

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

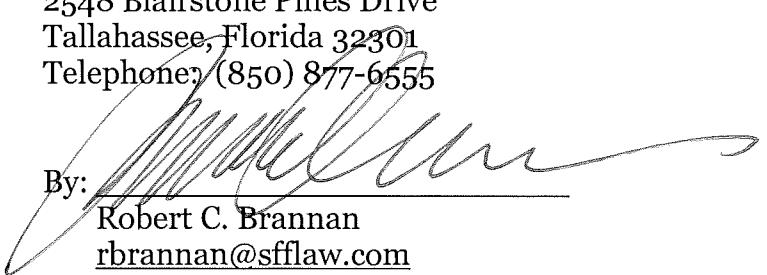
NOTICE OF FILING

First Coast Regional Utilities, Inc., by and through its undersigned attorneys, hereby gives notice of filing its Rebuttal Testimony of Scott D. Kelly in the above-referenced docket.

Respectfully submitted on this
31st day of July, 2020, by:

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CERTIFICATE OF SERVICE

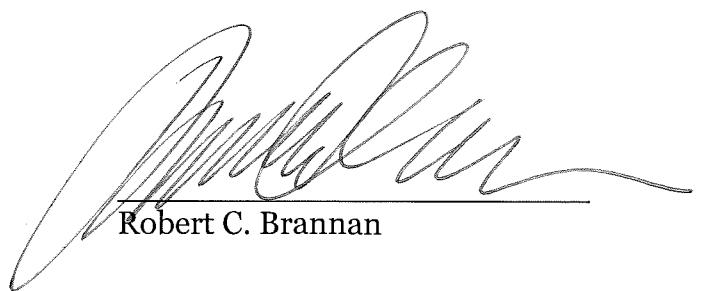
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/

REBUTTAL TESTIMONY

OF

SCOTT D. KELLY

ON BEHALF OF

FIRST COAST REGIONAL UTILITIES, INC.

- 1 **Q.** **Please state your name, profession and address.**
- 2 A. My name is Scott D. Kelly. I am a licensed professional engineer in the state of Florida. My
3 address is 241 Oceanwalk Drive South, Atlantic Beach, Florida 32233.
- 4 **Q.** **Please summarize your education and professional experiences.**
- 5 A. I have a Bachelor of Science in Civil Engineering from Georgia Institute of Technology. I
6 have more than 40 years of experience in water, wastewater, solid waste and transportation,
7 engineering and operations.
- 8 **Q.** **Please tell us about your prior employment history, as it relates to the JEA.**
- 9 A. I worked for the City of Jacksonville and the JEA in water, wastewater, engineering, design
10 construction and operations for JEA and the City of Jacksonville.
- 11 **Q.** **How many years were you employed by the JEA?**
- 12 A. I was with the JEA for 16 years.
- 13 **Q.** **JEA is a large enterprise. What were your primary responsibilities for the JEA?**
- 14 A. I had several positions including Director of Water and Wastewater Systems, Vice President
15 of Construction and Maintenance and Vice President of Water and Wastewater Systems. In
16 these positions, I was involved directly in decision making relative to plant locations and
17 expansion of extension of lines and facilities, the acquisition of existing utilities, and in the
18 negotiations for expansion of the JEA into St. Johns and Nassau Counties.
- 19 **Q.** **When did you leave the employ of the JEA?**
- 20 A. I retired from the JEA in 2013.
- 21 **Q.** **Have you held any positions since your employment with the JEA?**
- 22 A. Yes, I was the Assistant City Administrator for the City of West Palm Beach responsible for
23 water, wastewater and stormwater utility, parking, public works, and engineering from the
24 fall of 2013 until I retired in March of this year.
- 25 **Q.** **What did you do next?**

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

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

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

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

9 A. Yes, I have.

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

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

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

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

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

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

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

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

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

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

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

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

12 Q. Why?

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

15 Q. Please elaborate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **Q. In what way?**

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

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

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

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

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

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

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

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

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

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

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

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

1 A. Yes.

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

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

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

12 A. Yes.

13 **Q. Why is that?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **familiar with that testimony?**

2 A. Yes.

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

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

7 **City of Jacksonville 2030 Comprehensive Plan**

8 **SANITARY SEWER SUB-ELEMENT**

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

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

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

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

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

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

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

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

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

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

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

19 **A.** Yes.

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

23 **A.** Yes. For example, pursuant to subsection 1.2.10 nonregional wastewater facilities may be
24 permitted as interim facilities, provided all of the following requirements are satisfied:
25 1. The facility meets all federal, state, regional, and local environmental regulations.

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

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

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

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

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

18 **DEFINITIONS**

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

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

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

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

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

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

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

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

19 A. Yes. For example, the term “large wastewater facility means”: *Large Wastewater Facility means: Any wastewater treatment facility and appurtenant sewerage of any privately owned water and sewer utility, now or hereinafter operated or constructed in territories covered by a certificate of public convenience and necessity issued by the Public Service Commission (PSC) or (2) any privately owned wastewater treatment facility and appurtenant sewerage with treatment capacities and customer base that would qualify it as a PSC certificated facility; which has the ability to provide for new connections*

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

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

8 A. Yes. For example, the term “regional sewer utility” or “regional sewerage” is defined below:
9 *Regional Sewer Utility or Regional Sewerage means:*

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

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

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

1 Considerations.

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

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

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

- 22 *1. JEA Water, Sewer and Reclaimed Water Design Standards, December, 2009 Edition and*
23 *subsequent revisions thereto, published by JEA; and*
- 24 *2. City of Jacksonville Land Development Procedures Manual, last revised November 9,*
25 *2010, and subsequent revisions thereto, published by the City's Development Services*

1 *Division; and*

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

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

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

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

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

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

16 **3.501 Permits**

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

20 **3.502 Large Wastewater Treatment Facilities**

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

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

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

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

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

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

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

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

1 *regulations adopted herein, and*

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

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

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

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

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

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

16 *(b) Fire protection;*

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

18 *(d) Toilet flush;*

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

20 *(f) Irrigation of edible crops.*

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

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

1 Wastewater Treatment Facilities.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 A. Yes, it does.

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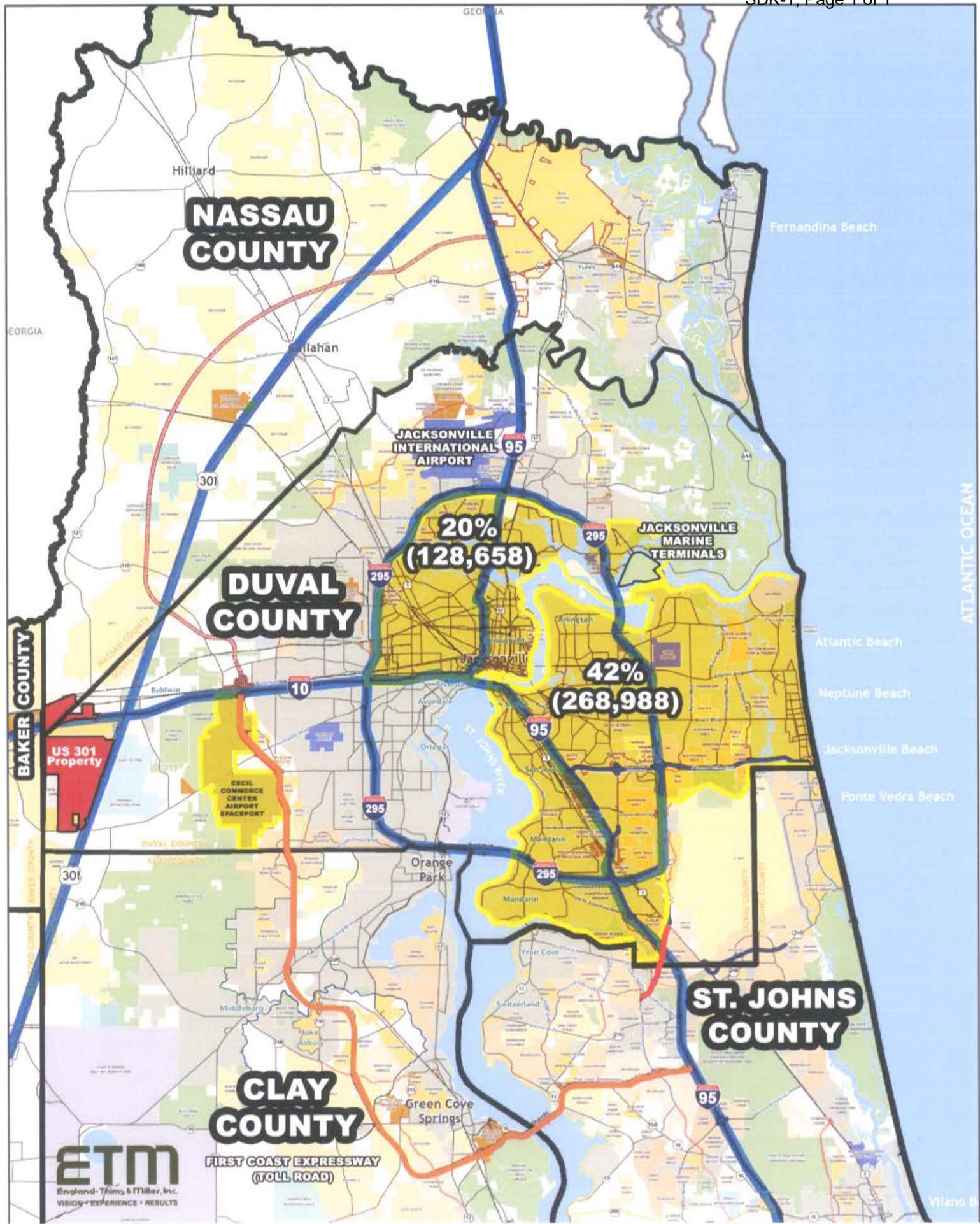
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First Coast Regional Utilities Location Map

