owned public utilities may in the future exist within
4 the limits of the City of Jacksonville. Policy 1.2.1 states that JEA will continue its efforts
5 toward the acquisition of nonregional investor or community owned public utility companies
6 where analysis of the acquisition indicates that the costs of acquiring, integrating and
7 upgrading the facilities to City standards will be offset by the existing and projected rate base
8 of the utility.

9 **Q. Mr. Kelly, what, in your opinion, is the effect of these sections relevant to the**
10 **development of private water utilities in the City of Jacksonville?**

11 A. The effect of all of these is that they also recognize that privately owned regional and non-
12 regional water and wastewater facilities are allowed. It further states in the definitions that
13 an *Investor Owned Public Utility Company* is a water or sewer utility company which, except
14 as provided in Section 367.022, F.S., is providing or is proposed to provide, water or sewer
15 service to the public. These provisions recognize that an Investor Owned Public Utility
16 Company may be certificated by the FPSC and developed in the future to provide service
17 within Duval County and the City of Jacksonville.

18 **Q. Mr. Kelly, is the application of First Coast, in your opinion, consistent with the City of**
19 **Jacksonville 2030 Comprehensive Plan and Jacksonville’s Environmental Protection**
20 **Board Rule 3?**

21 A. The application of First Coast to the FPSC is consistent with the City of Jacksonville 2030
22 Comprehensive Plan and Jacksonville’s Environmental Protection Board Rule 3, dealing with
23 water pollution, in my opinion.

24 **Q. Can you describe for the Commission the relative proximity of the existing JEA water**
25 **and wastewater facilities to the lands proposed for certification by First Coast?**

1 A. A good way to describe the fact that JEA's facilities are nowhere near the proposed First
2 Coast service area is graphically. Attached hereto are two Exhibits which I am sponsoring,
3 SDK-1 which shows that the proposed First Coast service area is on the western extremity of
4 Duval County, and far away from the core communities where the JEA is already serving.
5 Exhibit SDK-2 shows the enormity of the distance between the proposed First Coast service
6 area and the Cecil Field area, which areas are over 7 miles apart. The net effect of these
7 Exhibits is to demonstrate why the Comprehensive Plan and Rule 3, which I have already
8 discussed, envision the authorization of an investor-owned public utilities, in this case,
9 regulated by the FPSC, in the area where First Coast proposes to build its systems.

10 **Q. Earlier, you discussed the proposed sale of all of the JEA's systems. What, if anything,**
11 **do your Exhibits depict as regards the application now before the Commission?**

12 A. My study of this matter on behalf of First Coast has made it abundantly clear to me that
13 Nassau County, and St. Johns County for that matter, have signaled their desire to acquire the
14 JEA water and wastewater assets within those counties. Those counties and the JEA are at
15 odds about when that will happen, and with Nassau County providing notice to JEA to acquire
16 the JEA water and wastewater assets in this county before the expiration of the Interlocal
17 Agreement that I have already described. In my view, it is not in the best interest of neither
18 301 Capital Partners nor their proposed utility, First Coast, be caught in the middle of a
19 dispute between the JEA and Nassau County when Nassau County assumes ownership of the
20 JEA water and wastewater systems in that County.

21 **Q. Do you have any concluding thoughts for the Commission?**

22 A. The JEA has many, many competing capital demands on it, and it must address those
23 demands in the order of priority. In light of the extensive capital needs of the JEA, it is not
24 in my view, prudent for the JEA to direct its capital toward providing service in the area
25 proposed by First Coast.

1 **Q. Does that conclude your rebuttal testimony?**

2 A. Yes, it does.

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1 MR. WHARTON: Tender for cross.

2 COMMISSIONER GRAHAM: Cross exam?

3 EXAMINATION

4 BY MR. LUNNY:

5 Q Mr. Kelly, good morning. You -- your degree
6 is in civil engineering, correct?

7 A That's correct.

8 Q And you are not an accountant, correct?

9 A No.

10 Q Nor a finance major?

11 A No.

12 Q And is it safe to say, then, that Mr. Orfano,
13 as the Vice-President of Financial Services for JEA, is
14 in a better position than you to discuss JEA's position
15 today?

16 A Not necessarily. I have extensive experience
17 as a utility director. I manage budgets. I understand
18 capital programs, so not necessarily in this regard.

19 Q You don't think that Mr. Orfano is more keenly
20 aware of JEA's financial situations and obligations than
21 you are?

22 A I think that there is a lot of uncertainties,
23 and there is a lot that was left out when Mr. Orfano
24 testified in regard to costs and the impact of those
25 costs on JEA's financial position.

1 **Q** **So why weren't you feverishly passing notes to**
2 **counsel over here to ask the Vice-President of Financial**
3 **Services all sorts of follow-up questions as he was**
4 **under oath and available for questioning?**

5 A That's not my responsibility.

6 MR. WHARTON: Object. I am not sure the
7 witness understands the question.

8 COMMISSIONER GRAHAM: What's the objection?

9 MR. WHARTON: I don't understand the question.
10 I don't think that's something Mr. Kelly would
11 know. Can I hear the question again?

12 COMMISSIONER GRAHAM: I will allow the
13 question.

14 MR. LUNNY: I was saying --

15 COMMISSIONER GRAHAM: Restate the question.

16 MR. LUNNY: Sure.

17 BY MR. LUNNY:

18 **Q** **Why weren't you trying to pass notes or**
19 **anything to counsel to question Mr. Orfano about the**
20 **financial ability of JEA, as he was the Vice-President**
21 **of Financial Services, sworn in under oath, and ready,**
22 **willing and able to answer any questions you had?**

23 MR. WHARTON: Object to the relevance.

24 COMMISSIONER GRAHAM: I will allow the
25 question.

1 THE WITNESS: Yeah, that wasn't my
2 responsibility. And what I -- what I am testifying
3 to is the incomplete picture that I am sure, you
4 know, I trust that he is being truthful, that he
5 has an incomplete picture of what the financial
6 requirements are for the capital, as well as
7 operation and maintenance.

8 And there is uncertainty with the utility, and
9 they have expressed it -- October 26th board
10 meeting, they expressed all those uncertainties.
11 So I don't know if he was not at the meeting, but,
12 I don't -- I don't know.

13 I am just -- I am testifying of what those
14 uncertainties are, and the fact that there is a
15 lack of information that I am -- that I think JEA
16 has been, the financial people maybe have been
17 provided. I don't -- I am not involved in their
18 operations, so I can't -- I don't understand why
19 they are not taking this information into account
20 when they are making their financial decisions. I
21 don't know.

22 MR. LUNNY: I will move on, Mr. Chairman.

23 BY MR. LUNNY:

24 **Q Mr. Kelly, the last time you were employed at**
25 **JEA was 2013, is that correct?**

1 A That's correct.

2 Q And in your direct testimony, you indicate
3 that you retired from JEA, correct?

4 A Officially, yes, in February --

5 Q I am sorry, your rebuttal?

6 A -- March, excuse me.

7 Q Right. So in your testimony, you indicated
8 that you retired, right?

9 A That's correct.

10 Q And is it safe to say that your retirement was
11 involuntary?

12 A Well, as I testified in my rebuttal testimony
13 -- or, yeah, I -- in my rebuttal testimony, that I
14 retired. That's official retirement. But I am not
15 afraid to say that a new CEO came in and chose his new
16 team. It was not any secret. I moved on to another
17 actually position, Assistant City Administrator of West
18 Palm Beach, and JEA went down a path, as we heard
19 testimony earlier, that JEA went into disarray. So, you
20 know, I feel good that I moved on.

21 Q Okay. Is it fair to say that you retained
22 counsel and sent demands to JEA for additional
23 compensation --

24 A No, I didn't.

25 Q -- in the wake of your involuntary retirement?

1 A No, I --

2 MR. WHARTON: Object to the relevance. Object
3 to the relevance.

4 COMMISSIONER GRAHAM: I will allow the
5 question.

6 MR. LUNNY: It goes to bias.

7 COMMISSIONER GRAHAM: I will allow the
8 question.

9 THE WITNESS: No, I ended up -- it was a
10 contractual issue. JEA owed money in regard to a
11 severance package that all the vice-presidents had,
12 and it was required -- you know, I was requesting
13 that they honor the contract.

14 BY MR. LUNNY:

15 **Q I think you answered no, so I am going to try**
16 **one more time at this.**

17 **It is true that you retained a counsel, a**
18 **lawyer, to pursue a claim against JEA after you**
19 **departed? Yes or no?**

20 A Yes.

21 **Q Okay. Do you know whether JEA's budget for**
22 **this coming year that you were just talking to allocates**
23 **\$35 million in the budget to build a utility at this**
24 **facility? Yes or no?**

25 A I have not -- no. I have not seen a budget of

1 \$35 million to build this facility.

2 Q Is it fair to say with respect to your
3 testimony on wastewater, that one possibility for JEA is
4 to handle the wastewater by replenishing the aquifer
5 through indirect potable use?

6 A Yes.

7 Q And is it fair to say that that use would
8 result in a 90-percent reclaim efficiency?

9 A I have not evaluated efficiency. That was not
10 what I was -- that's not what I was looking at. What I
11 was looking at is the alternatives and the cost of
12 alternatives to meet the \$1.85 billion mandate. So
13 that's what I was doing.

14 And the information is -- and what part of my
15 testimony was that it's -- there is not sufficient
16 information in regard to the performance of the
17 alternatives, and that -- nor the cost of the
18 alternatives, that it's very preliminary. And they have
19 -- and JEA has not considered that in their budget at
20 this particular point in time. They have not considered
21 it. They have not added the \$1.85 million -- billion
22 dollars when they have worked out their budget, when
23 they worked out their rates. It's -- you know, it
24 was -- this is the testimony that -- or not testimony,
25 but this is what was discussed at the October 26th,

1 2021, board meeting, that there was uncertainty
2 associated with all the -- with the whole program in
3 order to be able to respond to this mandate by --
4 through Senate Bill 64, which is now a -- now law.

5 **Q All right. I am going to try one more time.**

6 **Is it fair to say that if JEA used an indirect**
7 **potable use and wastewater in replenishing the aquifer,**
8 **that it would have a 90-percent reclaim efficiency? Yes**
9 **or no?**

10 MR. WHARTON: Objection. I let it go once.

11 It assumes facts not in evidence. A lawyer saying
12 something is not --

13 COMMISSIONER GRAHAM: I think because he is an
14 expert he can ask -- he can answer if he can answer
15 the question. If he can't, he can just simply say,
16 no, I don't know.

17 THE WITNESS: No, I don't -- I don't know
18 specifically in this case.

19 BY MR. LUNNY:

20 **Q Okay. And when you are talking about the**
21 **differences between the --**

22 MR. WHARTON: Wait a minute. Objection. Now,
23 the Commission's practice is yes or no and then a
24 chance to explain. After he said no, he was still
25 talking, he cut him off.

1 MR. LUNNY: I am sorry.

2 COMMISSIONER GRAHAM: I don't think he did. I
3 think he just said no, I don't know. Sir?

4 THE WITNESS: No. I was going to say that
5 this is not something that I would be privy to in
6 regard to what JEA's proposal is in regard to
7 recovery, or any of the other options that they've
8 indicated that would take the place of discharge to
9 the St. Johns River. There is four alternatives
10 that they've looked at, but they have not ended up
11 fully evaluating. And, in fact, again, I state --

12 COMMISSIONER GRAHAM: Sir -- sir, we can
13 handle the rest of that on redirect.

14 THE WITNESS: Okay.

15 BY MR. LUNNY:

16 Q All right. Wasn't part of your rebuttal
17 testimony how JEA would have to run a wastewater
18 pipeline back to the development, isn't that part your
19 opinion in this case, or no?

20 A Well, the proposal that was on the table when
21 I did my testimony, rebuttal testimony, was that they
22 would -- JEA would extend water -- or the developer
23 would be required to extend water and wastewater lines
24 more than five miles to their system to the project, and
25 they would be -- and my testimony also was that they

1 would have to extend reclaimed water 20 miles to the
2 project.

3 Q All right. And I guess, just for the sake of
4 us being clear --

5 COMMISSIONER GRAHAM: Hold on a second. Whose
6 phone, or whatever that chiming is, I need for it
7 to stop. It's gone on for a while.

8 MR. WHARTON: What is it?

9 COMMISSIONER GRAHAM: No, I meant -- I don't
10 know whose it is, but I damn sure don't want to
11 hear it again.

12 Okay, please continue.

13 BY MR. LUNNY:

14 Q All right. And I just want to say that just
15 for the sake of clarity, and I know that you are
16 refreshing and, you know, adjusting your rebuttal for
17 the sake of time and what's happened. Is that still
18 part of your opinion, that we would have to run -- JEA
19 would have to run a pipeline all the way back through
20 this property, is that still what you are saying in this
21 case, or not?

22 A Well, what I looked at in response to the
23 proposal that was on the table at that particular point
24 in time was extending the lines. I did not evaluate
25 installing a wastewater facility on -- JEA installing

1 wastewater facilities wherever and within the southwest
2 territory, I didn't evaluate those. I evaluated what
3 the option was at that time.

4 Q I think we've gotten there.

5 Okay. When you are evaluating the options as
6 I guess they presently exist, do you understand this
7 property to have seasonality in usage?

8 A Well, seasonality in regard to the generation
9 of reclaimed water because of irrigation, and also if
10 reclaimed water is provided, then there is seasonality
11 to that. If it's not provided, there is seasonality to
12 potable water because of the irrigation demands.

13 Q All right. Let me ask this: As part of your
14 modified testimony that you are extending into this
15 hearing today, are you still rendering opinions about
16 Rule 3 of the Jacksonville Environmental Board?

17 A Yes.

18 Q Okay. And is it fair to say that Rule 3 has
19 not been amended in any way since 2011?

20 A That's correct.

21 Q And is it fair to say that, as of your
22 deposition on January 19th, you did not know whether
23 there were any revisions planned to that rule or not?

24 A That's correct.

25 Q Is it still your intention to render opinions

1 in rebuttal with respect to the comp plan for
2 Jacksonville?

3 A Yes.

4 Q What is a non-regional wastewater facility, as
5 that term is used in the comp plan?

6 A It's not defined.

7 Q What is it?

8 A The term non-regional in the comp plan is not
9 a defined term.

10 Q So do you have any interpretation of what it
11 means?

12 A Well, I mean, you could take a look at it and
13 perhaps speculate that it means that it's the opposite
14 of a regional plant, but it's not defined, so I -- I,
15 you know, there is concerns in the fact that the exists
16 that there is no definition.

17 Q Okay.

18 A You know, that's a concern that we have
19 because -- let me just explain why, because there is
20 definitions elsewhere about large wastewater plants in
21 Rule 3, and there is, you know, multiple definitions, so
22 there is a lack of clarity in regard to how -- and it
23 also defines the Public Service Commission as being a
24 regulating body, but then doesn't specifically state
25 what their, you know, what their part of this is as

1 well.

2 So to me, it's just confusing and -- however,
3 when I looked at it as a professional, I determined that
4 there was no prohibition on an investor-owned utility
5 existing within this territory of JEA.

6 **Q Is it your understanding -- and I would be**
7 **happy to give you the comp plan if you want to see it --**
8 **is it your understanding that the applicant in this case**
9 **is proposing to construct a non-regional wastewater**
10 **facility as that term is used in the comp plan?**

11 A Well, it states that it's a non-regional
12 utility, but it doesn't define what a non-regional
13 utility is, so you would have to make assumptions of
14 what that means.

15 **Q Okay. Well, making whatever assumptions you**
16 **wish to make, is it your opinion that the applicant in**
17 **this case is seeking to construct a non-regional**
18 **wastewater facility as that term is used in the comp**
19 **plan?**

20 A Yes.

21 MR. LUNNY: That's all I have, Mr. Chairman.

22 COMMISSIONER GRAHAM: Staff?

23 MS. LHERISSON: No questions.

24 COMMISSIONER GRAHAM: Commissioners?

25 Redirect?

1 of how it would provide reclaimed water within the
2 proposed certificated territory?

3 A No. In fact, let me clarify that.

4 Per the master plan that JEA has, it indicates
5 that, within the southwest district, that there isn't
6 reclaimed water availability. So I ended up doing the
7 best I could because JEA didn't provide any methodology
8 to achieve reclaimed water. So I naturally had to go
9 and do my own investigation, and found that the closest
10 point of connection was more than 20 miles away to
11 provide reclaimed water for this developer who has made,
12 you know, a commitment to use reclaimed water. So it
13 was very important to the developer to have that
14 reclaimed water in accordance with the comp plan, and in
15 accordance with the St. Johns River Water Management
16 District objectives.

17 So I did my own analysis and evaluated that it
18 was more than 20 miles, and that the cost would be more
19 than \$50 million to connect. That's the closest point
20 of connection for reclaimed water.

21 MR. WHARTON: Those are all the questions we
22 have.

23 We would move Exhibit 29 and 30 into the
24 record.

25 COMMISSIONER GRAHAM: Seeing no objection, we

1 will enter Exhibits 29 and 30 into the record.

2 (Whereupon, Exhibit Nos. 29-30 were received
3 into evidence.)

4 COMMISSIONER GRAHAM: Would you like this
5 witness excused?

6 MR. WHARTON: I would like to have the witness
7 excused. Sorry.

8 (Witness excused.)

9 COMMISSIONER GRAHAM: All right. We don't
10 have anymore witnesses, correct, staff?

11 MS. LHERISSON: That is correct.

12 COMMISSIONER GRAHAM: Okay. Are there any
13 additional matters?

14 MS. LHERISSON: Not at this time.

15 COMMISSIONER GRAHAM: All right. Do any of
16 the parties have -- do any of the parties wish to
17 file post-hearing briefs?

18 MR. WHARTON: We do. Yes.

19 COMMISSIONER GRAHAM: So you guys don't want a
20 bench decision, I take it.

21 Okay. Staff, tell us about when the briefs
22 need to be filed and the details.

23 MS. LHERISSON: Staff will note that briefs
24 are due 30 days from today, on March 4th, 2022, and
25 shall not exceed 40 pages.

1 MR. WHARTON: So not -- not -- the time
2 doesn't begin at the filing of the transcripts but,
3 rather, from today?

4 MS. LHERISSON: That is correct. That is what
5 was discussed at the prehearing conference, 30 days
6 from the end of the hearing.

7 MR. WHARTON: May I ask that the it be 30 days
8 from the filing of the transcripts?

9 MR. FRIEDMAN: I thought that's what counsel
10 had asked for.

11 MR. CRABB: That would be our preference as
12 well, since a lot of our brief will be based on the
13 transcript.

14 MR. FRIEDMAN: I thought that's what we agreed
15 to when counsel -- because we had 30 days, and Mr.
16 Crabb was the one that suggested maybe we would go
17 30 days from the transcript, and we did not object
18 to that. So when I see that in the prehearing
19 order, to me, that means 30 days from the
20 transcript, not 30 days from today.

21 (Discussion off the record.)

22 COMMISSIONER GRAHAM: Staff, what does that do
23 to your schedule?

24 MS. LHERISSON: We wouldn't have an objection
25 to waiting until the transcripts come in.

1 COMMISSIONER GRAHAM: Okay. So then let the
2 record show it will be 30 days after transcripts
3 are available, which is roughly 40 days from today.

4 MS. LHERISSON: Okay, that works for staff.

5 COMMISSIONER GRAHAM: Thank you.

6 Okay. And, staff, so if you would send out an
7 email when transcripts are available so we will
8 know to start the clock at that point.

9 MS. LHERISSON: We will do that.

10 COMMISSIONER GRAHAM: Okay. Any of additional
11 matters, staff?

12 MS. LHERISSON: There are no additional
13 matters.

14 COMMISSIONER GRAHAM: All right. I would like
15 to thank everybody for their time and patience. I
16 know sometimes these things can be contentious, but
17 I thought we all behaved ourselves very well, and I
18 appreciate that. And that all being said, we are
19 adjourned. Everybody please travel safe.

20 MR. WHARTON: Thank you, Commissioners.

21 (Proceedings concluded at 9:58 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

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

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

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

DATED this 16th day of February, 2022.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024