

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Original Certificate of) DOCKET NO. 20190168-WS
Authorization and Initial Rates and Charges)
for Water and Wastewater Service in Duval,) FILED:
Baker and Nassau Counties, Florida by)
FIRST COAST REGIONAL UTILITIES,)
INC.)
_____)

**JEA’S UPDATE IN RESPONSE TO THE COMMISSION’S
JULY 28, 2020 STAY ORDER**

On July 28, 2020, the Prehearing Officer entered an Order Granting First Coast Regional Utilities Inc.’s Motion For Stay Of Proceedings. First Coast’s Motion For Stay, to which JEA agreed, requested that the following key activity deadlines (items 5 through 9 in Section VIII of the Order Establishing Procedure) be stayed for ninety (90) days: prehearing statements (item 5), discovery deadline (item 6), prehearing conference (item 7), hearing (item 8) and briefs (item 9). In the Order on the Motion, the Prehearing Officer stayed the above deadlines indefinitely and directed the parties to report to the Commission within sixty (60) days on “the status of the docket and any settlement negotiations, and the need, if any, to continue or cease this Stay of Proceedings.” Accordingly, JEA provides the following update:

1. In the last month, the parties have filed a series of related motions, including a dispositive motion by JEA. On September 1, 2020, First Coast filed a motion to strike references in JEA’s initial pleading to JEA’s franchises in the City of Jacksonville and Nassau County. On September 8, 2020, JEA filed a response to First Coast’s motion to strike as well as a motion for summary final order denying First Coast’s Application given JEA’s franchises in the City of Jacksonville and Nassau County paired with JEA’s ability to serve the development in compliance with the PUD Ordinance, which requires the developer to construct water and

wastewater facilities at its own expense and then dedicate them to JEA for operation and maintenance. On September 15, 2020, First Coast responded to JEA's motion for summary final order and added its own motion for partial summary final order asking the Commission to find that the Commission alone has "exclusive and superior" jurisdiction over the development regardless of JEA's franchises with the City of Jacksonville and Nassau County as well as the City's PUD Ordinance. On September 22, 2020, JEA filed a response to First Coast's motion for partial summary final order.

2. On August 4, 2020, a week after the stay order in this case took effect, the developer filed an application with the City of Jacksonville to amend the City's PUD Ordinance. A copy of the application is attached as Exhibit A to JEA's September 22, 2020, response to First Coast's motion for partial summary final order. That application again asserts the developer's position that the City's PUD Ordinance is unconstitutional: "JEA is thwarting illegally and unconstitutionally the rights of applicant, in an attempt to make a \$50 million grab, and otherwise take the lands of applicant." The developer has not yet, to JEA's knowledge, filed any constitutional challenge to the City's PUD Ordinance in any court.

3. In its application to the City for a "minor modification" to the PUD Ordinance, the developer has requested the language in the ordinance be changed from "the [developer] shall provide, at its expense, on-site treatment capacity to serve the needs of this Rural Village PUD, for potable water, wastewater, and reuse water at levels and to standards acceptable to JEA, to be dedicated to JEA for operation and maintenance or for contract operation" to "Applicant shall provide treatment capacity to serve the needs of the site for potable water, wastewater, and reuse, through a facility operated by a public or private entity."

4. Notwithstanding the developer's interactions with the City, the parties and Staff have continued written discovery since the stay order was issued. Written discovery currently pending includes First Coast's 2nd interrogatories and document requests to JEA (served August 31, 2020) and JEA's 3rd interrogatories and 2nd document requests to First Coast (served on September 11, 2020). JEA expects to have one more round of written discovery requests to First Coast.

5. No depositions have yet been scheduled. JEA wishes to depose First Coast's five (5) witnesses who have filed direct and/or rebuttal testimony: Bevin Beaudet, Deborah Swain, Robert Kennelly, Scott Kelly, and Paul Gandy. First Coast has advised JEA that it wishes to depose JEA's four (4) witnesses: Joe Orfano, Robert Zammataro, Susan West, and Julia Crawford. In-person depositions remain as impracticable now as they were when the stay order was issued sixty (60) days ago.

6. Settlement presently appears unlikely. While the parties keep the lines of communication open, the parties' differing interpretations of the City's PUD Ordinance lead to diametrically opposing views between them. JEA's position is that the PUD Ordinance requires the developer to provide the water and wastewater facilities at its expense and then dedicate them to JEA for operation and maintenance by JEA. The developer/First Coast's position is that the PUD Ordinance requires no dedication to JEA, the facilities can be owned and operated by First Coast notwithstanding any franchises of JEA, and their only obligation under the PUD Ordinance is to give JEA the opportunity to bid on providing contract operations.

7. Given the foregoing dispute between First Coast and JEA relating to the interpretation of the City's PUD Ordinance, JEA first suggests that this case be dismissed without prejudice or stayed until: 1) a court declares the PUD Ordinance to be unconstitutional

as argued by the developer; 2) a court issues a declaratory judgment concluding that under the PUD Ordinance, no dedication to JEA is required and a subsidiary of the developer can in compliance with the PUD Ordinance operate water and wastewater facilities for the development; or 3) the City of Jacksonville revises the PUD Ordinance. Under the PUD Ordinance as currently effective towards the developer, the developer has to dedicate the facilities to JEA so there can be no First Coast subsidiary of the developer owning and operating its own facilities. Unless and until that conflict is resolved, which would have to be resolved by either a court or the City, the Commission should defer further consideration of First Coast's Application.

8. In the alternative, in the interest of administrative efficiency and economy, JEA requests that the stay of the remaining procedural deadlines continue until the Commission first decides the pending motions described above. Depositions, prehearing, hearing, and post-hearing briefs will all require a substantial investment of time, energy and money by JEA, First Coast, and the Commission and its staff. If granted, JEA's pending motion for summary final order would conclude this case. Accordingly, the Commission should resolve JEA's pending motion for summary final order and First Coast's related motion to strike and motion for partial summary final order before the parties proceed further.

Respectfully submitted this 25th day of September, 2020.

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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 25th day of September, 2020.

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