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 FILED: March 18, 2022

FIRST COAST REGIONAL UTILITIES, INC.'S
POST-HEARING STATEMENT OF ISSUES AND POSITIONS

First Coast Regional Utilities, Inc., through undersigned counsel and pursuant to Prehearing Order PSC-2022-0045-PHO-WS, hereby submits this Post-Hearing Statement of Issues and Positions.

The following acronyms or abbreviations are sometimes used in this brief:

First Coast shall mean First Coast Regional Utilities, Inc., the applicant for certificates to operate a water and wastewater utility whose proposed service traverse county boundaries in Nassau, Baker, and Duval Counties.

JEA shall mean JEA, the utility division of the City of Jacksonville which provides, *inter alia*, water and wastewater to limited areas inside and outside of Jacksonville's municipal limits.

D**eveloper or 301 Capital** shall refer to the parent company of First Coast which is developing properties in Duval, Nassau, and Baker counties described below as the development.

The development or the project shall mean that Planned Unit Development in the proposed certificated territory proposed to be served by First Coast which is owned or controlled by First Coast's parent corporation 301 Capital in Duval, Baker, and Nassau Counties. Initially, the Development was projected to require water, wastewater and reuse/irrigation utility services on or before January, 2022 prior to JEA's delay of the project by this litigation.

The Objection shall refer to JEA's initial pleading in this case, the effective equivalent of a Petition for Administrative Hearing.

PSC shall mean the Florida Public Service Commission.

PRELIMINARY STATEMENT

First Coast Regional Utilities is an affiliated party of 301 Capital, the developer of the proposed service area. 301 Capital owns 7,000 acres and has exclusive rights to another 2,000 acres, that 9,000 acres being contiguous property located in Duval, Nassau and Baker Counties. An additional 1,800 acre property included in the application is located in Baker County, and the owner of that property has contacted First Coast requesting service to these properties. First Coast proposes to provide water and wastewater service within the entire proposed service territory, along with reclaimed water for irrigation purposes. The proposed utility facilities will be constructed and expanded to serve the development as it is constructed and expanded. In this case, there is no dispute that the proposed service territory transverses county boundaries. The record clearly demonstrates that First Coast has the financial and technical ability to provide this needed utility services which it proposes to provide.

JEA, whose dubious core theory of this case, as initially argued in its Objection, as it unsuccessfully argued at the 1st DCA, and which it failed to have included as a breakout issue in the Prehearing Order – that the PSC's authority and jurisdiction is inferior to its own – having been rejected at every turn, is now reduced to several positions on issues in this proceeding which are largely a parade of ingenuities. JEA's position is that there is no need for the utility services, although it has admitted the need for those very services by proposing to provide the service itself. JEA's position is that First Coast's application is inconsistent with the Jacksonville comprehensive plan, although the city, of which JEA is a part, has fully entitled the development. JEA's position is that the system proposed by First Coast will be in competition with or a duplication of the

existing JEA system, although JEA admits that it has no existing system in the area and no plans to construct one. The incongruity of JEA's positions on these issues are explained by a simple fact: JEA's position on need, on consistency with comprehensive planning, and on competition or duplication is, as addressed further below, in each instance is nothing but an extension of its theory that its authority and jurisdiction is superior to that of the PSC. Facing the assured rejection of its 'superior jurisdiction' argument, JEA is reduced to arguing that a developer owned utility, whose developer has committed to finance or facilitate the financing of the utility and who owns or has exclusive right to approximately 9,000 acres and which produced a balance sheet reflecting more than $137 million in total assets, has not demonstrated the requisite financial ability. Similarly, JEA argues that First Coast's certification would result in a system that is in competition or duplication of an existing system, even though JEA acknowledges that it has no existing systems in the area and no plans to build one.

At the time that JEA filed its Objection in this case, JEA asserted that the underlying Planned Unit Development Order issued by the City of Jacksonville purported to require the developer to build the needed water and wastewater facilities within the PUD area and then to gift them to JEA[1]. This was a significant basis for JEA's protest- it was mentioned in the Objection, it was mentioned in pleadings JEA filed at the PSC, it was mentioned in the 1st DCA case JEA filed in the middle of this case (shutting this case down for six months – a case which JEA lost), and it is mentioned by two JEA witnesses in their prefiled testimony. However, the PUD no longer contains that language. The new PUD merely requires a site for the utility.

After going through review at the planning levels in the City and upon request by the developer that that language be removed, the City Council, the governing board of JEA's parent,

[1] One of the reasons 301 Capital successfully sought the removal of the language was the disagreement between the parties regarding its meaning.

ultimately removed that language requiring that the developer design, permit, build, and dedicate the facilities to JEA – and the City Council did so unanimously despite the fact that several representatives of JEA tried to persuade the Council to vote otherwise.

It is and has remained the position of JEA from the moment it explicitly stated so in its petition until this very moment, that it has exclusive jurisdiction, and that the PSC has no jurisdiction or authority to certificate First Coast within the confines of JEA's self-promulgated "franchise area".

That position is entirely unsupported by Chapter 367. It is entirely unsupported by any case law, administrative code rule, statute, or PSC decision, and it was entirely laid to rest by the First District Court of Appeal in this very case.

JEA claims that First Coast's proposal will be in competition with an existing system, and that JEA is "first in time, first in right" because it claims franchise "rights", much of which, as is the case here, it not only has no facilities, but no plans to serve. In this case, JEA admitted that it has[2]:

- No water, wastewater, and/or water reuse facilities in the proposed service territory;
- No present water capacity to serve more than 3,000 ERC's in the proposed First Coast service area;
- No present wastewater capacity to serve more than 3,000 ERC's in the proposed service area;
- No plans to construct additional water treatment capacity in the proposed service area;
- No present plans to construct additional wastewater treatment plant capacity in the proposed service area;

[2] Each of these facts was admitted by JEA in response to requests for admission served upon JEA by First Coast and Staff (see Ex. 54, #s 11-15).

- No present plans to construct additional reuse water treatment plant capacity in the proposed service area.

First Coast has shown that it is less expensive for it to build its own onsite facilities than to construct two pipelines (water and wastewater) 7.5 miles each and a water reuse pipeline 20 or so miles to connect to JEA's distant facilities, or to participate in a currently unplanned regional wastewater treatment plant over 5 miles from First Coast with First Coast building a water treatment plant and connecting to JEA's water pipeline 7.5 miles distant.

First Coast's application and the other evidence in the hearing established that First Coast meets the criteria for issuance of the certificate for which it has applied, and that is in the public interest that First Coast be certificated. Jacksonville City Ordinance No. 2021-693, approving the development, issued by JEA's parent, in and of itself, demonstrates a need for the services.

Notably, the record is clear that, stripped to its essence, all of JEA's arguments are constructed on the same shifting sands – the supposed exclusivity of its own authority and jurisdiction and the concomitant limitations – JEA argues – in the face of PSC's own authority and jurisdiction.

- JEA's ostensible position is that there is no need, but the record reveals JEA has acknowledged the need for the services First Coast proposes to provide – rather its actual theory is that its "exclusive" franchise means *there is no need for First Coast.*
- JEA's ostensible position is that First Coast's proposal is inconsistent with the comprehensive plan, but the record reveals JEA raised no issue with regard to the actual (fully entitled) development – if it would even be the proper party to do so – but is rather referring to the comprehensive plan's attempt to usurp the exclusive jurisdiction of the PSC by purporting to "require" service by JEA.

- JEA's ostensible position is that the service provided by First Coast will be in competition with or duplication of a JEA "system", but the record reveals that JEA has no existing system, nor any plans to construct such a system, which could provide service to the development. Rather, JEA's theory rests upon its position that its so-called "exclusive" franchise and self-imposed authority to provide the needed service is an "existing system" which the PSC should recognize as such, contrary to PSC precedent on point as addressed below.

As JEA has relied so heavily upon an ostensible requirement in the ordinance for the planned unit development that JEA interpreted to require First Coast to finance, design, plan, permit, and construct the utility and then contributed to JEA, the current status of the PUD ordinance is necessarily addressed here[3].

The language in the PUD Ordinance 2010-874-E, Revised Exhibit 2, contained the following language in Section 6.0 Summary of Zoning Compliance and Minimum PUD Requirements:

6.1 Rural Village Checklist

The Applicant shall provide, at its expense, on-site treatment capacity to serve the needs of this Rural Village PUD for potable water, wastewater, and reuse water at levels and to standards acceptable to JEA, to be dedicated to JEA for operation and maintenance or for contract operation.

The parties disagreed as to the meaning of the dedication language. First Coast interpreted that the language meant that it would finance, build and own the utility facilities. At no time would First Coast gift the facilities to JEA. JEA, on the other hand, interpreted the language to require First Coast to dedicate the facilities and the underlying land to JEA.

While First Coast pursued its application for certificates at the PSC, 301 Capital filed an

[3] Official recognition was taken of the referenced ordinances.

amendment to the PUD, the 301 Villages Conceptual Master Plan. The proposed amendment deleted the dedication language in Ordinance 2010-874-E.

The City of Jacksonville Ordinance 2021-693 was enacted by the Jacksonville City Council on November 23, 2021. Revised Exhibit 3 to the PUD now only requires that the Developer provide a site to serve the needs of the PUD for potable water, wastewater, and reuse water.

ISSUES

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

STIPULATION: As reflected in the Prehearing Order, the parties stipulated that First Coast has met the filing and noticing garments. That stipulation was approved by the PSC. (Tr. 27).

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

ARGUMENT: Yes. JEA's argument that there is no need for the utility service First Coast has proposed to provide is twofold: the need for utility services is speculative in Nassau and Baker Counties; and alternatively, that the PSC cannot find that First Coast has satisfied the rule criteria (which requires a demonstration of need) because the PSC has no jurisdiction over First Coast's application. The only position taken by JEA on this issue in the Prehearing Order is that "the city's comprehensive plan calls for JEA alone to be the provider" throughout the county. In no way, shape, or form, does or has JEA ever taken the position that the *actual development* which the parent company of First Coast will build, and which was approved by the City of Jacksonville, JEA's parent, (and which First Coast proposes to serve) is inconsistent with the comprehensive plan.[4]

[4] The OEP in this case clearly states that parties must take a position on each issue of the time of the Prehearing Conference. JEA took no position on the issue of the compliance with the development itself with any comprehensive plan.

The need for the utility services First Coast has proposed to certificate is clearly demonstrated by First Coast's application and the record evidence in this case including, notably, JEA's own oft-repeated position that it desires to provide the needed service (if only First Coast will provide the initial land for facilities, design, permitting, construction, and financing and then contribute the finished product to JEA). The question is begged: if JEA believes there is no need in this case, why is JEA making such an extreme effort to provide the utility service First Coast proposes to provide? The answer is clear: it is not actually JEA's position that there is no need for utility service for the development, rather it is JEA's position that there is a need for utility service but that there is no "need" for any utility other than JEA to provide that service. That position, which is really just another failed extension of JEA's claim regarding the exclusivity of its jurisdiction and authority, is completely and entirely inconsistent with the way PSC has always interpreted the criteria that an applicant for a utility certificate must demonstrate that the service proposed to be provided is "needed". Be that as it may, even aside from JEA's clear indication that the service is needed by its very position in this case, the record is clear that the proposed services are needed. The land which is proposed to be certificated, is located west of Jacksonville in Duval County, Florida. 301 Capital is the current landowner, and successor to ICI Villages, LLC, which was granted zoning approval for a Planned Unit Development per Duval County ordinance. This parcel is part of the approximately 9,000 acres of contiguous property located in Duval, Nassau and Baker Counties, which 301 Capital Partners either owns or has exclusive repurchase rights to, intended to be developed in the future, and which portions have also have been granted appropriate zoning for development. An additional +/- 1,800-acre property, owned by the Chemours Company FC, LLC, located in Baker County and contiguous to the 301 Capital land holdings, is also planned for future development. These properties are adjacent to major transportation corridors and close to major job centers. (see Ex. 7).

The need for utility services

Although the PSC's rules and statute do not require a detailed investigation into the probability that anticipated growth within a new or existing utility service area will come to fruition, the record evidence in this case clearly reveals that 301 Capital is committed to imminently construct a large, phased, planned development in portions of Duval, Nassau, and Baker counties. The developer's plans are to develop, in phases, all of the property that it owns or controls not only in Duval but in Nassau and Baker Counties as well. The development will start in Duval and then move into Baker and Nassau County. Nassau County is ready right now, with no entitlement issues. (Tr.103).

Letters of support in the PSC's file reveal the developer's efforts to work with local governments.[5]. Notably, no entity or unit of government, including the City of Jacksonville itself, has made any objection – formally or informally – to this application other than JEA.[6] 301 Capital has committed and has secured the funds and/or fund commitments necessary for those entitlements; to hire experts to advise it in this case as to its application (including the commissioning of feasibility report), to file this application; and the expense of engaging in this litigation, including a mid-case bid by JEA at the 1st DCA to shut the case down. The developer's commitment to the proposed project is also clear by the fact that it has continued to engage with JEA in attempts to expeditiously move forward with the project, progress that JEA's demands have effectively thwarted. Perhaps most importantly, the funding and commitment necessary to acquire

[5] While the support letters from Baker and Nassau Counties and the City of Macclenny were not accepted into the record, the fact that they have been deposited by those governmental entities in the PSC's file was acknowledged by argument of counsel and was sometimes referred to in testimony, see e.g. (Tr. 219).

[6] Notably and illustratively, JEA spent significant time in cross examination inquiring about timing and development rights on the Baker County portion of the development project and the time frames set forth on a preliminary 'absorption schedule' regarding the Nassau and Baker Counties' portion of the development. Yet, neither Baker County nor Nassau County have protested First Coast's proposed certification, and both have in fact filed with the PSC *letters of support* for First Coast's application.

such a substantial parcel of undeveloped land inexorably stands as the ultimate demonstration of the developer's commitment to develop.

As previously discussed, JEA's continued raising in this case the "offers" it has supposedly made to the developer, including references to same by JEA in its initial Objection, clearly demonstrated that JEA itself has manifested its own position that there is a need for service in the proposed certificated territory and that this need can only be met by facilities financed, designed, permitted, and constructed by the developer and/or First Coast, and even then, apparently, only after such are contributed to JEA.

Jacksonville is the second hottest real estate market in the country and the property to be developed is on the path for growth with builders actually building to the west of the proposed certificated territory. This property is not remote at all. This is a three county project, and none of JEA's proposals consider Nassau or Baker County, while First Coast's proposal includes all three. (Tr. 347).

Mr. Kennelly testified that the intention and ability to develop Nassau and Baker Counties is not in the distant future, as JEA claims. The developer would begin the Baker County portion of the project in 2026, and as soon as utilities become available, the development could move forward in Nassau. (Tr. 348). First Coast intends service within the entire proposed service territory, along with reuse for irrigation purposes. The proposed treatment facilities will be constructed and expanded to serve the development as it is constructed and expanded. (Tr.100). As Mr. Kennelly testified and as JEA has admitted, there is currently no water or wastewater service in the proposed territory and no plans on the part of Duval, Nassau, or Baker Counties or any other utility service entity to provide such service in a timely or economically feasible manner. (Tr. 99). The only utility that has planned and proposed to provide this needed service, and that stands ready to finance, design, permit, and operate the needed utility services, is First Coast.

The PSC's jurisdiction and authority over the certification of First Coast is clear and exclusive.[7]

JEA has argued that there is no need in this case because a) the PSC's jurisdiction and authority is limited by the Florida legislature and b) that the PSC is without authority to certificate First Coast. First Coast will, for the sake of brevity, address these related topics together. JEA's first point in this regard is nullified by its second. Yes, the PSC is, as is every agency in Florida, a creature of statute and its powers have no legitimate source other than those statutes. In this case, First Coast's application is exactly the type of application which the PSC's enabling statutes require be filed with the PSC; require be reviewed by the PSC; require be adjudicated by the PSC if a substantially affected party objects to the PSC's proposed action; and require be ultimately resolved by the PSC. In this case, the PSC and First Coast are engaging in precisely the statutory mechanism required for certification for jurisdictional water and wastewater utilities in Florida. Whether the JEA has the present and existing ability to better serve the lands of 301 Capital is a factual issue that only the PSC can consider and decide. Whether JEA can credibly claim that it has the "ability to serve" when that "ability is entirely dependent on requiring a developer – one who is proposing to start a utility to serve the development no less – to construct the needed plant capacity and related infrastructure at great expense and contribute it to JEA is an issue for the PSC to decide. The issues before the PSC are factual and substantive, precisely the wheelhouse assigned to it by the Florida legislature.

As to the extent of the PSC's authority, the Florida legislature could not have been more clear in drafting the PSC's enabling water and wastewater statute. There is, in fact, only one entity with the unchallenged and immutable authority to decide whether First Coast should receive the

[7] At the time of the prehearing conference, JEA argued that issues such as whether JEA has an "exclusive" franchise and whether the PSC has no jurisdiction to issue the requested certificate should be included in the Prehearing Order. The Prehearing Officer struck those issues but said they could be argued under Issue 2. Thus, First Coast necessary will address those issues – to the extent merited.

certificated territory it has requested, and that entity is certainly not JEA. Although the unquestioned extent of the PSC's jurisdiction has been referenced dozens (if not hundreds) of times in case law and administrative decisions, one need only review Chapter 367 itself to lay any doubt about the exclusivity of that authority 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.*
> (Emphasis added)

As redundantly 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 appellate case or order of the Commission has ever suggested that the Commission's jurisdiction under Chapter 367 is somehow more limited, or any less all-encompassing, than it is under the Commission's other enabling statutes (Chapters 350, 364, 366, and 368, Florida 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.*

Likewise, in *FPSC v. Bryson,* 569 So. 2d 1253 (Fla. 1990), the Court, referring to the PSC'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.*

In the absence of case law clearly declaring that these statutory provisions mean what they plainly say or that they do not mean what they plainly say (of which there are, 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 jurisdiction is 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 Chapter 367, do not and cannot supersede 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, but it did. 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.

The PSC itself 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 is 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 imagine that the legislature could have established the breadth of the PSC's jurisdiction in any clearer or less ambiguous language. Legislative intent is the polestar that guides a court's statutory construction analysis, and "[t]o discern legislative intent, a court must look first and foremost at the actual language used in the statute." *Larimore v. State*, 2 So. 3d 101, 106 (Fla. 2008). "It is a fundamental principle of statutory construction that where the language of a statute is plain and unambiguous there is no occasion for judicial interpretation." *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 454 (Fla. 1992). "The Legislature must be understood to mean what it has plainly expressed and this excludes construction. The Legislative intent being plainly expressed, so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms." Id. (quoting *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693, 694–95 (1918)); *see also Daniels v. Fla. Dep't of Health, 898 So. 2d 61, 64 (Fla. 2005)* ("When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." (citation omitted)); *Holly v. Auld*, 450 So.2d 217, 219 (Fla. 1984) ("[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." (quoting *A.R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 137 So. 157, 159 (1931)).[8]

[8] *See DMB Trust v Islamorada,* 225 So. 3rd 312 (3rd DCA 2017)

Notably, JEA's initial objection which initiated this case mentions the word "exclusive" 20 times, but not once as to the jurisdiction of the PSC. The Florida legislature bestowed the exclusivity of the PSC's jurisdiction upon it. The City of Jacksonville bestowed the ostensible exclusivity of JEA's franchise upon itself. The repeated 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 the Petition and in so many filings in the administrative litigation can only mean one thing: it is JEA's position that JEA, not the PSC, is the only entity – by and through the local enactments – which can make the ultimate decision on First Coast's proposed certification.

As the PSC opined in its brief in the JEA 1st DCA appeal:

> *"Exclusive" means "limited to a particular person, group, entity, or thing." Black's Law Dictionary, 11th edition (2019).*
>
> *Chapter 367, Florida Statutes, is clear that the Commissions' exclusive jurisdiction to decide First Coast Utilities' application cannot be taken away by local government laws, ordinances, or franchise agreements. In this regard, section 367.011(4), Florida Statutes, states in relevant part:*
>
> *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.*
>
> *While JEA states that the ordinances and franchise agreements are "laws" (Petition, pg. 21), it has not even attempted to show to either this Court or the Commission how these "laws" "supersede" chapter 367, Florida Statutes, "by express reference." See § 367.011(4), Fla. Stat. And it can't because they don't.*
>
> *(emphasis added)*

Finally, while JEA made some attempts in cross-examination to establish that the subsequent phases of the development are insufficiently imminent so as to be considered "speculative", common sense – as well as the testimony and evidence of First Coast –

demonstrates the obvious: a development of this size takes planning and is typically and logically developed in phases. The service in Baker and Nassau may well be required at an earlier date than the developer's initial projections, and the certification of First Coast will provide the flexibility that will allow the developer to react to those market forces. Notably, neither Baker nor Nassau County seem to share JEA's "concern" regarding the future phases of development, as neither County protested the application and, in fact, both actively support it.

JEA's duplicitous attempt to claim there is no need for service in the Duval County portion of the development while at the same time claiming it has offered to provide that very service should be rejected out of hand. Likewise, its labeling as speculation regarding the need for service in Nassau and Baker - which is in fact nothing more than appropriate and proper phase development and timed planning for such a large project - is specious. The developer-parent of First Coast owns or has the right to develop that property, and the evidence was uncontroverted that the intent is to develop the proposed certificated territory. JEA's attempt to self-servingly carry water for two governmental entities who do not, in fact, object to the application should likewise be rejected. As the PSC has stated in *Nocatee Utility Corp.*, 2001 WL 1512766 (2001), at 10:

> *Indeed, it is common for this Commission to grant an original water certificate and approve rates for services for which there is no present, quantifiable need, but which may be in demand at a future time.*

In this case, there is a present, quantifiable need, but for the delay JEA has caused with its drawn-out objection. Additionally, the record reveals there is a quantifiable demand in the future and no credible evidence to the contrary.

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

ARGUMENT: No. Any discussion of compliance with the comprehensive plans of the three counties in which the proposed development (which First Coast proposes to serve) lies must begin

with recognition of a few paramount and undisputed truths:

- Baker County has raised no objection to this application and in fact has filed a letter of support of the application in the PSC's file.
- Nassau County has raised no objection to this application and in fact has filed a letter of support of the application in the PSC's file.
- The proposed territory in Nassau County is fully entitled for both commercial and industrial development.
- The City of Macclenny has raised no objection to this application and has filed a letter of support of the application in the PSC's file.
- The only position taken by JEA in the Prehearing Order is that "the city's comprehensive plan calls for JEA alone to be the provider" throughout the county.[9] In no way, shape, or form, has JEA *ever* taken the position that the actual development which the parent company of First Coast will construct, and which First Coast proposes to serve, is inconsistent with any comprehensive plan[10].

Section 367.045(5)(b), Fl. Stats., provides that:

> *(b) When granting or amending a certificate of authorization, the commission need not consider whether the issuance or amendment of the certificate of authorization is inconsistent with the local comprehensive plan of a county or municipality unless a timely objection to the notice required by this section has been made by an appropriate motion or application.* ***If such an objection has been timely made, the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.***
> (emphasis added).

[9] Jacksonville's Comprehensive Plan also allows for the establishment of non-regional privately owned utilities under certain circumstances.

[10] The OEP in this case clearly states that parties must take a position on each issue of the time of the Prehearing Conference. JEA took no position on the issue of the compliance with the development itself with any comprehensive plan.

The PSC has held that the governmental entity whose position is that the proposed certification violates is comprehensive plan has the burden:

> *We are required by Section 367.045(5)(b) to consider a comprehensive plan only if an objection is filed. Absent an objection, the applicant need not prove that certification is consistent with a governmental entity's plan. If an objection is filed, the objecting governmental entity must raise the issue of certification's inconsistency with its plan. Therefore, we think that under this statutory arrangement, the entity which raises the issue has the burden of proof on the issue.*
>
> *Application of East Central Florida Services,* 1992 WL 12596008 (1992).
> Cited by *Nocatee*, at 18.

Of the three counties in which First Coast proposes to provide service by establishing a certificated territory, two have raised no objection to the application, on the basis of their respective comprehensive plans *or for any other basis*. Likewise, the City of Jacksonville did not directly object to the application, raise any issues with regard to its own comprehensive plan, or otherwise become involved in this proceeding. Only JEA, whose consistent goal has been to secure this needed utility service to the proposed development for itself (and only after the developer finances, designs, permits, constructs, and then donates the utility facilities), has raised such an objection. And JEA's objection is not predicated upon and position that the proposed certification of First Coast will somehow allow development or growth contrary to the comprehensive plan, but rather that the comprehensive plan requires service by JEA, if anyone. As discussed below, this is just another attempt by JEA to argue that local enactments have somehow divested the PSC of its exclusive and superior jurisdiction over First Coast's application.

Neither party presented any expert planners to testify on the comprehensive plan of the City of Jacksonville. First Coast witness Mr. Kelly testified at length that he was familiar with the relevant areas of the comprehensive plan (that familiarity and experience having been gained in the same way as JEA's witnesses, i.e., while employed with JEA) and that, in his opinion, the certification of First Coast would be in compliance with and in furtherance of the City of

Jacksonville comprehensive plan. (Tr. 397-98). The JEA shall not invest in sanitary sewer facilities in the Rural Area as defined in the Future Land Use and Capital Improvements Element, except where necessary to protect the public health or safety, or encourage mixed use or regional economic development and the development is in the Rural Area. (Tr. 397-98). JEA is not allowed to invest in sanitary sewer or permitted to establish a non-regional wastewater facility, under the comprehensive plan, in a rural area. While the zoning of the area was changed with the change of ordinance, under the comprehensive plan proposed, development is in a rural area in Duval County and the prohibition still exists. Likewise, Mr. Kennelly testified that JEA is not allowed to invest in sanitary sewer or permitted to establish a non-regional wastewater facility, under the comprehensive plan, in a rural area. While the zoning of the area was changed via Ordinance 2021-693, under the comprehensive plan proposed development is in a rural area in Duval County and the prohibition still exists. (Tr.135).

Mr. Kelly also testified at length that, in his opinion, under the City's rules, the comprehensive plan recognizes that investor-owned public utilities may exist within the limits of the City of Jacksonville (Tr. 407), reiterating that in his opinion the application is consistent with the comprehensive plan and the environmental protection rules enacted by Jacksonville, as he discussed in his testimony. (Tr. 407).

Likewise, First Coast witness Kennelly testified that, in his opinion, the provision of water and wastewater service by First Coast is consistent with the comprehensive plans of Duval, Nassau, and Baker County. (Tr.100-101). Mr. Kennelly also noted that the granting of the proposed certificate would not negate the effectiveness of any of the City's authority to control development and growth as it sees fit. (Tr.101-102). Indeed, and again as discussed in more detail elsewhere herein, the fact that: (1) the City of Jacksonville did not deem it necessary to directly intervene in this proceeding; (2) that JEA did not produce expert planners or non-JEA City witnesses; and (3)

the City's entitlement of the portion of the service area in Duval County, all support the inescapable conclusion that nothing about the development is contrary to the comprehensive plan tenets as set forth in that plan. Rather, JEA's only concern based on the comprehensive plan is that it be allowed to provide the service – if and when the developer contributes to its turnkey facilities so that it will have the ability to do so.

The very purpose of comprehensive planning, that growth would be planned and allowed or discouraged comprehensively, is not advanced in this case by JEA's unique attempt to use the comprehensive plan as an effective block to the PSC's jurisdiction rather than as a tool to promote orderly residential and commercial growth. Indeed, one of the few things that is undisputed in this case is that neither 301 Capital nor JEA believe that the proposed residential and commercial development in Duval County, as approved by the City of Jacksonville, should not proceed as planned. Indeed, the City has fully entitled 301 Capital's proposed development in Duval County – the precise development First Coast proposes to serve. In stark contrast to the typical argument the PSC hears in the case of original or extended certification regarding consistency with the comprehensive plan, JEA attempts to use the comprehensive plan to bolster its argument that it should serve the proposed certificated territory.[11]

JEA's attempt to use the comprehensive plan to support its argument that it is the only utility that can lawfully serve this development is simply another assault on the exclusivity of the PSC's jurisdiction. JEA's comprehensive plan argument is nothing more than an attempt to take through the back door what it will not be able to gain through the front door – JEA's argument that its "franchise" and authority is "exclusive". The PSC should reject JEA's alternative theory of the exclusivity of its own authority – as the statutes cited herein expressly states the PSC may do –

[11] The fact that JEA has no plans or facilities to undertake such service, unless First Coast finances, designs, permits, and constructs the utility and contributes it to JEA, is addressed elsewhere this brief.

just as the 1st District Court of Appeal has rejected JEA's intent to have its so-called franchise recognized as an effective usurpation of the PSC's exclusive authority. [12]

The PSC's exclusive authority to certificate First Coast remains clear and paramount regardless of whether JEA's novel theory of its own exclusive jurisdiction is based on the so-called "franchise agreement" or upon provisions in the comprehensive plan which were apparently intended to tie the PSC's hands or to undermine that authority.

JEA has failed to show that the certification of First Coast – or the development it proposes to serve – is inconsistent with any applicable comprehensive plan. Even assuming, *arguendo*, that the PSC finds an inconsistency between the comprehensive plan of the City and the application of First Coast, based on JEA's argument that the comprehensive plan divests the PSC of its exclusive jurisdiction, the PSC should find, consistent with Section 367.045(5)(b), that it has duly considered, but elected not to be bound by, that particular interpretation or ostensible purpose of the comprehensive plan.

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

ARGUMENT: No. JEA's entire position on this issue rests not upon the quality and location of any real-world facilities, but rather upon the same argument of the exclusivity of its jurisdiction which is contrary to the statute, which is contrary to prior PSC cases, and which has been shot down by the 1st DCA, as addressed elsewhere in this brief.

Section 367.045(5)(a) states:

> *The commission may not grant a certificate of authorization for a proposed system, or an amendment to a certificate of authorization for the extension of an existing system, which will be in competition with, or a duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person*

[12] In its denial of JEA's petition for a writ of prohibition, the 1st DCA held "(b)ecause section 367.045, Florida Statutes, gives the PSC authority to decide certificate of authorization applications…we deny the petition."

operating the system is unable, refuses, or neglects to provide reasonably adequate service.

In a case involving the original certification of Nocatee, the PSC discussed at length what comprises a "system" for the purposes of the statute. Before finding in that case that no review is even warranted into the issue if "there is no evidence in the record indicating that there is an existing system in or in close proximity to (the development)", the PSC's Order noted as follows:

> *In Order No. PSC-92-0104-FOF-WU, issued March 27, 1992, in Docket No. 910114-WU, we stated:*
>
> > *we cannot determine whether a proposed system will be in competition with or duplication of another system when such other system does not exist*. We do not believe Section 367.045(5)(a), Florida Statutes, requires this Commission to hypothesize which of two proposed systems might be in place first and, thus, which would compete with or duplicate the other. Engaging in such speculation would be of little use.
>
> *In Order No. 17158, issued February 5, 1987, in Docket No. 850597-WS, we stated that we are not required to speculate as to competition with, or duplication of, proposed systems which are essentially little more than future possibilities. Rather, the statute addresses the existing system as that which warrants a closer investigation as to the potentially undesirable effects of duplication and/or competition.*
>
> (emphasis added)

Certainly, three immutable facts are clear on the record: 1) JEA has no present existing ability, and no specific plans nor allocated funds, to provide water and wastewater service to the proposed certificated area; 2) any finding by the PSC that First Coast's proposed utility would be duplicative or in competition with any *existing* system of JEA would either be entirely contrary to the record or engaging in gross speculation, or both; and (3) JEA has no authority to serve First Coast's proposed territory in Baker County.

The PSC's precedent in this regard is intuitive and common sense. Websters defines the word "duplicate" as "consisting of or existing in two corresponding or identical parts or examples". JEA has not even requested that the PSC speculate about a future JEA system –

much less an existing one. JEA's entire position that First Coast will be in competition with or a duplication of a "JEA system" is based upon its ostensibly "exclusive" franchise – discussed at length elsewhere in this brief – and nothing more. At a minimum, even should the PSC somehow find that JEA has an "existing" system in the proposed certificated territory, that non-physical, non-planned or unfunded, non-existent system is not adequate to meet the needs of the development or the proposed service territories in Nassau or Baker Counties (*see* Section 367.045(5)(a)).

Mr. Kelly testified that a good way to describe the fact that JEA's facilities are nowhere near proposed First Coast service area is graphically. In that regard, he provided two exhibits which shows the proposed First Coast service area is on the western extremity of Duval County, far away from the core communities where JEA is already serving, and showing the enormity of the distance between the proposed First Coast service area and the Cecil Field area, which areas are over seven (7) miles apart. (Tr. 408).

JEA witness Zammataro admitted that even though JEA master plans more than most utilities, JEA has no plan in place to serve a three county area that is encompassed within the certificated territory. (Tr. 221). JEA has not worked out the feasibility of the permitting, nor done any analysis of the cost of the physical facilities that would be required to serve the area proposed to be certificated, nor done any of the kind of due diligence that would need to be done if JEA was actually going to move forward with a project. (Tr. 222-223). Mr. Kelly agreed, noting that JEA has not identified the proposed project in any capital plans or planning document; neither is service to the development identified in its master plan. (Tr. 394-6).

The record is clear. JEA is reduced by the facts on the ground to arguing that First Coast's proposed system is competitive or duplicate to JEA's self-bestowed paper-only claim to superior jurisdiction and authority to the PSC. JEA's position has no other basis.

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

ARGUMENT: Yes. First Coast is a wholly-owned subsidiary of 301 Capital, the developer of the proposed service area. 301 Capital owns approximately 7,000 acres, and has exclusive rights to another 2,000 acres, that 9,000+ acres being contiguous property located in Duval, Nassau and Baker Counties. JEA's counterintuitive position that there has been a failure to demonstrate the requisite financial ability is particularly undermined in this case where an intended developer-owned utility is proposing to serve such a substantial development and whose affiliated developer (301 Capital) is so demonstrably solvent. That position is only further paradoxically undermined by JEA's "offers" to developer which would require the developer/First Coast to design, permit, *finance*, and build the utility before gifting it to JEA. See JEA's Objection, Para. 15. Be that as it may, JEA's pre-litigation apparent confidence that both the developer and First Coast had and have the financial ability to construct the proposed facilities was clearly verified by the record in this case.

First Coast's application contained an unequivocal commitment from 301 Capital to provide financial support to the utility during any period the utility's revenues are not sufficient to cover expenses. (Ex. 5, p. 13). Even at this early stage, the developer was exploring which bond underwriters and/or financial advisors may be appropriate for the utility's long-term financing. First Coast's application also included, in addition to the above commitment, a balance sheet from 301 Capital, which reflected more than $137,000,000 in total assets.[13]

Mr. Kennelly, the president of First Coast (and a licensed accountant, a licensed attorney, an MBA, and a member of 301 Capital through an LLC he controls), testified that 301 Capital was committed to fund First Coast as and when needed. (Tr. 99). That commitment remained constant

[13] At hearing, Mr. Kennelly updated the financial strength behind First Coast, noting that land value is now approximately 190 million. (Tr.92).

through the long pendency of this application review, JEA's appeal to the 1st DCA, and the preparation for the litigation, as Mr. Kennelly testified that the developer's expectations remain that the funding of the utility would be part equity and part debt at the utility level, and that the developer had recently received a letter from Ag America that provides $40 million in available financing to the utility. (Tr. 96).

Mr. Kennelly further testified that just prior to the hearing, on December 31, 2021, there was $190 million in land value, and about $12 million worth of debt. (Tr. 143). This provided not only borrowing capacity to pay for the utility, but also the ability to sell some parcels to fund the utility as a contingency (this would not change the need for utility services on such parcel – as the buyer of land would still want and need a utility). (Tr. 143). Mr. Kennelly further stated that the bond market and the possibility of raising capital from other investors are also available to 301 Capital to fund the utility. (Tr. 143). Mr. Kennelly made clear during the time this application has been pending that 301 Capital has been active with regard to doing due diligence regarding financing the utility by contacting underwriters, testing the bond market for bond issuance to potentially fund part of the utility costs, and by discussing among and between the members of the developer the financial capital that would need to remain committed. Mr. Kennelly testified that just bearing the high cost of the administrative litigation was indicative of that commitment. (Tr. 145-46).

Any suggestion by JEA that First Coast itself should have an audited financial statement, or the ability to initially finance the utility without the commitment and assistance of its parent corporation at this stage reveals a deep misunderstanding of how private utilities work. Developer owned utilities who are applicants for a PSC certificate always initially rely on the commitment of the developer or an affiliated party. In this case, the developer, 301 Capital, has clearly established

its commitment, intent, and financial ability to effectuate that commitment and its intent to fund the construction and operation, if and when necessary, of First Coast.

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

ARGUMENT: Yes. JEA presented no evidence on this issue and at hearing made only a cursory attempt to support its position that First Coast's "officers" have "no experience in water and wastewater". In stark contrast to the implication, the President of First Coast is well suited for his position as he is an accountant, a lawyer, an MBA, a CFO of a real estate investment firm, and a member of the developer through an LLC. (Tr. 98). With regard to the engineering, design, permitting, construction, and operation of the proposed water and wastewater and reuse water systems, Mr. Kennelly affirmed that First Coast would engage well-known utility design-build-operations contractors which had been involved in the development of numerous utility systems throughout Florida. Any genuine question as to First Coast's ability to retain experts and/or experienced persons on an as and when needed basis to develop and operate its proposed utility systems is belied by First Coast's retention of its application/litigation team of:

- a regulatory rates and fees expert who has in the past 35 years prepared over 300 water and wastewater system cost of service studies (Tr. 86);
- an engineer professionally registered in Florida with 40 years of experience in water and wastewater systems who managed the Palm Beach County Utilities Department for 20 years (Tr. 36);
- a design build engineer who is also a plumbing contractor, a mechanical contractor, a general contractor, and an underground utility and excavation contractor (Tr. 378);
- a second engineer with 40 years of experience in water and wastewater who was vice president of construction and management and vice president of water and wastewater at

JEA (Tr. 388); a utility regulatory legal team with well over 100 collective years of experience representing utilities and working before the PSC; and.

- the aforementioned and aptly experienced Mr. Kennelly, to act as utility president.

First Coast has clearly demonstrated that it has and will continue to retain the expertise necessary to design, permit, construct, and operate the proposed facilities.

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

ARGUMENT: Yes. First Coast witness Mr. Beaudet testified in his feasibility assessment report which he prepared on behalf of First Coast that he worked with a subcontractor to develop very high-quality facilities (Tr. 32), and that his direction was to design a plan for Phase I of the development (Tr. 49). Mr. Beaudet further testified that based on his experience as a utility director and on his experience as a consulting engineer for developers, long-term phase planning is always somewhat uncertain. (Tr. 72). It would not be prudent to construct a 4 MGD plant now, which is the assumed capacity needed for the development of buildout (Tr. 32), because it is impossible to project when capacity is needed to meet demand over that horizon. (Tr. 72). Mr. Beaudet testified that he believed that appropriate facilities can be phased-in over time. (Tr. 75).

Mr. Beaudet's feasibility report (Ex. 7) calculated a need for a water treatment plant of 1 MGD average daily flow expandable to 2 MGD in the future (p. 16) and 1 MGD wastewater treatment plant, the design including provisions to accommodate a future average daily flow of 2 MGD (p. 16). Mr. Beaudet's feasibility report stated:

> *Based on the absorption schedule provided by 301 Capital Partners, the flow demands for water and wastewater service to Phase 1 were estimated based on standard engineering practice. Preliminary (budget level) design and cost estimates were performed for On-Site Utilities for Phase 1 of the Villages, keeping in mind expansion needs to meet future development phases. Both alternatives were compared based on total cost and other important factors such as time required for implementation, life cycle cost analysis, impact to the public and environmental impact during construction and long-term operation.*

The results of the evaluation determine that the On-Site Utilities alternative is much more economically feasible, *over $11 million less than the JEA Interconnection Alternative*, and can be constructed in approximately two and one-half years, versus a five-year estimated time for the JEA interconnection.

First Coast has prudently projected the demands for Phase I, properly considered needed growth in the system as the development proceeds over time, and has showed that it has the expertise to adjust those projections as necessary if required. First Coast has demonstrated it proposes sufficient plant capacity for Phase I and beyond. JEA offered no evidence to the contrary.

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

STIPULATION: As reflected in the Prehearing Order, the parties stipulated that First Coast provided a copy of an unrecorded Special Warranty Deed between First Coast and the current landowners, 301 Capital, as evidence that it will have continued use of the land upon which the utility treatment facilities will be located. That stipulation was approved by the PSC. (Tr. 27).

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

ARGUMENT: Yes. For all of the reasons set forth herein, it is in the public interest that First Coast be certificated so that the development can proceed assured that service will be available when and as needed. In *Nocatee, id.,* "JEA argued in its brief that (the PSC) should give significant weight to the landowner's preference" and Nocatee - JEA's ally in that case - argued that the PSC should consider both landowner preference "and the unique ability of the developer related utility to integrate utility planning and overall planning for the development". The PSC concluded that it could consider the landowner service preference but was not bound to do so. In this case, the PSC

should consider the strong preference of the developer/landowner for service by First Coast, and the problems the developer has experienced working with JEA, and toward the certificate to First Coast. The developer is better able to match capital expenditures to utility needs than is JEA. The developer can match development needs to utility capacity resulting in the efficient use of capital and not suffer delays in utility availability and excess unused capacity resulting in higher rates.

Additionally, JEA acknowledged that it is involuntarily committed, by recent legislation requiring it to quit dumping reuse water into the St. Johns River within 10 years, which JEA projects will require the construction of 30 million gallons of traditional reclaimed water, 18 million gallons of purified water, and 26 deep well injections, at a cost of at least $1.9 billion. (Tr. 212). JEA witness Zammataro did not know what effect this could have on JEA's rates. (Tr. 214-14).

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

STIPULATION: As reflected in the Prehearing Order, the parties stipulated that the appropriate return on equity is 8.12 percent with a range of plus or minus 100 basis points. That stipulation was approved by the Commission (Tr. 27).

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

POSITION: *Water (Monthly)

Requested Rates - Residential		
Base Facility Charge	**$**	**31.75**
Gallonage Charge		
First 3,000 gls	**$**	**1.55**
Over 3,000 gls - 10,000 gls	**$**	**2.33**
Over 10,000 gls	**$**	**4.66**
Requested Rates - General Service		
5/8" x 3/4"	**$**	**31.75**
3/4"		**47.63**
1"		**79.38**
1-1/2" Turbine		**158.75**

0" Turbine		**254.00**
1" Turbine		**555.63**
Charge per 1,000 gallons	**$**	**1.58**
Wastewater (Monthly)		
Requested Rates - Residential		
Base Facility Charge	**$**	**84.35**
Gallonage Charge, 10,000 gallons cap	**$**	**5.09**
Requested Rates - General Service		
5/8" x 3/4"	**$**	**84.35**
3/4"		**126.53**
1"		**210.88**
1-1/2" Turbine		**421.75**
2" Turbine		**674.80**
3" Turbine		**1,476.13**
Charge per 1,000 gallons	**$**	**6.10**
Reclaimed Water (Charge per 1000 gallons)	**$**	**.50***

ARGUMENT: First Coast presented the testimony of Deborah D. Swain, an expert in water and wastewater regulatory accounting. (Tr. 86). Ms. Swain prepared financial schedules consistent with Commission Rules which were admitted into evidence. (Ex. 2). Those schedules were supplemented by an additional schedule of plant by NARUC account number provided in response to staff discovery. (Tr. 79-80; Ex. 49, Bates 00103). A modification was also made in financing that results in the final proposed rates. (Tr. 294-296; Ex. 36). The revenue requirement and resultant rates were vetted by staff through discovery. (Ex. 38, Bates 00007; Ex. 39, Bates 00015-00017; Ex. 40, Bates 00021-00024; Ex. 42, Bates 00062-00064; Ex. 44, Bates 00077-00079; Ex. 45, Bates 00082; Ex. 47, Bates 00091; Ex. 48, Bates 00096-00097; Ex. 51, Bates 00106 & Ex. 53. Bates 00127). The revenue requirement and rates are unrebutted.

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

STIPULATION: As reflected in the Prehearing Order, the parties stipulated that pursuant to Rule 25-30.460, Florida Administrative Code, the appropriate miscellaneous services charges for First

Coast should be a premise's visit charge $30, and violation reconnection charge at actual cost. That stipulation was approved by the Commission. (Tr. 27).

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

STIPULATION: As reflected in the Prehearing Order, the parties stipulated that the appropriate late payment charge for First Coast should be $7.50. That stipulation was approved by the Commission. (Tr. 27).

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

STIPULATION: As reflected in the Prehearing Order, the parties stipulated that the non-sufficient funds charge for First Coast should be prescribed as in Section 68.065(2), Florida Statutes. That stipulation was approved by the Commission. (Tr. 27).

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

POSITION:

***WATER**	**Plant Capacity**	**Main Capacity**
Requested Service Availability Charge Per ERC	$ 752.00	$ 3,158.00
Requested Service Availability Charge Gallon Per Day	$ 2.79	$ 1.70

WASTEWATER	**Plant Capacity**	**Main Capacity**
Requested Service Availability Charge Per ERC	$ 1,250.00	$ 4,833.00
Requested Service Availability Charge Gallon Per Day		$ 5.79 $ 22.38 *

ARGUMENT: First Coast presented the testimony of Deborah D. Swain, an expert in water and wastewater regulatory accounting. (Tr. 86). Ms. Swain prepared financial schedules for service availability charges consistent with Commission Rules which schedules were admitted into evidence. (Ex. 2, P. 16). The proposed service availability charges result in a level of CIAC at design capacity and are consistent with Rule 25-30.580, F.A.C. The basis for the proposed service

availability charges was vetted by staff through discovery. (Ex. 38, Bates 00004-00005 & 00008-00009; Ex. 40, Bates 00020; Ex. 49, Bates 00103-104 & Ex. 57, Bates 00128-137). No substantive challenge was made to First Coast's proposed service availability charges and they stand unrebutted.

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

STIPULATION: As reflected in the Prehearing Order, the parties stipulated that the appropriate customer deposits for First Coast should reflect an average of two months service for residential customers with a 5/8" x 3/4" meter and two times the average customer bill for all other meter sizes. That stipulation was approved by the Commission. (Tr. 27).

ISSUE 17: Should this docket be closed?

Yes.

Respectfully submitted this 18th day of March, 2022.

John L. Wharton
John L. Wharton
Dean Mead, & Dunbar
106 E. College Ave., Suite 1200
Tallahassee, FL 32301
850-999-4100
Jwharton@deanmead.com
Martin Friedman
Dean Mead
5300 S. Atlantic Ave. Apt. 12605
New Smyrna Beach, FL 32169
mfriedman@deanmead.com
AND
William E. Sundstrom
Robert C. Brannan
SUNDSTROM & MINDLIN, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
850-877-6555
wsundstrom@sfflaw.com
rbrannan@sfflaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail to the following parties this 18th day of March, 2022:

Thomas A. Crabb
Susan F. Clark
Christopher B. Lunny
Radey Law Firm
301 S. Bronough Street, Ste. 200
Tallahassee, FL 32301
tcrabb@radeylaw.com
sclark@radeylaw.com
dgueltzow@radeylaw.com
clunny@radeylaw.com
sschultz@radeylaw.com

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

Richard Gentry/Mary Wessling
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399
gentry.richard@leg.state.fl.us
wessling.mary@leg.state.fl.us

Jody Brooks
Radley Law Firm
21 West Church Street
Jacksonville, FL 32202
brooj1@jea.com

/s/ John L. Wharton
John L. Wharton