

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,
Florida by FIRST COAST REGIONAL
UTILITIES, INC.

DOCKET NO. 20190168-WS

**FIRST COAST REGIONAL UTILITIES INC'S RESPONSE TO JEA'S MOTION FOR
SUMMARY FINAL ORDER AND FIRST COAST'S MOTION FOR PARTIAL
SUMMARY FINAL ORDER**

First Coast Regional Utilities Inc. (First Coast) hereby files this Response to JEA's Motion for Summary Final Order and First Coast's Motion for Partial Summary Final Order and in support states:

PROCEDURAL POSTURE

1. On September 1, First Coast filed its Motion to Strike select portions of JEA's Petition. A Motion to Strike allows the striking of any issue which is immaterial in any pleading.
2. JEA's response to the Motion to Strike was primarily two-pronged. JEA filed a motion for summary final order (referred to as JEA's Motion for SFO) which requests a contrasting summary adjudication on the same issue raised by the Motion to Strike and by filing a response to the Motion to Strike (that of the exclusivity of the PSC's jurisdiction) which obliquely took the position that the Motion to Strike is not the appropriate procedural vehicle for its requested relief. By this filing, First Coast responds to JEA's Motion for SFO and files (in the alternative to the Motion to Strike) this Motion for Partial Summary Final Order (referred to as First Coast's Motion for PSFO).

RESPONSE TO JEA’S MOTION FOR SUMMARY FINAL ORDER

The nature of JEA’s Motion for SFO and the prerequisites to the granting of such a motion

3. That motions for summary final order and partial summary final order can be appropriate in administrative proceedings (mid-case) is neither in doubt nor in dispute. As recently as 2019, in *In re: Investigation into the billing practices of K W Resort Utilities Corp. in Monroe County*, Docket No. 20170086-SU, Order No. PSC-2019-0113-PCO-SU (2019), the PSC entertained a motion to strike, a motion for summary final order, and a motion for partial summary final order. Each was discussed and decided on the merits, and none was dismissed on procedural grounds. Each can be an appropriate vehicle for resolving issues to which no outstanding facts attach.

4. The *KW Resort* case is also highly instructive in its detailed examination of the burden of a fact-laden, full case, summary disposition, which is exactly what JEA requests in this case. In *KW*, the PSC noted:

1. Standard for Motion for Summary Final Order

Section 120.57(1)(h), F.S., requires that, in order to grant a motion for summary final order, it must be determined from “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order.” This Commission has previously stated that “the standard for granting a summary final order is very high.”

In general, “a summary judgment should not be granted unless the facts are so crystalized that nothing remains but questions of law,” and “must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom a summary judgment is sought.” *Moore v. Morris*, 475 So. 2d 666, 668 (Fla. 1985); *see also City of Clermont, Fla. v. Lake City Util. Servs., Inc.*, 760 So. 2d 1123, 1124 (Fla. 5th DCA 2000), and *Wills v. Sears, Roebuck & Co.*, 351 So. 2d 29 (Fla. 1977). If the record “raises even the slightest doubt” that an issue of material fact may exist, a summary final order is not appropriate. Even if the parties agree as to the facts, “the remedy of summary judgment is not available if different inferences can be reasonably drawn from the uncontroverted facts.” (*sic*)

5. As further addressed below, JEA has not established the requisite lack of factual disputes, which is its absolute lowest hurdle and threshold burden for the adjudication of its summary motion; *i.e.* that the facts are so crystallized, even to the point that different inferences may not be reasonably drawn from them, that nothing remains but an issue of law.

6. While it is addressed more thoroughly *infra*, the sharp contrast between JEA's Motion for SFO and First Coast's Motion for PSFO must be clearly drawn. The JEA motion is heavily dependent on facts, referencing dozens of pages of attachments and referring to dozens of other factual allegations within the body of the motion. The First Coast motion is not dependent upon the resolution of any question of fact - it only requests a clear and unequivocal statement in this case that the exclusivity of the PSC's jurisdiction is truly exclusive.¹ The JEA motion limits the PSC's jurisdiction, both in this instance and in any analogous instance in the future. The First Coast motion only further clarifies the PSC's jurisdiction to the full extent of the exclusivity of jurisdiction granted to the PSC by the legislature. JEA's motion requires assumptions about facts and circumstances and the requirements and contents of documents. The motion of First Coast does not. Perhaps most notably, the JEA motion requests that the PSC summarily dismiss the entirety of this case now, with no opportunity for the PSC to actually review the merits of the application. That is because JEA's theory is that the PSC has no jurisdiction to proceed any further in this case. The First Coast motion would not end the case now, even if granted, and would not deprive JEA of its day in court regarding its remaining concerns about the merits of the application, if any. The First Coast motion is dependent upon neither disputed facts nor upon a strained and/or novel interpretation of case law and statute. The First Coast motion simply requests the PSC to

¹ A review of the pleadings filed in reference to the pending motions demonstrates clearly that the parties have practically a 180° difference in the way each reads the controlling statute.

make clear the extent of its own jurisdiction, so the issue can be resolved, to the benefit of the public and the PSC, allowing the case to proceed in the proper posture, unhindered by disagreement and disparate interpretation of such a fundamental issue.

7. The fact of the matter is, distilled to its essence, JEA's Motion for SFO is not nearly as fact-dependent as the many, many facts JEA has chosen to rely on and/or reference might imply. JEA's Motion for SFO seeks a PSC order finding that there are instances when the PSC's exclusive jurisdiction doesn't apply, or takes a backseat to local ordinance. This is really little more than the flipside of the order which First Coast requests: that the PSC's exclusive jurisdiction is exclusive all the time regardless of what actions local government may take to attempt to circumvent or limit that exclusivity.

The merits of JEA's Motion for SFO

8. No discussion of JEA's Motion for SFO can begin without a review of the depth and breadth of the PSC's jurisdiction as bestowed upon it by its enabling statute. Chapter 367 states in relevant part:

367.011 Jurisdiction; legislative intent.—

- (1) This chapter may be cited as the "Water and Wastewater System Regulatory Law."
- (2) The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates.
- (3) The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.
- (4) This chapter shall supersede all other laws on the same subject, and subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference. This chapter shall not impair or take away vested rights other than procedural rights or benefits.

9. In the absence of case law clearing declaring that these words mean what they plainly say or that they do not mean what they plainly say (of which there is, not surprisingly, none), interpreting the wording of the statute itself and applying it to this set of facts is

paramount and ultimately dispositive. In drafting the statute, the legislature did not have to use the word “exclusive”, but it did; it did not have to further explain that the broad extent of the PSC’s broad jurisdiction was found to be in the public interest and that this exclusivity, along with the rest of 367.011, should be “liberally construed”, but it did; and finally, it did not have to anticipate that other laws on the same subject, read to be “inconsistent” with this law, do not and cannot trump the exclusivity of the PSC’s jurisdiction over each utility with respect to its authority, service, and rates unless that subsequent legislation does so by express reference. There can be no logical interpretation of this language that is consistent with JEA’s position that the statute should be read to allow local governments to pass local laws which tie the PSC’s hands and effectively prevent it from fulfilling its statutory mandate to exclusively regulate jurisdictional utilities.

10. This statement, on page 19, appears to be the most succinct characterization of the basis for the JEA Motion for SFO:

As discussed above, JEA has an exclusive franchise granted by the City of Jacksonville by a City ordinance and by a franchise agreement with the City. JEA has an exclusive franchise with Nassau County for the area in Nassau County in the development, granted by Nassau County when it was a non-jurisdictional county. Under the holdings of *JJ’s Mobile Homes* and *Lake Utility Services*, the Commission has no authority to take territory from JEA’s existing franchises in the City of Jacksonville and Nassau County and give it to First Coast. JEA has the ability to serve the development in accordance with the City of Jacksonville’s PUD Ordinance, which clearly and unequivocally requires the developer to provide at its own expense the water and wastewater capacity for the development at levels and to standards acceptable to JEA and then to dedicate the same to JEA.

These concepts will be broken into two parts and addressed in turn:

- a) JEA has an exclusive franchise granted by the City of Jacksonville by a City ordinance and by a franchise agreement with the City. JEA has an exclusive franchise with Nassau County for the area in Nassau County in the development, granted by Nassau County when it was a non-jurisdictional county. Under the holdings of *JJ’s Mobile Homes* and *Lake Utility Services*, the Commission has no authority to take territory from JEA’s existing franchises in the City of Jacksonville and Nassau County and give it to First Coast.

11. The most inescapable conclusion about JEA's fact intensive argument is that it is JEA's position that it is JEA, not the PSC, which has exclusivity over the authority, service, and rates of First Coast. Indeed, JEA's real argument is that the PSC does not have authority to decide whether First Coast can even exist, even if it meets all of the conditions for certification in the PSC's rules. Apparently recognizing the inherent difficulty in arguing that the PSC's exclusive jurisdiction is actually 'exclusivity light' - indeed, JEA's Motion for SFO mentions the word exclusive over 50 times but never once in the context of the statute providing that the PSC "shall have exclusive jurisdiction ..." - JEA pivots to a new and novel interpretation of two cases: *JJ's Mobile Homes* and *Lake Utility Services* (full citation in JEA's Motion for SFO) to bolster its position.

12. Initially, it is not surprising that neither of these cases is ever cited as having been discussed in this context in any previous PSC order. That is quite simply because these two decisions, both from the Fifth District Court of Appeal, do not address in any manner how the PSC should interpret, implement, or enforce its own rules or statutes in an original certificate case. The PSC was not even a party to either case. Undeniably, if such summary relief as JEA requests was granted, it would not be upon the application of any law or precedent that could be reasonably gleaned from *JJ's* or *Lake Utility Services*. To the contrary, that appellate court twice found itself in a situation that could only benefit the public: in each case two utilities, one private and one public, asserted they were both ready, willing, and able to serve, and the court devised a method *under that unique set of circumstances and facts* in each case to settle the matter. In this case, JEA asks the PSC to use *JJ's* and *Lake Utility Services* to cut First Coast off at the knees, to make sure it will never be certificated (as both of the private utilities in those two appellate cases were). JEA now attempts to head the possibility of such a *JJ's*-type comparison at the pass, so

that First Coast will not even exist to assert in any such a future case that it should be recognized as the appropriate utility to serve. Neither *JJ's* nor *Lake Utility Services* has ever been recognized by the PSC (or any court or any other administrative body) to mean what JEA says the decisions mean or to create the precedent which JEA now attempts to bind to the PSC in perpetuity. JEA, who is not ready or able to provide timely service to First Coast's proposed service area as set forth in the affidavit attached hereto, attempts to use these two cases (cases which recognized that there was no lawful preference for private utilities over government or vice versa) to deliver a fatal blow to First Coast before it is even certificated. JEA's reading of *JJ's* and *Lake Utility Services* in actuality turns those cases on their head, to effectively proffer that these decisions not only favor municipal utilities over private², but also to declare that the PSC is somehow compelled to deny the application of First Coast, so JEA will never have to be bothered by proving that it meets the standards of *JJ's* and *Lake Utility Services*, since it will have extinguished at the PSC the only viable alternative, First Coast. Neither *JJ's* nor *Lake Utility Services* can be fairly read to restrict the PSC's exclusive jurisdiction nor to support denial of First Coast's application if all other criteria for certification are met.

- b) JEA has the ability to serve the development in accordance with the City of Jacksonville's PUD Ordinance, which clearly and unequivocally requires the developer to provide at its own expense the water and wastewater capacity for the development at levels and to standards acceptable to JEA and then to dedicate the same to JEA.

13. JEA's Motion for SFO clearly and repeatedly states, in one nomenclature or another, that "(t)he Commission's subject matter jurisdiction over the Application, however, confers no authority on the Commission to take JEA's franchise rights in the City of Jacksonville

² If JEA gets what it wants here, how many municipal utilities or consolidated local governments, such as Duval County, will similarly pass language limiting the PSC's jurisdiction inside and outside of their boundaries?

and Nassau County”. The fundamental basis for JEA’s position in that regard is certain local ordinances enacted by the City of Jacksonville. Notably, JEA’s Motion for SFO references those ordinances over 40 times without a single citation to the fact that Chapter 367 states, with clarity and without ambiguity, that “*(t)his chapter shall supersede all other laws on the same subject, and subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference*”. The use by the legislature of words like ‘exclusive jurisdiction’ and ‘all other laws on the same subject’ were likely chosen with by the legislature with care, so that the PSC would not have to be faced with arguments attempting to erode its comprehensive jurisdiction based on the facts of each particular case, eventually resulting in a hodgepodge of orders in which the PSC’s jurisdiction is not at all exclusive and in which some laws on the same subject do in fact supersede Chapter 367.

14. JEA’s characterization of its attempt to veto the application of First Coast (summarily no less, either by a PSC order which recognizes JEA’s superior jurisdiction or by a PSC order which somehow recognizes the supremacy of inconsistent local ordinances over Chapter 367), as the “taking away” of “rights” from JEA (assumedly in the form of the oft-mentioned “franchises) is a red herring. Besides making it abundantly clear that once broken down, JEA’s bottom-line theory is that its jurisdiction is superior to that of the PSC, this line of argument completely ignores that the PSC has no jurisdiction over the City of Jacksonville nor JEA nor its franchises (so as to ‘take anything away’ from JEA) and no such authority to “take away” JEA’s “rights”. Likewise, neither the City of Jacksonville nor JEA can alter, modify, restrict, limit, or otherwise adversely impede the exclusivity of the PSC’s jurisdiction. No proclamation in any self-serving franchise agreement, between related parties as here or otherwise, nor any recitation of what local government did what and when, can create exclusive

jurisdiction where none otherwise existed nor restrict the decades-old exclusivity and superiority of the PSC's jurisdiction over every jurisdictional utility's service, territory, and rates. JEA is asking for nothing less than that the PSC issue an order bestowing upon JEA jurisdiction and authority it does not have, whilst simultaneously limiting the power the legislature clearly intended the PSC to exclusively exercise.

15. JEA's arguments all require the PSC to issue an order that is counter to its own statute; to interpret case law in a way it has never previously been interpreted, to apply legal authority to the PSC certification process even though the cases urged to be applied addressed a wholly unconnected set of issues, and to find that local governments can easily circumvent the PSC's jurisdiction by using the "magic" word or phrase in their ordinances. This request by JEA is made without citation to a single rule, order, or statute that bestows upon the City of Jacksonville or JEA either the superior or more exclusive jurisdiction than that which the PSC has over utility service territories and conditions of service, whether within or without local political boundaries.

16. Certification of First Coast will only be the exercise of the PSC's exclusive and superior jurisdiction. The legal effect of certification on the various claims of JEA may or may not be subject to test in other forums on other days. Be that as it may, none of the arguments raised by JEA should either force the PSC's hand to act summarily (to dismiss this application) nor to limit its own jurisdiction. If JEA has a case in opposition to the certification of First Coast which recognizes the PSC's exclusive jurisdiction, let it make that case at the time a hearing³ Either way, it is now clearly established, by this motion practice, that one party to this case believes the PSC has jurisdiction over this application, while the Petitioner's position is that the

³ In fact, this is exactly what the First Coast Motion for SPFO requests.

PSC's jurisdiction is limited or nonexistent. The PSC must take this opportunity – given the mirrored request of each party to the proceeding – to issue an order in no uncertain terms as to the extent of its exclusive jurisdiction under this set of facts. It is Chapter 367 itself which will control the PSC's decision on these competing motions.

17. There are disputed issues of material fact which stand in opposition to JEA's Motion for SFO. As argued elsewhere, this is really a legal issue. The jurisdiction of the PSC and the exclusivity of the same is what will carry the day, despite the lengthy discussions JEA has put forth about ordinances, franchise agreements, layout of the development, timing of this thing or that thing, etc. It was necessary for JEA to allege all of these facts, and all the inferences from all of these facts, because JEA's Motion swings for the fence, requesting summary disposition of the entire case. In clear contrast, First Coast is moving only for resolution of this overarching controversy (although in the end First Coast would suggest both motions really seek a ruling on the same subject): the extent of the exclusivity of the PSC's jurisdiction. However, since JEA offered an affidavit with the proposition that it was prepared to serve some of the territory that First Coast proposes to be certificate, First Coast has offered an affidavit to the contrary – JEA is not in a position to provide service to the territory and is unable to do so for an extended timeframe which does not work for First Coast or the development. Those facts are in dispute. See attached affidavit of Robert Kennelly. This motion is not the time or place to decide whether one witness is more credible or persuasive than another. The issue is whether, in the context of JEA's request for summary disposition of the case, disputed facts exist, as defined by case law. To the extent JEA's motion is dependent upon the resolution of disputed facts – which it is - the motion must be denied on that basis alone.

18. In an apparent attempt to bolster its argument that the PSC's enabling statutes – again, never cited in the motion – “confers no authority on the Commission to take JEA's franchise rights in the City of Jacksonville and Nassau County”, JEA undergoes a detailed analysis of 367.171 and a 1990 *GDU* case (full citations in JEA's Motion for SFO) and a 1999 case involving *Nocatee Utility Corporation*. Neither of these cases support the situational limitation JEA requests the PSC place upon its own exclusive authority nor similarly support JEA's inference that the PSC's jurisdiction over utilities traversing county boundaries is somehow limited. In *GDU*, a 40 year old PSC Order that has never (to the undersigned's knowledge) been read to stand for any proposition that limits the PSC's exclusive jurisdiction in any way, shape, or form, the PSC affirmed the intent of the statute on systems that transverse county boundaries (which JEA now seeks the PSC to interpret and implement as restrictive rather than expansive) and found that “by concentrating exclusive jurisdiction over the system and the commission, the legislature has corrected the problem of redundant, wasteful, potentially inconsistent regulation”. How this helps or supports the position of JEA, that the PSC should simply throw up its jurisdictional hands, close the books on the application of First Coast, and walk away from the situation to the benefit of JEA, is unclear.

19. Likewise, in the *Nocatee* case, the PSC determined it did have jurisdiction over the utility systems which traverse county boundaries, rejecting the arguments of St. Johns County and multiple other county Intervenors. Like *GDU*, these cases only strengthen the argument that JEA's request for comprehensive summary relief should be denied.

20. The PSC and the statutory provisions here at issue have existed for decades. Thousands of PSC orders have been issued during that time and many appealed to appellate courts or the Florida Supreme Court. With all respect to JEA, the novel approach which the PSC

is asked to adopt based upon so-called “subject matter jurisdiction” and what JEA sees as the PSC’s (substantive?) jurisdiction in this case is nothing more than another repackaged attempt to gut the PSC’s exclusive jurisdiction to the benefit of JEA. On page 17, JEA’s Motion for SFO candidly admits that while the PSC has some “subject matter jurisdiction” such that it may “consider” First Coast’s application, *the PSC has no actual authority to grant the application!* Characterizing the granting of the application by the PSC as “...award(ing) First Coast the franchises currently held by JEA” cannot and does not lessen the tortured nature of the jurisdictional theory JEA invites the PSC to accept. There can be no reasonable suggestion that the intent of the language in Chapter 367 was that in some circumstances the PSC’s exclusive jurisdiction could be exercised but only in complete subservience to that of a municipality and its related utility. Many cities and counties over the years have pushed back against the exclusivity of the PSC’s jurisdiction over the service, territory, and rates of jurisdictional utilities. In each case, the PSC stood firm. In this case, it should once again reaffirm the exclusivity of its jurisdiction to grant or deny the application of First Coast based on the criteria for certification contained in the PSC’s rules.

21. JEA’s Motion for SFO should be denied. Granting the motion would require the assumption of facts not in evidence, summary disposition of the case without facts that are “so crystalized that nothing remains but questions of law”, and ultimately the issuance of a PSC order which would weaken and restrict its own jurisdiction, now and in the future.

FIRST COAST’S MOTION FOR PSFO

22. In contrast to the motion of JEA, First Coast’s Motion for PSFO is solely predicated upon facts “so crystalized that nothing remains but questions of law”. First Coast has not requested the summary disposition of the entire case, but rather a ruling, to the benefit of the

parties and the PSC, on the single most overriding issue in the litigation, an issue of law which both parties have acknowledged needs to be addressed here and now.

23. JEA's Petition requests that the PSC deny the application of First Coast for an original certificate in Duval, Baker, and Nassau counties. *Inter alia*, the Petition provides that:

4. JEA's substantial interests will be affected by the Commission's determination of the Application, as follows:

a. JEA has **exclusive franchise agreements** with the City of Jacksonville and Nassau County to provide water and wastewater service. The Applicant seeks to provide water and wastewater services in those areas. Accordingly, issuance of a certificate of authorization to Applicant would be directly contrary to JEA's **exclusive** franchises.

6. The disputed issues of material fact known at this time include but are not limited to the following:

b. Whether the issuance of a certificate of authorization to the Applicant would violate JEA's **exclusive** franchise agreements with the City of Jacksonville and Nassau County to provide water and wastewater service;

(emphasis added)

24. Likewise, JEA's response to the Motion to Strike and JEA's Motion for Summary Final Order make it abundantly clear that the issue of the extent of the PSC's jurisdiction is ripe, is openly and directly challenged both within JEA's petition and in its recent filing, and the disposition of this issue now, as a matter of law, is in the interests of the litigants, the public, in the PSC.

25. The PSC has long recognized the general rule of statutory construction in Florida. *See, e.g., In re: Proposed adoption of Rule 25-6.030, F.A.C., Storm Protection Plan and Rule 256.031, F.A.C., Storm Protection Plan Cost Recovery Clause*, Docket No. 20190131-EU, Order No. PSC-2019-0469-PCO-EU (1919); citing *Forsythe v. Longboat Key Beach Erosion Control*

District, 604 So. 2d 452, 454 (Fla. 1992) (“It a fundamental principle of statutory construction that where the language of a statute is plain and unambiguous there is no occasion for judicial interpretation.”). It is difficult to hypothecate that the legislature could have established the breadth of the PSC’s jurisdiction in any more plain, or less ambiguous, language.

26. The use of the word “exclusive” by JEA in this context can only have one meaning. Indeed, the very word does not lend itself to parsing or ambiguity. The Cambridge Dictionary defines “exclusive” as “limited to only one person or group of people”. JEA’s selection of this nomenclature in its petition can only mean one thing: it is JEA’s position that JEA, not the PSC, is the only entity – by and through its “franchise agreements” – which will decide what utilities operate within those unilaterally established territories set forth in those agreements. In fact, if it is not the position of JEA that its franchise agreements are “exclusive”, such that any PSC ruling granting the requested territory to First Coast would be contrary as a matter of law to that ostensible exclusivity, then its response to this motion will provide an ample opportunity to so clearly state.

27. The Florida legislature could not have been more clear that there is in fact only one entity with the unchallenged and immutable authority to decide whether First Coast should receive the certificated territory it has requested, and that entity is not JEA. Although the unquestioned extent of the PSC’s jurisdiction has been repeated dozens (if not hundreds) of times in case law and administrative decisions, one need only review Chapter 367 to lay this apparent conflict to rest:

367.011 Jurisdiction; legislative intent.—

- (1) This chapter may be cited as the “Water and Wastewater System Regulatory Law.”
- (2) The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates.
- (3) The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and

welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

(4) This chapter shall supersede all other laws on the same subject, and subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference. This chapter shall not impair or take away vested rights other than procedural rights or benefits.

28. As clear as that is, Florida's Supreme Court has expanded upon the concept.

While these cases rely upon the sister statutes of Chapter 367, no case or order of the PSC has ever suggested that the PSC's jurisdiction under Chapter 367 is somehow more limited, or any less all-encompassing, than it is under the PSC's other enabling statutes. In *Storey v. Mayo*, 217 So. 2d 304 (Fla. 1968), the Court proclaimed that:

The powers of the Commission over these privately-owned utilities is omnipotent within the confines of the statute and the limits of organic law. Because of this, the power to mandate an efficient and effective utility in the public interest necessitates a correlative power to protect the utility against unnecessary, expensive competitive practices.

29. Likewise, in *FPSC v. Bryson*, 569 So.2d 1253 (Fla. 1990), the Court, referring to the Commission's authority under Chapter 366, declared that:

The PSC derives its authority solely from the legislature, which defines the PSC's jurisdiction, duties, and powers. *See, e.g., United Tel. Co. v. Public Serv. Comm'n*, 496 So.2d 116, 118 (Fla.1986). In section 366.04(1) of the Florida Statutes (1987), the legislature granted the PSC exclusive jurisdiction over matters respecting the rates and service of public utilities:

[T]he commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service.... The jurisdiction conferred upon the commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in case of conflict therewith, all lawful acts, orders, rules, and regulations of the commission shall in each instance prevail.

30. JEA proffers the word "exclusive" exactly because it is so clear, so definitive, and so authoritative. If JEA can enter into an "exclusive" franchise agreement which prohibits the creation and operation of an utility which the PSC would otherwise certificate, then the PSC's

jurisdiction is not exclusive. Under that interpretation, the PSC's jurisdiction would in fact be subservient to all local government actions with conflict. Such a conclusion would be clearly contrary to the PSC's authority, the PSC's enabling statute, and all the many decisions the PSC has made over the years enforcing that authority.

31. This conflict, created by the allegations in the Petition and other filing of JEA, is a clear question of law which should be dealt with now in order to save any more time or expense in litigating an already clear legal concept. Indeed, if JEA has the power to issue "exclusive" agreements which override the PSC's authority, and effectively grant to JEA the prerogative to veto in advance any future PSC decision to certificate any utility within the geographic reach of those agreements, better that the parties know that now rather than learn such only after a fully adjudicated administrative hearing.

32. JEA can hardly claim to be surprised by the exclusive extent of the PSC's jurisdiction. Duval County has been a PSC jurisdictional county for decades. In fact, Duval has falling under the jurisdiction of the PSC since before JEA was created. In light of this fact, it is all the more notable that these franchise agreements do not even mention either the PSC nor its jurisdiction or authority.

33. Contemporaneous with the filing of this motion, First Coast has filed its response to JEA's Motion for Summary Final Order. Those paragraphs are incorporated herein by this reference as a part of this Motion for Summary Partial Final Order.

34. For all of the reasons set forth herein, the PSC should grant this Motion for Partial Summary Order; and find that it is the PSC, and the PSC alone, who has exclusive jurisdiction and

exclusive authority over First Coast's proposed authority, service, and rates, JEA's local documentation and ordinances to the contrary notwithstanding.

Robert C. Brannan
Florida Bar 103217
Sundstrom & Mindlin, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555

/s/ John L. Wharton
John L. Wharton
Florida Bar 563099
Dean Mead & Dunbar
215 S. Monroe Street, Ste. 815
Tallahassee, FL 32301
(850) 999-4100

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email on this 15th day of September, 2020 to:

Thomas A. Crabb
Susan F. Clark
Ready Law Firm
301 S. Bronough Street, Ste. 200
Tallahassee, FL 32301
tcrabb@readeylaw.com
sclark@readeylaw.com

Jody Brooks
JEA
21 West Church Street
Jacksonville, FL 322202-3155
broojl@jea.com

Bianca Lherisson
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
BLheriss@psc.state.fl.us

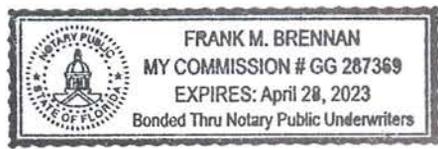
J.R. Kelly/Mireille Fall-Fry
Office of Public Counsel
111 W. Madison St, Room 812
Tallahassee, FL 32399
Kelly.jr@leg.state.fl.us
Fall-fry.mireille@leg.state.fl.us

/s/ John L. Wharton
John L. Wharton

Sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization, this 14th day of September, 2020, by ROBERT KENNELLY, who _____ is personally known to me or has produced FLDL ID as the type of identification.


Signature of Notary Public - State of Florida

Stamp of Commissioned Notary Public
04-28-2023





Date: April 9, 2019
Location: JEA Office Building – 21 W Church St
Project: 301 Property

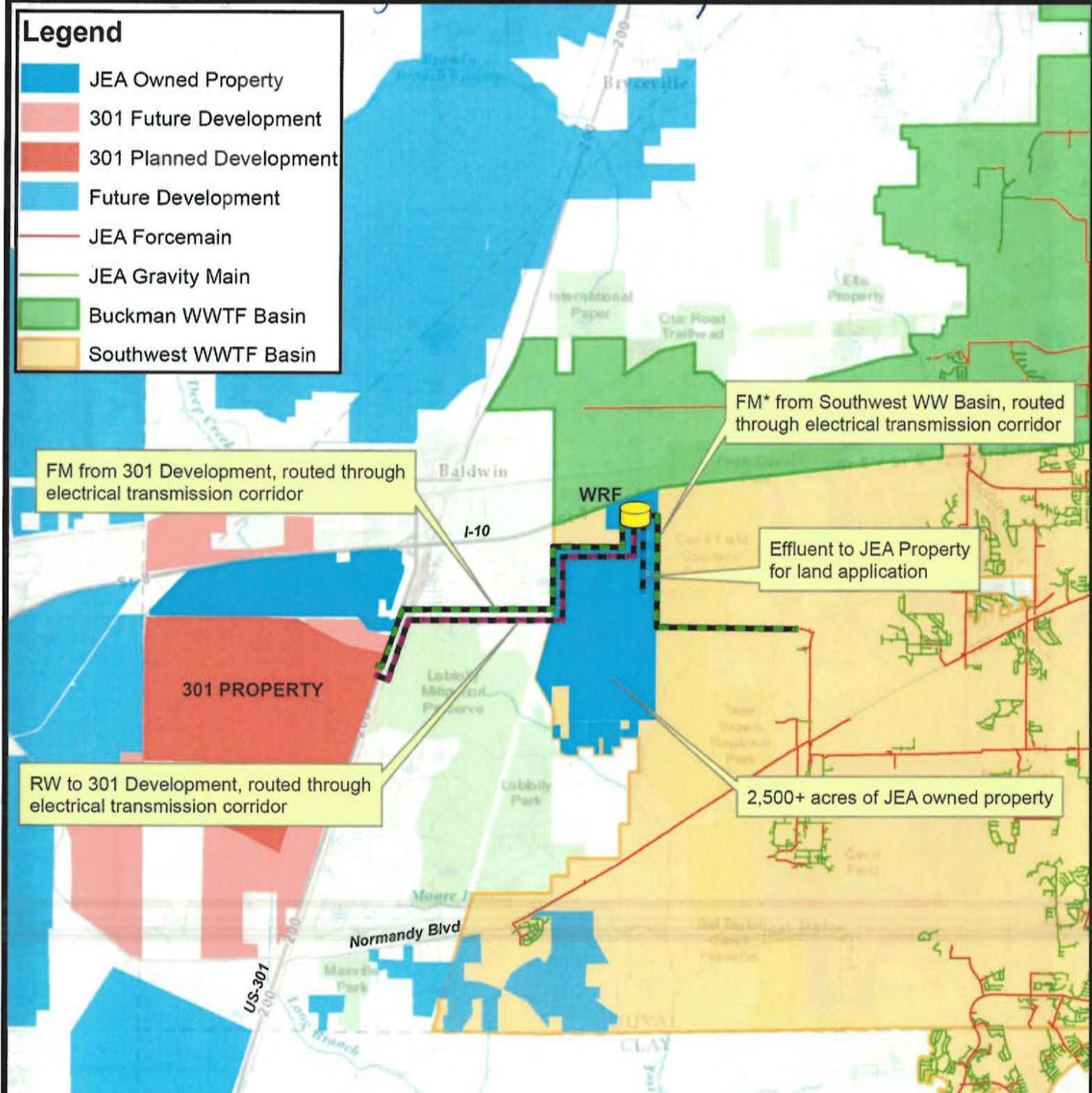
Agenda

- | | | |
|----|---|-------------------|
| 1. | Safety Briefing | Raynetta Marshall |
| 2. | Introductions | |
| 3. | Energy | Russ Durham |
| | A. Energy Service Availability | |
| 4. | Water | Susan West |
| | A. Water Service Availability | |
| | B. Wastewater Service Availability | |
| | C. Reclaimed Water Service Availability | |
| 5. | Financing Options | Juli Crawford |
| 6. | Discussion | All |
| 7. | Next Steps | All |

* AT LEAST 15 YEARS TO GET SERVICE TO US-31

Legend

- JEA Owned Property
- 301 Future Development
- 301 Planned Development
- Future Development
- JEA Forcemain
- JEA Gravity Main
- Buckman WWTF Basin
- Southwest WWTF Basin



- NOTES:**
- o A package Water Reclamation Facility (WRF) would initially be needed, but low flow would be an issue for the first year as homes are established; this could be solved with a baseline* wastewater flow from the Southwest Wastewater (WW) Basin into the package WRF.
 - o Reclaimed water demands will require supplemental water; wastewater* from the Southwest WW Basin could be used as a supplementation option to produce sufficient reclaimed water to meet demands.
 - o This location will require piping to and from US-301, the preferred route would be the electrical easement.
 - o Wet weather discharge and/or unused reclaimed water could be sent south and land applied on the same JEA owned property. Other discharge options will also be evaluated.
 - o A solar farm is planned for 500 acres of the JEA property east of US-301 in the next five years.
 - o This is a preliminary evaluation, subject to verification; some options could change as a result of a more thorough investigation.

JEA
 WWW System Planning
 21 W Church St, Tower - 4
 February 2019

301 Corridor Wastewater Treatment

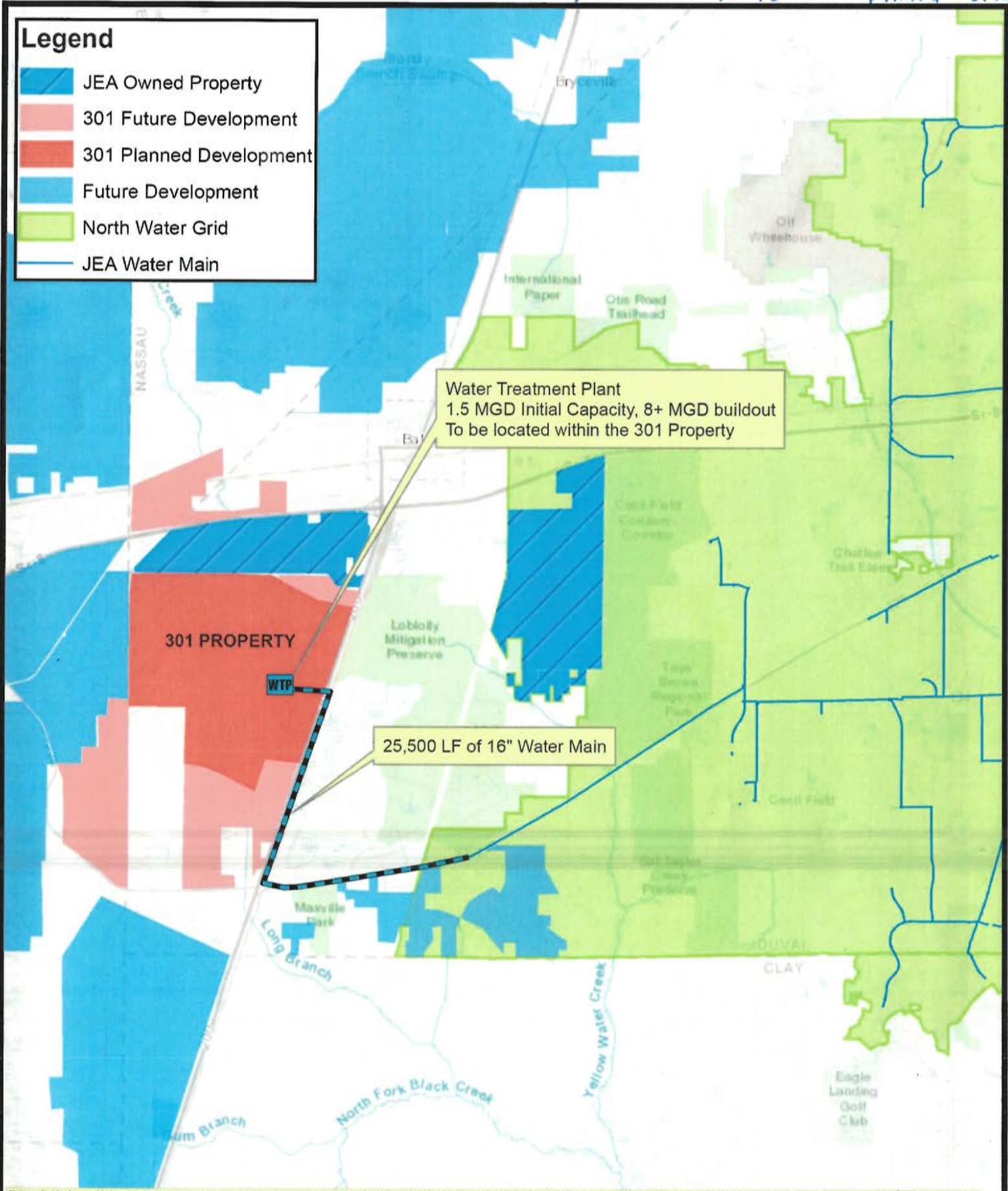
N
 Northeast Florida

0 0.5 1 2
 Miles

Date: 4/2/2019

Legend

-  JEA Owned Property
-  301 Future Development
-  301 Planned Development
-  Future Development
-  North Water Grid
-  JEA Water Main



Disclaimer of Liability: Accuracy of the data contained on this map is contingent upon the source information as compiled by various agencies both internal and external to JEA. Maps are provided "as is" without warranty or any representation of accuracy, timeliness, completeness, or financial commitment. JEA assumes no legal responsibility for the information contained on this map.

Conceptual New Substation & 230kv Transmission Route

- New 150 FT transmission corridor running adjacent to and west of FP&L corridor
- New 8 acre substation site adjacent to new corridor
- Require 24/7 road access to station

** To Have in place by 2030**

April 2019

 **New US 301
Substation &
Transmission**





Meeting Notes: 301 Property

Date: April 9, 2019

Meeting Attendees:

JEA

Steve McInall
Raynetta Marshall
Juli Crawford
Susan West
Michael Dvoroznak
George Porter

Gabor Acs
John Coarsey
Russ Durham
Robert Fowler

301 Property

Avery Roberts
James Hissam
Robert Kennelly
Zach Miller
Doug Miller

Proposed development will consist of 15-20,000 ERCs in 3 counties (Duval, Nassau and Baker) and is being planned as a Regional Activity Center.

Energy Service

Connection to the JEA electric system will require the following:

- A 150' transmission corridor adjacent to US 301 and west of the existing FPL corridor to create a 230kV loop between existing substations;
- Future substation (~8 upland acres), ideally located at the center of the future demand/development and adjacent to the transmission corridor.

First phases of proposed development can be served from the existing system. The substation needed ~2030 based off proposed schedule.

Doug Miller (301 Property) requested that JEA consider alternate sites for the substation location; Deep Creek property (adjacent JEA solar site) and adjacent property owned by 301 group.

JEA will investigate feasibility of southern location; Deep Creek is not ideal due to onsite wetlands and site utilization for solar.

Doug Miller (301 Property) requested that JEA consider alternate route for transmission corridor.

JEA will investigate alternate routes for transmission corridor.

Water Service

JEA recommends an on-site Water Treatment Plant to be designed, permitted and constructed by 301 Property. A future connection to the existing JEA system will be needed for redundancy.

Alternatively, a connection to the existing system will require approximately 25,500 LF of 16" water main and will be limited to approximately 3,000 units before needing a storage and re-pump facility.

Wastewater Service

The proposed site within the 301 Property boundary (30 acres, roughly 13-15 acres within 100-yr floodplain) is not sufficiently sized for the facility.

JEA recommends an off-site Water Reclamation Facility to be built on the northern section of JEA owned property (Peterson Tract). A regional facility would allow for flow to be diverted from adjacent wastewater basins to provide needed flow to seed the new facility.

301 Property suggested a temporary package plant to be built on-site and phased into master pumping station when WRF is complete.

JEA to investigate feasibility of temporary package plant on 301 Property. Primary issues will be reject disposal site and available flow to properly seed the plant.

Reclaimed Water

Augmentation proposal from 301 Property to be from storm/ground water with proposed pond system:

- By groundwater harvesting at PS to increase available flow to treatment facility
- By point source at treatment facility with additional filtration and chlorination

The regional facility would allow for flow to be diverted from adjacent wastewater basins to provide needed reclaimed water for proposed development(s).

Schedule

301 Property is holding 2,500 units on a Letter of Intent contingent on Utility Services. Planning on vertical construction in 2021 (30 months total; 6 months of discussions, 12 months design and 12 months construction).

JEA schedule for WRF completion is roughly 5 years; siting, permitting, design and construction.

Financing

Prorated infrastructure costs will be used to calculate capacity fees in lieu of the traditional calculation per unit. Preliminary estimates of the capacity fees for the 301 Property is \$39M for the first 3,000 units (\$13,000/unit). Traditional capacity fees are ~\$3,300/unit for water/sewer service.

JEA has recently completed a Rate Study, but the results are still in a DRAFT state with no action plan in place to move forward with recommendations. Capacity fees will likely be increased, but no decision has been made as to what they will be or when they will be implemented.

Next Meeting

The next meeting was discussed to occur in 2-3 weeks, but no specific date was discussed. J. Hissam to provide available dates/times.