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

JEA's POST-HEARING BRIEF AND STATEMENT OF POSITIONS AND ISSUES

JEA, pursuant to rule 28-106.215, Florida Administrative Code, and the Prehearing Order, submits its Post-Hearing Brief and Statement of Positions and Issues, which incorporates JEA's proposed findings of fact and conclusions of law. References to admitted Exhibits in the record will be designated as "Exh." followed by the exhibit number and relevant page number(s), if any. References to the final hearing transcript will be designated as "Tr." followed by the relevant page and line numbers separated by a colon (*e.g.*, final hearing transcript page 1, line 5 would be shown as "Tr. 1:5."). This Brief does not address the issues identified in the Prehearing Order for which Type 2 stipulations have been proposed and approved (1, 8, 10, 12, 13, 14, 16) or the issues on which JEA has no position (11, 15, 17).

INTRODUCTION

JEA is the City of Jacksonville's municipal utility, providing service to approximately 378,000 water customers, 298,000 wastewater customers and 21,000 reuse customers as part of the City's public works under chapter 180, Florida Statutes. The service territory sought by the Applicant First Coast Regional Utilities ("First Coast" or the "Applicant") in the City of Jacksonville and Nassau County is in JEA's franchise territory in close proximity to JEA's existing system infrastructure. By ordinance and by interlocal agreement, JEA has an exclusive franchise from the City of Jacksonville (the "City") to provide service within the City as part of the City's

public works. By interlocal agreement, JEA has an exclusive franchise with Nassau County to serve the Nassau County portion of the service territory sought by First Coast. The only portion of the service territory sought by First Coast that is not in JEA's current territory is the portion in Baker County, for which there is no need for service.

Beyond the franchise right to provide service to the territory, JEA is ready, willing, and able to do so. Without question, JEA has the financial, technical and all other resources needed to serve the development that comprises the territory which, even at buildout decades from now would constitute only about 5% of JEA's system. JEA has further demonstrated that it is ready, willing and able to provide service by the multiple options JEA has given the developer, 301 Capital Partners, LLC ("301 Capital" or the "Developer"), for the provision of water and wastewater service. 301 Capital is the parent company of First Coast. The service options presented by JEA to the Developer to date include: 1) extending mains from JEA's existing system infrastructure to serve the property; 2) extending mains to a JEA regional facility constructed at JEA expense on JEA property adjacent to the development; and 3) construction of an initial onsite facility with JEA handling all future expansions.

The franchise rights of municipal utilities like JEA are coequal to the franchise rights of investor-owned utilities that can be granted by the Commission. Neither set of rights is superior to the other. Instead, between the municipal and private utility, first in time is first in right provided there is the ability to serve. JEA has preexisting exclusive franchise rights as a municipal utility to the service territory sought by First Coast in the City and Nassau County, and JEA has the ability to provide service. Accordingly, the Commission has no jurisdiction to certificate First Coast for the territory it seeks in the City of Jacksonville and Nassau County.

In addition to the jurisdictional basis for denial, the Commission must deny First Coast's Application because it fails to satisfy the substantive elements necessary for certification. First Coast has demonstrated no need for service in Baker or Nassau counties and no need for service in the City beyond the first phase of the development. The Application is prohibited by the City's comprehensive plan, which calls for JEA to be the exclusive provider and for *regional* treatment facilities, not *development-specific* facilities such as those proposed by First Coast. Certification of First Coast would result in the creation of a utility which will be in competition with, and duplication of, JEA's system as shown by JEA's exclusive franchises, the multiple service options JEA has presented to the Developer, and the development's proximity to JEA's existing system infrastructure.

Moreover, First Coast has demonstrated no financial ability to construct and operate a utility. It has shown no liquidity and no financing plan. First Coast and its officers have no experience or technical ability to operate a utility. The proposed plant capacity is insufficient to serve the development. The rates proposed by First Coast are *more than twice* those of JEA and certification of First Coast is otherwise not in the public interest as detailed below. For lack of jurisdiction and for First Coast's failure to establish the substantive elements necessary for certification, its Application must be denied.

ISSUE 2: NEED FOR SERVICE

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

Summary of JEA Position: ***No. First Coast has failed to demonstrate any need for service in the Nassau County and Baker County portions of the proposed territory. For the portion in the

City, First Coast has failed to demonstrate a need for service beyond the first phase of the development (the first 2,800 connections).***

Analysis and Argument

A. The foreseeable future of the development is limited to the City of Jacksonville.

First Coast has shown no need for service in Nassau and Baker counties, or in the City beyond the first phase of the development. The rule relating to need for service requires a showing of "[t]he number of customers currently being served and proposed to be served, by customer class and meter size, including a description of the types of customers currently being served and anticipated to be served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, or commercial." Rule 25-30.033(1)(k)1., F.A.C.; *see also* § 367.045(1)(b), Fla. Stat. As the proposed territory is currently raw land, there are no "customers currently being served."

First Coast witness Beaudet testified as to the "customers . . . proposed to be served." The Feasibility Assessment prepared by Mr. Beaudet is limited to Duval County. Tr. 46:7-8. The Developer's proposed phasing of the development -- when and where water and wastewater connections would be needed -- is shown on a "Preliminary Absorption Schedule." Tr. 43:15-25; Exh. 68. No connections are contemplated in Nassau or Baker counties until at least 10 years after the development begins. Tr. 45:15-19; Tr. 47:18-21; Exh. 5, p. 4 ("The Development will begin in Duval County and expand based on the economy and housing demand in the area.").

On its face, the Preliminary Absorption Schedule shows 100 connections in Nassau County and 200 connections in Baker County in years 10-15 of the development and 200 Nassau and 300 Baker connections in years 15-20 of the development. However, there is no information on who or what might be connected, if anyone, ever, let alone a description by "customer class and meter size." Tr. 45:20-46:12; Exh. 5, p. 6 ("the exact customer mix and timing of the development phases

has not been determined"). There is no information in the record supporting that these connections will be needed in the Nassau and Baker County portions of the development 10 years from now, 20 years from now, or ever.

The first 10 years of the development, consisting of 2,800 connections -- 2,500 residential connections and 300 low-intensity commercial connections -- are planned to be in the Villages portion of the development, specifically the North Village and the Commercial Village. Tr. 47:11-17.[1] The Villages areas addressed by Mr. Beaudet's Feasibility Assessment are comprised of a 5,000 acre parcel of the Developer's land located entirely in the City. Tr. 48:6-15. According to First Coast, "[t]he Feasibility Assessment and its cost estimate were for Phase I of the development." Exh. 60, p. 2.

The recently-enacted revised City development ordinances, 2021-692 and 2021-693 (Exh. 67), have a timeline for the first 15 years of development of the Villages -- which is again entirely within JEA's exclusive franchise area in the City -- showing a potential 15,000 residential units plus space for commercial, hotel, light industrial, office, and hospital/medical office space. The foreseeable future of the development is limited to the City.

B. There is no need for service in Baker or Nassau counties.

The record is devoid of any evidence as to whether, when and how the Nassau County and Baker County portions of the development may proceed. When, if ever, any development may happen there is pure speculation. There is no information about Baker or Nassau County customers "currently being served" or "proposed to be served" as required by the rule. First Coast witness Kennelly testified "[t]he Nassau County property is currently classified as Commercial and

[1] At the final hearing, First Coast witness Kennelly testified that "the engineers are still designing Phase I, but I think those numbers are representative of Phase I." Tr. 139:19-24.

Industrial, while the Baker County parcel is currently classified as Agricultural while the owners determine how best to develop the property." Tr. 100:17-19. The Duval County portion of the development is "the only portion of the service area currently entitled for development." Exh. 5, p. 6; Exh. 38, p. 8 ("Applicant is without knowledge of any steps taken by the current owner to facilitate land use designation changes for that [Baker County] property.").

There are two parcels of land presently owned by The Chemours Company, FC, LLC, that comprise the service territory requested by First Coast in Baker County. For one of the parcels, the Developer has the right to acquire the parcel from Chemours in 2030. Tr. 139:25-140:25. For the other Baker County parcel, which the Developer does not have the right to acquire, Chemours has not requested service. Rule 25-30.033(1)(k)2., Florida Administrative Code, requires "[a] copy of all requests for service from property owners or developers in areas not currently served." The Application (Exh. 5, p. 70 of 236) includes only a letter from Chemours requesting to be included in the service area. Curiously, Chemours does *not* request service. It says mining operations will be completed "in the not too distant future" but offers no timeline on when or how that mining property may be redeveloped and water and wastewater service needed. In sum, First Coast failed to offer any proof as to when, and to what extent, Chemours may need service. *See In Re: Objection to Notice of Conrock Utility Company of Intent to Apply for a Water Certificate in Hernando County,* Order No. 22847, Docket No. 890459-WU (Fla. P.S.C. April 23, 1990) ("*Conrock*") (finding that "discussions" about service do not equate to a need for service to a "contemplate[d]" development where there was "no evidence which shows when or on what schedule the construction of that development might occur").

There are no customers currently being served in the Baker and Nassau portions of the territory and no customers that have requested service. There has been no local government

approval of the development in Nassau or Baker counties, nor have any plans or proposals been brought forward by First Coast or the Developer as to those counties. Simply put, First Coast has established no need for service in Nassau or Baker counties. *See In Re: Application of Gulf Utility Company for Amendment of Water Certificate No. 72-W and Sewer Certificate No. 64-S in Lee County, Florida*, Order No. 14536, Docket No. 840387-WS (Fla. P.S.C. July 3, 1985) (finding need for service had not been established in two of three requested areas, where for one of the two denied areas there was testimony that "[w]e have not made any elaborate plan, and we haven't come to the County with any proposal for development at this time [and a]ll our plans are preliminary" and for the other denied area there was "no direct testimony concerning a demand or need for service in that area").

ISSUE 3: INCONSISTENCY WITH LOCAL COMP PLAN

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

Summary of JEA Position: ***Yes. The application is inconsistent with the City's comprehensive plan, which calls for JEA to be the exclusive provider of water and wastewater service and for treatment facilities to be regional in nature. Development-specific utilities like the one proposed by First Coast are to be phased out.***

Analysis and Argument

Section 367.045(4), Florida Statutes, provides that "[n]otwithstanding the ability to object on any other ground, a county or municipality has standing to object on the ground that the issuance or amendment of the certificate of authorization violates established local comprehensive plans developed pursuant to ss. 163.3161-163.3211." Certificating First Coast would violate the City's local comprehensive plan (Exh. 21) ("Comp Plan") as discussed below.

A. Under the City's Comp Plan, JEA is to be the provider of service.

JEA witness West testified that, consistent with the exclusive franchise agreement between JEA and the City, the Comp Plan contemplates JEA as the sole provider of wastewater service. Tr. 237:6-15. Goal 1 of the Sanitary Sewer sub-element is that "JEA shall provide for economically and environmentally sound regional wastewater collection and treatment systems which protect the public health and investment in existing facilities, promote beneficial land use and growth patterns, and discourage urban sprawl." Exh. 21, p. 30. It states that "JEA shall provide . . ." service, with no contemplation of a provider like a First Coast. Similarly, as discussed below, the Potable Water element of the Comp Plan calls for JEA -- not the Developer or another provider[2] -- to regionalize facilities.

B. The Comp Plan calls for regional facilities, not development-specific plants.

Goal 1 of the Sanitary Sewer sub-element is for "regional wastewater collection and treatment systems . . . ." Exh. 21, p. 30. Similarly, Potable Water Goal 1 calls for regional facilities from JEA:

> JEA shall regionalize water facilities in a manner which adequately corrects existing deficiencies, accommodates future growth, increases system capacity, acquires investor owned systems and incorporates private package plants into the regional system, and

[2] In his prefiled rebuttal testimony, First Coast witness Kelly testified that new private utilities like First Coast are permitted by the Comp Plan, quoting the following language: "JEA shall provide for regional water facilities associated with development within the Urban Area as defined in the Capital Improvements Element, excluding improvements within the service area of an investor-owned public utility." Tr. 406:13-407:4.

According to First Coast witness Kelly, because JEA is not required to provide for regional water facilities within the "service area of an investor-owned public utility" that means that new investor-owned public utilities are permitted under the Comp Plan. The Comp Plan simply does not say that. There are three legacy investor-owned utilities in the City. Tr. 218:4-12; 225:23-227:2. The quoted language means only that JEA does not have to regionalize facilities in the service areas of these legacy providers. Moreover, as it relates only to the Urban Area, the quoted language does not apply to the development.

> interconnects water systems where required while complying with all federal, State, regional and local regulations.

Exh. 21, p. 49. This language calls for JEA, not the Developer, to regionalize facilities. Tr. 238:8-16.

First Coast "Regional" Utilities is a misnomer. There is nothing regional in nature about First Coast. The plant proposed by First Coast is a non-regional facility. Tr. 421:20; Tr. 351:12. According to First Coast witness Kennelly, First Coast was formed to serve the Developer's own property. Tr. 104:11-13 ("we are in a better position to provide a utility that not only corresponds to our need but can stay with us as we develop"); 364:4-7 ("[w]e believe the most economical approach to providing services to the folks that will be in our development is by building and operating our own utility").

Over the last two decades, JEA has taken significant steps to regionalize facilities. This includes a regionwide effort to acquire private water and wastewater plants and systems with the goal of improving the service to utility customers, improving water quality, and limiting demand on the aquifer. Tr. 202:9-13. Exhibit 14 is a list of small systems acquired and upgraded by JEA, involving more than $250 million and approximately 70,000 customers.

The Comp Plan promotes regional facilities with good reason. As testified by JEA witness Zammataro, in Northeast Florida "[p]rivate systems, particularly small systems, have a history of being short-lived." Tr. 203:23-24. The three remaining legacy investor-owned utilities in the City (that predate the existence of JEA) all have issues: "Normandy Village is entering into a FDEP Consent order for failure to meet effluent limits. FDEP has contacted JEA to ask if JEA could handle the additional wastewater if the private utility was unable to financially comply. Regency Utilities has abandoned all potable water treatment and only provides water and wastewater service though a bulk meter with JEA. Neighborhood Utilities is a water-only utility which uses JEA as a

backup source of water." Exh. 56, p. 4. Certification of First Coast would be directly contrary to the Comp Plan's direction for regional facilities and for those regional facilities to be provided by JEA.

C. The plant proposed by First Coast is a non-interim, non-regional facility disallowed by the Comp Plan.

As described above, the Comp Plan calls for JEA regional facilities. New non-regional water facilities may, however, be allowed as appropriate interim facilities under the Comp Plan, provided that each of the following requirements are satisfied:

1. The facility meets all federal, State, regional and city environmental regulations;
2. The developer provides for all operation and maintenance costs;
3. The developer provides for phase out costs where appropriate;
4. The developer enters into an agreement with JEA specifying the date and manner of phase out;
5. The facility operator will reimburse JEA for costs of enforcement of violations of water quality standards; and
6. Minimum fire protection levels of service as specified in Policy 1.3.1 are provided for.

Exh. 21, pp. 50-51; Tr. 239:3-12. Similarly, non-regional wastewater facilities may be permitted as interim facilities, provided all of the following requirements are satisfied:

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

Exh. 21, p. 32. There is nothing in the record to suggest the Developer ever pursued this alternative with the City or JEA. To the contrary, First Coast witness Kennelly testified that "[w]e are in front of the Commission right now for certification so that we don't have to deal with this comprehensive plan." Tr. 362:4-6.

Regardless, the plant proposed by First Coast does not qualify for the Comp Plan exception for interim non-regional facilities, simply because it is not an interim facility, a fact which was readily admitted at hearing. Tr. 361:21-22 (Kennelly: "It's not in our current plans to build an interim facility.") The plant proposed by First Coast is a non-regional facility. Tr. 421:20. There is no agreement with the City or JEA for phase out, let alone for the Developer to provide for the costs of phase out. In sum, First Coast does not meet the limited Comp Plan exceptions for interim, non-regional facilities, nor is there any suggestion in this record that it was ever First Coast's intent to do so.

D. The Comp Plan does not preclude JEA from constructing facilities at the development.

In her prefiled direct testimony, JEA witness West testified that "[i]n Rural Areas, such as this Development, the Comp Plan generally prohibits JEA from investing in sanitary sewer facilities." Tr. 237:23-24. Thus the Comp Plan was consistent with the PUD Ordinance in effect at the time, which required the Developer to construct the water and wastewater treatment facilities and dedicate them to JEA. Tr. 237:24-238:1. The PUD Ordinance was revised in December 2021, removing this requirement. *See* FN8, *infra*. Also in December, 2021, the development was rezoned to mixed use (Exh. 67) which removed any Comp Plan barrier to JEA investing in facilities at the development site.

At the final hearing, Ms. West testified that "the comp plan . . . states the JEA shall not invest in utilities in the rural area except in areas where there is mixed use and for economic development." Tr. 231:14-18. The provision of the Comp Plan referenced by Ms. West is policy 1.1.3, which provides that:

> 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.

Exh. 21, p. 30 (emphasis added). As testified by Ms. West: "the property land use has been changed from agricultural to a multiuse. . . . significant in that JEA may now invest in facilities in this area, which was previously required for the developer to provide." Tr. 241:10-14. Similarly, First Coast witness Kelly testified: "[the Comp Plan] permits development beyond urban and suburban boundaries if it is mixed use." Tr. 400:11-12. As a result, the Comp Plan does not preclude JEA from investing in facilities at the development site and a JEA facility would be in complete conformance with the Comp Plan.

ISSUE 4: COMPETITION OR DUPLICATION

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?

Summary of JEA Position: ***Yes. JEA has exclusive franchises from the City and Nassau County and the ability to provide service. JEA has provided the Developer multiple options for connecting the development to JEA for water and wastewater service and JEA's existing system infrastructure is in close proximity to the proposed service territory.***

Analysis and Argument

Certification of First Coast would result in the creation of a utility which would be in competition with, or duplication of, JEA's system. Section 367.045(5)(a), Florida Statutes, provides that:

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

See also, e.g., In re: Application of Certificates Nos. 340-W and 297-S in Pasco Cnty. by Mad Hatter Utility, Inc., Order No. PSC-97-1173-FOF-WS, Docket No. 960576-WS (Fla. P.S.C. Oct. 1, 1997) (finding that certain parcels in a requested territory amendment would result in competition with, or duplication of, the County's system where the County's existing mains could serve the parcels). The statute prohibits the Commission from granting a certificate which will be in competition with, or a duplication of, another system absent a determination that the other system is inadequate to meet the reasonable needs of the public, or it is unable, refusing, or neglecting to provide reasonably adequate service.

First Coast would be in competition with, or duplication of, JEA's system. First Coast's proposed territory in the City and in Nassau County is in JEA's existing franchise territory. JEA has exclusive franchise agreements with the City of Jacksonville and Nassau County for these portions of the proposed service territory. The development is in close proximity to JEA's existing system infrastructure. JEA has provided the Developer with multiple options for connecting the development to JEA's system and is otherwise ready, willing, and able to provide service to this development.

A. First Coast's proposed system would be in competition with or duplication of JEA's system.

1. JEA has exclusive franchises with the City and Nassau County for those portions of the development.

JEA is wholly-owned by the City.[3] Exh. 57, p. 3. The portion of First Coast's proposed territory located in the City is within the exclusive franchise territory of JEA as granted by City

[3] *See, e.g.*, Ch. 67-1569, Laws of Fla. As a governmental authority and municipal utility, JEA is exempt from chapter 367 and regulation by the Commission. § 367.022(2), Fla. Stat. (exempting "[s]ystems owned, operated, managed, or controlled by governmental authorities . . .").

ordinance. Specifically, section 21.07(l) of the City of Jacksonville Charter[4], provides in part:

> This franchise fee [paid by JEA] is in consideration of the administrative costs incurred by the City to coordinate functions and services with JEA, for the exclusive right to serve electric, water and sewer customers, for use by JEA of the public rights-of-way used by it in connection with its electric distribution system and its water and sewer distribution and collection system, and in further consideration of the unique relationship of JEA and the City, in which JEA is a wholly owned public utility, and such other good and valuable consideration that has been agreed to between JEA and the City of Jacksonville.

(emphasis added).[5] Similarly, an interlocal agreement between the City of Jacksonville and JEA provides that the "consideration for the Franchise Fee is the exclusive right for JEA to serve electric, water and sewer customers . . . ." (Exh. 16, p. 3) (emphasis added).

The portion of First Coast's proposed territory located in Nassau County is within the exclusive franchise territory of JEA as granted by Nassau County. On December 17, 2001, while it was a non-jurisdictional county,[6] Nassau County granted JEA the exclusive authority to provide water and wastewater service to a certain portion of the County. The Nassau County/JEA Water and Wastewater Interlocal Agreement (Exh. 17) provides in part that:

- "[T]he parties seek through this Interlocal Agreement to establish the terms and conditions by which JEA will have exclusive authority to provide water and wastewater (including reuse) services within the Service Territory and elsewhere in Nassau County." Exh. 17, p. 2 (emphasis added).

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[4] Official recognition of Article 21 of the Charter Laws of the City was requested by JEA and granted at the final hearing. Tr. 9:21-10:8.

[5] In Duval County, there are three private utilities regulated by the PSC that predate JEA: one obtains service from JEA through bulk meters, another uses JEA as a backup provider, and the third is under a DEP consent order for effluent violations. Tr. 218:4-12; 225:23-227:2.

[6] Nassau County was a non-jurisdictional county between September 17, 2001 and July 15, 2002. *See In Re: Recission by Nassau County of Resolution No. 2001-128, Which Rescinded Florida Public Service Commission Jurisdiction Over Investor-Owned Water and Wastewater Systems in Nassau County*, Order No. PSC-02-1411-FOF-WS, Docket No. 011344-WS (Fla. P.S.C. Oct. 10, 2002). The referenced interlocal agreement between Nassau County and JEA was executed while Nassau County was not a PSC jurisdictional county.

- Defining as the "Additional Territory" all areas west of the Intercoastal Waterway excluding Callahan and Hilliard. Exh. 17, p. 3.

- "Nassau County will not authorize or certificate any other utility to provide water or wastewater services in the . . . Additional Territory without JEA's prior written approval." Exh. 17, p. 4.

- "The County and JEA agree that the rights of JEA to provide water and wastewater services in Nassau County are limited by this Agreement to the . . . Additional Territory." Exh. 17, p. 4.

- "As consideration for the County's entry into this Agreement and its consent to all of the terms and conditions of this Agreement, including but not limited to granting JEA rights to operate and provide services in the Additional Territory, JEA agrees to make a one-time lump sum payment to the County in the amount of One Million Five Hundred Thousand Dollars ($1.5 Million) within ten (10) days of the effective date of this Agreement." Exh. 17, p. 13 (emphasis added).

The portion of the development located in Nassau County is within JEA's franchise territory pursuant to its interlocal agreement with Nassau County. Tr. 205:7-8; Exh. 17.

JEA's preexisting franchise rights to provide service in the City and Nassau County portions of the territory sought by First Coast are material to this proceeding in two respects. First, coupled with JEA's present ability to serve, JEA's franchise rights mean the Commission lacks jurisdiction to certificate First Coast.[7] Second, the franchises show that First Coast would be in competition with, or duplication of, JEA's system. *See Conrock* at ¶¶ 14-16 (finding that the

[7] Florida courts have unambiguously held that "the entity, whether governmental or private, which first acquired the legal right to provide water service to the subject area and which has the ability to do so is the entity with the exclusive legal right to do so." *Lake Utility Servs., Inc. v. City of Clermont*, 727 So 2d 984, 988 (Fla. 5th DCA 1999); *see also City of Mount Dora v. JJ's Mobile Homes, Inc.*, 579 So. 2d 219, 225 (Fla. 5th DCA 1991) (holding that "[w]hen each of two public service utility entities, whether governmental or private, have a legal basis for the claim of a right to provide similar services in the same territory and each has the present ability to promptly and efficiently do so, that entity with the earliest acquired (prior) legal right has the exclusive legal right to provide service in that territory without interference from the entity with the later acquired (subsequent) claim of right"). JEA has both the "legal right to provide water service and . . . has the ability to do so" and therefore has the "exclusive legal right to do so."

applicant would compete with or duplicate the City of Brooksville's system, in that the applicant's proposed service territory included an area in the City's franchise territory under an interlocal agreement between the City and Hernando County: "much of Conrock's territory . . . lies within the 5-mile radius urban services area of Brooksville, authorized to be served by the city and county interlocal agreement" and that "the certificated territory proposed would overlap that reserved to the municipality of Brooksville by its agreement with Hernando County").

The development land is in JEA's existing franchise territory. Not close to it, in it. If First Coast is certificated by the Commission for the City and Nassau County portions of the requested territory, it could not be more "in competition with" JEA, contrary to section 367.045(5)(a), Florida Statutes.

2. JEA has provided the Developer with multiple options for connecting the development to JEA for the provision of water and wastewater service.

JEA has proposed several alternatives to the Developer including extending service mains from JEA's existing system, extending service mains to a JEA regional facility with JEA paying for the cost of the new facility, and initial onsite plants with regional expansion by JEA.[8] The Developer has rejected all JEA proposals. Exh. 57, p. 10. The availability of these alternatives further show that First Coast's proposed system would be in competition with or duplication of JEA's system.

[8] Prior to December 14, 2021, the portion of the development in the City was subject to a City planned unit development ordinance that required the Developer to "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." Exh. 19, p. 28. Effective December 14, 2021, the City enacted a new ordinance that requires the Developer to "provide a site to serve the needs of this PUD for potable water, wastewater, and reuse water." Exh. 67, p. 23; Tr: 231:1-7. JEA's exclusive franchise with the City is unaffected by the revised PUD ordinance.

a. Extending service mains from JEA's existing system.

The first service alternative provided to the Developer was to simply extend service mains from JEA's existing system to the property (*i.e.*, connecting by pipes to JEA's system), which would accommodate over 2,800 connections. Tr. 208:9-12; Exh. 54, p. 6. Maps illustrating this alternative are at Exhibit 55, p. JEA1390-1391. This alternative could be completed in 30-36 months. Exh. 54, p. 5. "The developer would run water and sewer mains from the proposed development to the JEA system, approximately 25,500LF at a total cost of $20 million. JEA would construct at JEA expense a potable water re-pump facility estimated at a cost of $2 to $3 million. This project could serve 2,800 ERC's and construction would take 2.5 to 3 years." Exh. 54, p. 5. JEA witness Zammataro further testified that "we felt like we could construct the lines quicker than a facility to get the development off the ground." Tr. 216:20-21.

b. Extending service mains to a JEA regional facility

Another alternative offered by JEA was for the Developer to extend mains to a JEA regional facility, with JEA paying for the cost of the new facility. Tr. 208:12-13. "JEA owns property directly northwest of Cecil Field. This property was identified as a location for a future JEA regional wastewater treatment facility ("WWTF"). Under this scenario, the Developer would run the sewer and reclaimed water mains to the proposed WWTF site and JEA would construct a new WWTF." Exh. 54, p. 6. A map illustrating this alternative is at Exhibit 55, p. JEA1392. The projected cost to the Developer for the service mains was $22 million, and the cost to JEA for constructing the regional WWTF was $15-$20 million. Exh. 54, p. 7. The regional WWTF could then be expanded as needed. Exh. 54, p. 7.

c. Initial onsite plants by the Developer, regional expansion by JEA.

In August, 2019, JEA again provided the Developer with a proposal to provide water and wastewater service to the development. Exh. 22, 70. Under this proposal, the Developer would construct initial onsite facilities and JEA would handle all future expansions. Tr. 208:13-15; 239:15-17. Regarding the initial onsite facilities, JEA proposed to refund the Developer for the connection fees collected by JEA, Tr. 212:10-11, or waive the JEA fees for those connections. Exh. 70, p. 2. JEA witness Zammataro testified that this was a "solution that allowed 301 Partners to meet their timeline and get reimbursed for the cost." Tr. 212:12-14.

First Coast witness Kennelly acknowledged the Developer "evaluated" this offer. Tr. 136:23. Under this proposal, presented in detail in Exhibit 70, for the initial onsite water and wastewater treatment plants, the Developer would construct the plant and obtain the needed consumptive use permit from the water management district, and JEA would purchase the needed real estate from the Developer and waive JEA's capacity fees for the related connections. When 50% of the initial plant connections were issued meters, JEA would then be solely responsible for expanding the plant to meet the needs of the development.

Once service is established, with this proposal or the others, JEA is required to keep pace with the development regarding any expansions, as shown by this question from Commissioner Clark and answer from JEA witness Zammataro at the final hearing:

> COMMISSIONER CLARK: Could you take, based on the proposal, all the way through their entire proposed development and guarantee that you would have capacity available at the time they needed it?
>
> THE WITNESS: Yes. What happens is once a facility gets constructed, we do build-out curves. So we track the flow. We are required by FDEP. And so many years in advance, we have to begin planning and expanding the facility. So once the facility is expanded and we fall under the Florida Department of Environmental Regulation we are obligated to make sure that capacity is there.

Tr. 225:1-13. For wastewater, JEA would construct a regional water reclamation facility to serve the development as it expanded.

3. First Coast's Feasibility Assessment does not accurately communicate the array of service alternatives provided by JEA to First Coast.

First Coast's Application includes a "Feasibility Assessment" (Exh. 7) that ostensibly compares the feasibility of an onsite plant constructed and operated by First Coast to interconnection with JEA's system. Any notion that this Assessment was prepared as an objective evaluation of all the options for providing service to the development is baseless. The focus of the Assessment was on minimizing costs to the Developer (Tr. 57:13-17) without regard to the costs to ratepayers. Tr. 57:18-22. First Coast witness Beaudet, author of the Assessment, was hired by the Developer's attorney to help First Coast attempt to get certificated by the Commission (Tr. 40:18) not to get the development connected to JEA. Alternatives presented by JEA, including an early $10 million interconnection alternative, were inexplicably not shared with Mr. Beaudet (Tr. 61:5-8) and were not included in the Assessment.

Moreover, construction of an onsite plant[9], and every other alternative that would be available to a new utility such as First Coast would be available to JEA as well. Tr. 64:18-21. The Assessment thus artificially limits itself to an "either/or" scenario -- either First Coast constructs its own onsite plant or the development is connected to the JEA system (new onsite water treatment plant, new regional water reclamation facility). As a result, the Assessment is incomplete and unpersuasive. Certainly, JEA can construct an onsite plant -- just like a new utility in theory could

[9] There is no requirement for onsite plant in the current City development ordinance. Tr. 95:17-19. Plant cost projections in the Feasibility Assessment are planning-level only, which can vary greatly from the reality. Per the Assessment, projections "are normally within +50 percent to -30 percent." Exh. 5, p. 93.

-- but JEA has additional options available to it from its existing system infrastructure such as directly connecting by pipes (whether as the primary or backup method of service) or constructing a regional facility that would be available to serve growth in the entire region, not just the Developer's land.

Against this backdrop, First Coast witness Kennelly's testimony that there are "no plans on the part of . . . any other utility service entity to provide such service in a timely and economically feasible manner" is simply belied by the record evidence. Tr. 99:17-19. JEA demonstrated that it provided multiple alternatives, multiple "plans," to serve this development. Any notion that JEA provided "no plan" to serve this development is flat false. The multiple alternatives proposed by JEA show that First Coast would be in competition with, or duplication of, JEA's system.

4. The development is in close proximity to JEA's existing system infrastructure.

JEA's existing system infrastructure is within a few miles of the proposed development. Exhibit 7, page 13 is a map showing the development, JEA-owned lands to the immediate north and east of the development, and the current terminus of JEA's service mains off Normandy Boulevard. According to First Coast's own Assessment, this terminus is 25,500 feet from the Developer's preferred utility plant connection site within the development. Exh. 7, p. 13. JEA witness Zammataro testified that this is "approximately five miles the connection point." Tr. 217:12-13. The same map also illustrates that current JEA terminus is *less than half that distance* to the boundary of the development. First Coast witness Kennelly testified that "[t]here are no water or wastewater facilities in proximity to the proposed territory." Tr. 100:22. That is simply incorrect. JEA's existing system infrastructure is across the highway (US301) from it, with JEA-

owned land to the north and east of it. JEA could not be more "in proximity" to the proposed territory.

B. JEA's system is more than adequate to meet the needs of the public and JEA is ready, willing, and able to provide service.

JEA is ready, willing, and able to provide service. The alternatives proposed by JEA, as well as the resources JEA would bring to bear in service of the development, show that JEA's system is anything but "inadequate to meet the reasonable needs of the public" under section 367.045(5)(a), Florida Statutes. Under that statute, because First Coast's system would compete with or duplicate JEA's system, First Coast cannot be certificated absent a showing that JEA's system is inadequate to meet the reasonable needs of the public. *See Conrock* (concluding that "there has been no showing that future customers in the territory involved cannot be provided adequate service by the presently existing city and county water facilities and reasonably anticipated extensions and augmentations thereof"). The alternatives presented by JEA show that the territory can be readily served by JEA's existing facilities and "extensions and augmentations thereof."

Moreover, JEA witness Orfano testified to JEA's extensive financial resources that could be brought to bear in service of the development. JEA's water and wastewater system had net capital assets of approximately $2.8 billion as of September 30th, 2021. Tr. 186:20-24. In addition to its substantial revenue bond capacity, JEA's water and wastewater system has access to JEA's $500 million revolving credit facility with J.P. Morgan Chase Bank. Tr. 187:2-5. As of September 30, 2021, the water and wastewater system served approximately 378,000 water customers, 298,000 wastewater customers and 21,000 reuse customers. Tr. 187:5-8. Its system is far beyond adequate. As testified by Mr. Orfano: "we have a one-and-a-half billion dollar capital program that's about to be disclosed to be significantly higher than that. We absolutely have the capacity

to add capital to our system to serve our customers. Absolutely." Tr. 193:7-14. These numbers show JEA has the ability to provide service.

Even if the development ultimately added 15,000 customers to JEA's system, they would comprise only about 5% of the total, showing JEA's size and resources. First Coast witness Swain testified at the final hearing that "I don't doubt their financial capability," (Tr. 303:22-23) that JEA has the facilities, labor, equipment and systems available to provide service to this development, (Tr. 306:11-16) that any concerns Wall Street had about governance at JEA no longer exist (Tr. 312:13-18), that JEA's recent management of its bond refinancings were "very good" (Tr. 316:7-20) and that "that there is certainly stability and leadership" at JEA (Tr. 319:24-25). There can be no doubt about JEA being ready, willing and able to provide service.

ISSUE 5: FINANCIAL ABILITY

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

Summary of JEA Position: ***No. First Coast itself has no resources. While First Coast's developer parent, 301 Capital Partners, LLC, has stated it will provide financial support, the Developer has failed to establish that it has funds to construct or operate a utility or that it has secured any outside financing.***

Analysis and Argument

Neither the applicant First Coast nor its parent the Developer 301 Capital Partners, LLC has demonstrated the financial ability to serve the requested territory. Rule 25-30.033(1)(h)1., F.A.C. requires:

> A detailed financial statement (balance sheet and income statement), audited if available, of the financial condition of the applicant, which shows all assets and liabilities of every kind and character. The financial statements shall be for the preceding calendar or fiscal year. The financial statement shall be prepared in accordance with Rule 25-30.115, F.A.C. If available, a statement of the sources and uses of funds shall also be provided;

First Coast has no financial resources. Tr. 112 (First Coast witness Kennelly: "no bank account . . . no payroll . . . no financial statements whether audited or not")

Similarly, the Developer has not demonstrated the financial ability to serve the requested territory nor has it explained the manner or amount of any funding it intends to provide to First Coast. The Application (Exh. 5, p. 8) says the Developer will provide "necessary start-up funding as well as funds sufficient to cover operational shortfalls during the utility's initial years of operation." When a utility is to be funded by an affiliate, rule 25-30.033(1)(h)2., F.A.C., requires the applicant to provide:

> A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding. The list need not include any person or entity holding less than 5 percent ownership interest in the utility. The applicant shall provide copies of any financial agreements between the listed entities and the utility and proof of the listed entities' ability to provide funding, such as financial statements;

(Emphasis added). There is no information in this docket on either the "manner" or "amount" of funding from the Developer, or proof of the Developer's "ability to provide funding." This deficit is only worsened by the fact that there is no contractual relationship between First Coast and the Developer 301 Capital. Tr. 116:18-23.

The list of individuals who constitute 301 Capital is largely unknown and has been misrepresented in this docket. In its Application (Exh. 5, p. 9 of 236), First Coast stated that "[t]he majority of the officers of Applicant are members of the Developer/301 Capital." This is false and intentionally misleading. It was meant to suggest that First Coast's officers have some influence or say in the activities of the parent Developer, which is simply untrue. In his prefiled direct testimony, First Coast witness Kennelly testified that he is "a member of 301 Capital Partners."

Tr. 98:4-6. This is also false.[10] In reality, neither of First Coast's officers are members of 301 Capital Partners, LLC. The truth is that one of the two officers of First Coast, Mr. Kennelly, owns an LLC that owns 5% of 301 Capital, and the other First Coast officer has no membership interest in 301 Capital, through an LLC or otherwise.

The Applicant, First Coast, has only two officers -- Robert Kennelly and Denise Howard. Exh. 5, pp. 3,19; Tr. 112:1. Mr. Kennelly is not a member of 301 Capital Partners. Tr. 117:3-118:2. Ms. Howard is not a member nor does she have any ownership interest. Tr. 120. Those with an ownership interest in 301 Capital Partners, LLC include Cattail Capital Partners, LLC; Roberts Development & Management, LLC; Roberts Swift Creek Holdings, LLC; Swift Creek Land & Timber, LLC; Magnolia Southern Ventures, LLC; JCH Land, LLC; Lagoon Capital Partners, LLC; and John F. White. Tr. 118.

The financial resources of the Developer are unknown and unverified. In unaudited "fair market value" financial statements (Exh. 5, pp. 114-115), the Developer states it has $137 million in land value but only $100,000 in cash. It has no audited financial statements or profit and loss statement. Tr. 121:1-6. As of January 19, 2022, Mr. Kennelly's deposition, First Coast had no funding commitment letter from a bank. Tr. 122:24-123:2. Mr. Kennelly testified that in the week following his deposition, days before the final hearing, First Coast obtained a funding commitment letter from a bank. Tr. 123:3-124:16. Yet, remarkably, First Coast made no effort to tender any such letter into the record.

Mr. Kennelly's testimony at the final hearing shows the Developer and First Coast have no plan as to how they might finance construction and operation of a utility:

[10] Mr. Kennelly testified that he owns an LLC called Cattail Capital Partners, LLC, that owns about five percent of 301 Capital Partners, LLC. Tr. 118:3-9.

> [T]here is an incredible amount of, not only borrowing capacity to pay for the utility, but it is a collection of properties that you could sell off parcels as you are going along, Nassau, something like that. So you can actually fund this utility out of parcel sales.
> . . .
> We can also raise money from other investors. We have -- and, of course, there is the bond market for financing the utility as well, that may give it, you know, a lower rate to customers.

Tr. 143:13-24. Maybe borrow money, maybe sell off parcels of land, maybe seek additional investors, maybe issue bonds . . . clearly the Developer has no financial plan in place, let alone an "explanation of the manner and amount of such funding" as required by the rule.

If anything, the record in this case illustrates *just how fragile* the Developer's finances are, as testimony at hearing showed that the Developer recently lost its majority investor and, according to Mr. Kennelly, the remaining investors are now saddled with the burden of that (presumably unexpected) buyout. Mr. Kennelly offered no explanation as to this departure and vehemently objected to any discussion of how this loss would be compensated. First Coast failed to establish its financial ability to construct and operate a water and wastewater utility.

ISSUE 6: TECHNICAL ABILITY

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

Summary of JEA Position: ***No. First Coast and its officers have no technical ability or experience in the utility industry, nor has First Coast identified any contractors with the required technical ability.***

Analysis and Argument

First Coast and its owners, officers and members have no experience in the water or wastewater industry or otherwise in the utility industry. Rule 25-30.033(1)(i), F.A.C., requires the application to "demonstrate the technical ability of the applicant to provide service" including by providing "[a] statement of the applicant's experience in the water or wastewater industry." First

Coast and its personnel have no technical ability to provide service, nor any experience in the water or wastewater industry. Exh. 38, p. 10 ("Neither the Applicant nor its owners and officers have previously owned and/or operated water and wastewater systems.")

First Coast's President, Mr. Kennelly, a Georgia lawyer and CPA, testified that prior to entering the real estate development industry, he was a tax partner at KPMG. Tr. 98:8-10. He was selected as First Coast President as "the person with the most appropriate skill set" (Tr. 109:20-25) despite never having worked for a utility and last being a W-2 employee in 2013. Tr. 110:1-15. In addition to his ostensive role with First Coast, Mr. Kennelly is a member of five LLCs with their own real estate interests (Tr. 110:16-22), and serves as the Chief Financial Officer for BHK Capital, which is his "primary venture." Tr. 110:23-111:1.

Accordingly, Mr. Kennelly lacks the required experience or technical ability to run a utility. *See Conrock* (concluding that the applicant lacked the required technical ability where "[t]he landfill business is the most closely related business endeavor to a water utility business in the experience of . . . Conrock's president" and also that the applicant's lack of financial ability translated to a lack of technical ability where the applicant had asserted it would retain qualified personnel to operate the utility).

First Coast's Vice President and only other officer is Denise Howard (Tr. 112:1). Mr. Kennelly testified that he has no idea of Ms. Howard's education or background. Tr. 111:6-9. The only record evidence of Ms. Howard's skill or expertise is a suggestion that Ms. Howard serves as an assistant to Avery Roberts (Tr. 142:21-23), who is apparently one of the managers of the

Developer (Exh. 5, p. 109).[11] In sum, there is simply no evidence from which the Commission can find that First Coast's officers have any relevant skill or experience in the utility business.

In an apparent attempt to overcome this obstacle, First Coast has asserted that it can acquire the required technical ability to serve the proposed territory solely by virtue of the fact that it intends to hire qualified vendors and contractors to construct and operate the utility. Tr. 142:7-9 ("we are going to put a team around us that knows how to operate a utility"). First Coast has not identified the vendors and contractors who would construct a system and operate a utility. First Coast witness Kennelly testified that regarding "engineering, design, permitting, construction and operations" it will "engage a well-known utility design-build-operations contractor." Tr. 98:23-25. No such contractor has been identified. There is nothing for the Commission to evaluate.

Moreover, regardless of any contract plant operators, management must have experience in the industry. First Coast's management has no utility experience. The statute, section 367.045(1)(b), requires a "detailed inquiry into the ability of the applicant to provide service" and the rule similarly requires the application to "demonstrate the technical ability of the applicant to provide service." (Emphasis added). First Coast has demonstrated no such ability. Technical ability "usually refers to the utility's operations and management abilities, and whether it is capable of providing service to the development in question." *In re: Application for Certificate to Provide Water Service in Volusia and Brevard Counties by Farmton Water Res.*, Order No. PSC-04-0980-FOF-WU, Docket No. 021256-WU (Fla. P.S.C. Oct. 8, 2004) (finding that a utility had the technical ability to serve because the Vice President of Operations had extensive experience in managing water resources and knowledge of those issues, consulting engineers and regulatory

[11] Mr. Roberts is identified as a manager of 301 Capital Partners, LLC in the unexecuted deed included with the Application (Exh. 5) at page 109 of 236.

experts were identified and engaged, and the same personnel who operated the water facilities many years in the past would continue to operate those in the future by working for the utility rather than the landowner). In contrast to *Farmton*, First Coast's management has no utility experience and it has retained no one to design, construct, or operate treatment facilities. First Coast has failed to prove it has the technical ability to provide service.

ISSUE 7: PLANT CAPACITY

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

Summary of JEA Position: ***No. The proposed 2 MGD plant is insufficient for the site plan, which would support 10,000 ERCs at 200 gpd. The developer proposes 11,250 single family homes, 3,750 multi-family ERCs, and 1,050,000 square feet of commercial space just in the City of Jacksonville portion of the development.***

Analysis and Argument

The plant proposed by First Coast lacks sufficient capacity to serve the City portion of the development, let alone any area beyond the City. Rules 25-30.033(1)(n), F.A.C. requires First Coast to provide:

> A description of the separate capacities of the existing and proposed lines and treatment facilities in terms of equivalent residential connections (ERCs) and gallons per day estimated demand per ERC for water and wastewater and the basis for such estimate. If the development will be in phases, this information shall be separated by phase.

JEA witness Zammataro testified to the lack of sufficient capacity:

> The plant site plan shows a one million gallons per day ("MGD") capacity with room on the site to double the capacity to 2.0 MGD. The PUD has 11,250 single family residences along with 3,750 multi-family residences for a total of 15,000 residential units. In addition, the PUD identifies 1,050,000 square feet of commercial and office space. Using only 250 gallons per day ("gpd") per residential unit and 0.1 gpd/sf of commercial usage the total estimated flow for this development is 3.86 MGD. Typically, 350 gpd per customer is the planning number for wastewater plants, however with modern energy-efficient appliances that number has dropped to 250 gpd. The proposed site plan shown in the Feasibility Assessment accompanying the application does not show any room to expand or

> accommodate the additional 1.8 MGD. This plant capacity problem is further compounded by the addition of the Chemours property in Baker County to First Coast's application. These flows from this additional area are not covered in the Feasibility Assessment.

Tr. 205:13-206:2. The proposed plant discussed in the Feasibility Assessment (Exh. 7) is limited to the first phase, in the City. Tr. 49:6-10. The Feasibility Assessment shows no plant capacity, even on a conceptual basis, to serve either Baker or Nassau counties. Tr. 49:21-50:3. Just as there is no articulated need for service in Nassau and Baker counties, there is similarly no provision for plant capacity in those counties. Absent an identified need, there would be no plant to design. First Coast has failed to demonstrate adequate plant capacity in Nassau or Baker counties, or in the City beyond the first phase of the development.

ISSUE 9: PUBLIC INTEREST

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?

Summary of JEA Position: ***No. First Coast has not demonstrated need for service, financial ability, technical ability, or plant capacity. Its rates and charges would be double those of JEA. The public interest is served by compliance with the local franchises, Comp Plan, development ordinance, and otherwise by JEA as the municipal provider.***

Analysis and Argument

Ultimately, the decision whether to certificate First Coast depends on the public interest. Section 367.045(5)(a), Florida Statutes, provides that "[t]he commission may grant . . . or it may deny a certificate of authorization . . . if in the public interest." *See also In Re: Application for Authority to Transfer Certificate Nos. 620-W and 533-S in Highlands County from the Woodlands of Lake Placid, L.P. to L. P. Utilities Corporation*, Order No. PSC-04-1162-FOF-WS, Docket No. 030102-WS (Fla. P.S.C. Nov. 22, 2004) (noting that "[w]e consider many factors in determining

whether a transfer is in the public interest, including the buyer's financial and technical ability to continue operating the utility, as well as any other factors that are relevant to the public interest of the transfer" and that "we have discretion in determining what is in the public interest and are not precluded from considering a variety of factors, where appropriate, in the interpretation of what is in the public interest").

The public interest is served by denial of the application. Public interest is shown first by whether the required elements of the application are present. As noted above, First Coast fails to satisfy at least six of the elements. There is no need for service in Nassau or Baker counties or in the City beyond the first phase of the development. The application is directly contrary to the City's Comp Plan, which calls for regional systems by JEA. First Coast's system would compete with or duplicate JEA's system, as shown by JEA's existing franchises with the City and Nassau County, the multiple options JEA has provided the Developer for service, which would not be available if there was no competition or duplication, and the proximity of the development to JEA's existing system infrastructure. First Coast lacks the financial and technical ability to provide service. First Coast's assertions that it will come up with a funding plan and find people with utility expertise do nothing to show the Commission today that this utility can ever be sufficiently funded or appropriately staffed.

Beyond the required elements of the application, many other facts have been developed in this docket that speak to the public interest. The rates and charges proposed by First Coast are at least twice those of JEA. Certificating First Coast would mean residents would pay twice as much for service as they would pay if JEA was the utility. Ratepayers would be denied access to JEA's system, resources and economies of scale. Beyond paying more than twice as much, residents would be denied the customer service capabilities, rate stability, and reliability of JEA's system

with its hundreds of thousands of customers. If certificated, all indications are that the Developer would attempt to sell First Coast's system to JEA or another public entity as soon as possible. The City has spent decades and hundreds of millions of dollars to eliminate small standalone systems like the one proposed by First Coast.[12] The last thing the public needs is another one. This Application is not in the public interest and should be denied.

A. First Coast's rates would be more than twice those of JEA.

Certification of First Coast would result in water and wastewater customers in the development paying rates more than twice those of JEA. That cannot be in the public interest. First Coast's proposed rates for residential service are more than three times that for service from JEA for a five-eighths inch meter and more than two-and-a-half times that of JEA for a three-quarter inch meter. Tr. 161:20-25; Exh. 10. Assuming a reasonable usage of 6,000 gallons per month, a residential customer in the development if served by First Coast would pay $204.88 per month for water and sewer, as compared to either $66.36 per month (5/8" meter) or $79.71 per month (3/4" meter) with JEA, all before taxes. Tr. 165:13-16. A typical residential customer would pay First Coast at least $1,500 more per year than they would pay for service from JEA. Tr. 162:1-6. JEA's rates are projected to remain stable for at least the next five years. Tr. 173:6-8. As compared to municipal water and wastewater utilities in Florida, First Coast's rates would be almost twice as much as the next highest utility. Tr. 168:19-20; Exh. 12.

[12] *See* Exh. 14 (showing the water/wastewater systems acquired by JEA since 2000 at a cost of $257.2 million); § 21.01(a) of the City of Jacksonville Charter ("There is hereby created and established a body politic and corporate to be known as JEA, which is authorized to own, manage and operate for the benefit of the City of Jacksonville the utilities systems within and without the City of Jacksonville. JEA is created for the express purpose of acquiring, constructing, operating, financing and otherwise having plenary authority with respect to electric, water, sewer, natural gas and such other utility system as may be under its control now or in the future.")

Similarly, First Coast's service availability charges are significantly higher than those of JEA. First Coast proposes service availability charges that total $9,993.00. Tr. 88:15-18. JEA's current service availability charge for a typical residential customer is $3,308.00. Over the next two years, JEA's service availability charges will increase: to $5,818.00 on April 1, 2022, to $7,309.00 on October 1, 2022 and ultimately to $8,798.00 on April 1, 2023. Tr. 160:14-18. When JEA's service availability charge reaches $8,798.00 on April 1, 2023, it would still cost the typical residential customer $1,195.00 less to connect to JEA than it would to connect to First Coast.

In rebuttal, First Coast witness Swain testified extensively regarding the reasons First Coast's rates are higher, including source of supply and treatment, wastewater treatment and effluent disposal, regulatory compliance, contributions in aid of construction, the fact that municipals are exempt from certain expenses, and the return on investment going to the private utility. Tr. 291:18-293:25. JEA takes no issue with how Ms. Swain calculated First Coast's proposed rates. That is not the point. The point is that a decision to certificate First Coast means residents in this development will pay more than twice as much for water and wastewater service as they would pay with JEA as the utility.

First Coast witness Kennelly testified that "[n]either the JEA nor anyone else can construct facilities and provide service to the proposed service territory as efficiently or cost effectively as First Coast." Tr. 101:2-3. At double the rates or more, certainly from the perspective of ratepayers there is nothing "cost effective" or in the public interest about service being provided by First Coast.

B. Additional customer benefits to service from JEA.

Beyond the substantial difference in rates, JEA offers other advantages to customers compared to a small utility. JEA has an interactive website that allows customers to manage their

account and pay their bills online, get rate information, track usage, learn how to conserve, and get notices of outages and advisories. Tr. 204:11-16. JEA has community impact initiatives including volunteer, ambassador, and educational programs, as well as an employee giving campaign. Exh. 24, p. 108. JEA's water and wastewater system has received a substantial number of awards. Exh. 15; Exh. 24, p. 156.

Because of its financial stability and large customer base, JEA is better suited to handle problems or events which may occur that affect utility service, such as a hurricane. Tr. 209:8-9; Exh. 24, pp. 133-136. A small utility like First Coast would have a substantially smaller customer base to distribute costs from an unforeseen event. Tr. 209:10-11.

C. First Coast was formed to be sold to a public entity.

Despite its testimony to the contrary[13], since forming the entity First Coast, the Developer has sought its sale or transfer to JEA or another public entity if it is certificated by the Commission. Tr. 261:20-22. Exhibit 72 is a purchase option offered to JEA, that also contemplates the sale of First Coast to a community development district. There is no intent to be a permanent operator, which cannot be in the public interest. First Coast witness Beaudet testified extensively about the supposed virtues of the creation of small private utilities by developers and their subsequent sale to governmental entities. *E.g.*, Tr. 258:5-260:10. The premise of Mr. Beaudet's testimony is that developers had to step in and construct their own utilities in places where "service was not available from the host municipality or county." Tr. 258:20-21. Certainly, that is not the situation in this case. Service is available from JEA as shown from the extensive testimony about the JEA service alternatives provided to the Developer.

[13] Exh. 41, p. 1 ("FCRU commits to be the provider and is ready willing and able to provide water, wastewater and reuse services throughout the life of the development, and beyond.")

The City's priority, as expressed in the Comp Plan discussed above, is to regionalize water and wastewater facilities through JEA and eliminate the hodgepodge of small, substandard, standalone systems. JEA witness Zammataro: "JEA embarked on a region-wide effort to acquire private water and wastewater plants and systems with the goal of improving the service to utility customers throughout greater Jacksonville and the surrounding counties, improving the water quality of the St Johns River, and limiting demand on the Floridan aquifer." Tr. 202:10-13. Exhibit 14 lists the systems acquired and upgraded by JEA, involving more than $250 million and approximately 70,000 customers. Incredulously, First Coast witness Beaudet suggested that First Coast would be a more reliable provider because JEA has "reliability problems . . . due to the age, condition and lengthy pipelines of JEA's highly decentralized system." Tr. 265:8-9. To any extent JEA's system is "decentralized," it is because of a long history of systems like the one proposed by First Coast from which JEA has been left to pick up the pieces. First Coast seeks to repeat a cycle (creation of a development-specific system to be acquired by JEA) that the City has spent decades and hundreds of millions of dollars to break. Certificating First Coast would be directly contrary to the public interest.

WHEREFORE, for the reasons expressed above, the Commission should DENY First Coast's Application.

Respectfully submitted this 18th day of March, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail to the following this 18th day of March, 2022.

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