

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: January 24, 2022
Baker and Nassau Counties, Florida by)
FIRST COAST REGIONAL UTILITIES,)
INC.)
_____)

**JEA’S OBJECTION TO FIRST COAST REGIONAL UTILITIES’
NOTICE OF INTENT TO USE DEPOSITIONS**

Pursuant to the April 17, 2020 Order Establishing Procedure (“Order”), JEA objects to Applicant First Coast Regional Utilities, Inc.’s (“First Coast”) Notice of Intent to Use Depositions.

In support, JEA states:

1. JEA deposed First Coast’s witnesses on January 18 and 19, 2022: (1) Deborah Swain; (2) Bevin Beaudet; (3) Paul Gandy; (4) Robert Kennelly; and (5) Scott D. Kelly.

2. After the conclusion of the last deposition on January 19, 2022, First Coast filed a Notice of Intent to Use Depositions (“Notice”) relating to all five (5) of its witnesses deposed by JEA.

3. Contrary to paragraph V.G. of the Order, in the Notice First Coast failed to indicate page and line numbers nor did it otherwise attempt to identify specific portions of each deposition transcript it seeks to introduce. Rather, the Notice states that the “depositions will be introduced in their entirety at the hearing.”

4. It appears that First Coast intends to use these depositions as supplemental direct or supplemental rebuttal testimony.

5. The time for prefiling testimony has long since passed. Pursuant to the Order, First Coast’s direct testimony and exhibits were due on May 15, 2020, and its rebuttal testimony and

exhibits were due on July 31, 2020. First Coast prefiled extensive testimony of its witnesses with related exhibits.

6. Now, days before the final hearing, First Coast by its Notice attempts to supplement its direct and rebuttal testimony. This is simply improper. Accordingly, JEA requests that the Commission sustain this Objection and preclude these five depositions from being introduced in their entirety by First Coast during the final hearing.

ARGUMENT

I. The Proposed Evidence Serves to Improperly Supplement the Applicant’s Pre-Filed Testimony.

The Notice is an improper attempt by First Coast to supplement its prefiled direct and rebuttal testimony. It offers no justification for the admission of the depositions at the hearing. “While a presiding officer has significant discretion in allowing testimony, the party filing testimony has an obligation to show that the testimony it has presented is legally proper upon a challenge by another party to the case.” *In re TDS Telecom*, Docket No. 050125-TP, Order No. PSC-06-0261-PCO-TP (Fla. P.S.C. Mar. 28, 2006). First Coast’s attempt to admit the deposition testimony at hearing is an impermissible expansion of its case-in-chief. *See In re Gulf Power Co.*, Docket No. 010827-EI, Order No. PSC-01-1682-PCO-EI (Fla. P.S.C. Aug. 20, 2001) (determining that the proposed supplemental testimony broadened the scope of the case and added more to the original pre-filed testimony, making it fundamentally unfair to the other parties).

II. The Notice Fails to Meet the Requirements of Florida Rule of Civil Procedure 1.330.

Similarly, First Coast’s Notice does not meet the requirements of Florida Rule of Civil Procedure 1.330 to allow the introduction of these depositions in their entirety at the hearing. *See In re Transcall Am., Inc.*, Docket No. 951232-TI, Order No. PSC-98-1003-PCO-TI (Fla. P.S.C.

July 23, 1998) (noting that “[i]n order to be admissible at a hearing, a deposition must be submitted in accordance with Rule 1.330 . . .” and that “[d]ue to the specific requirements applicable to the use of deposition transcripts at hearing, it is appropriate that deposition transcripts be submitted and used in strict conformity with those requirements.”).

Although “any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition” at the hearing, the deposition must be used in accordance with six (6) specific provisions. *See* Fla. R. Civ. P. 1.330(a). A party’s use of its own deposition is governed by subdivision 1.330(a)(3) of the Rule. “Accordingly, a party may use that party’s own deposition testimony in lieu of live oral testimony only after making the required showing under subdivision (a)(3) . . .” 4 Fla. Prac., Civil Procedure § 1.330:10.

Florida Rule of Civil Procedure 1.330(a)(3)(E) requires an exceptional circumstance “as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.” An exceptional circumstance has been interpreted by Florida courts to be an extension of when a witness is unable – or unwilling – to testify. *See State of Fla, Dep’t of Health and Rehab. Servs. v. Bennett*, 416 So. 2d 1223, 1224 (Fla. 3d DCA 1982) (finding an exceptional circumstance existed when the witness invoked the privilege against self-incrimination to avoid testifying at trial); *Schwind Harvesting v. Boatman*, 424 So. 2d 948, 949 (Fla. 1st DCA 1983) (stating exceptional circumstances may have applied where a witness did not attend a final hearing due to his fears from being fired from his job if he took time off).

In this case, there is no suggestion that First Coast’s witnesses are unavailable or unable to testify at the hearing. First Coast’s witnesses are all scheduled to appear and testify in person at the final hearing, as required by the Order. No evidence has otherwise been provided to support

an exceptional circumstance for the transcripts to be admitted. First Coast's attempt to use the depositions is nothing more than an attempt to supplement its direct and rebuttal testimony and is otherwise contrary to the Order and Rule 1.330.

WHEREFORE, JEA requests that this objection be sustained and that First Coast be precluded from introducing the transcripts "in their entirety at the hearing."

Respectfully submitted this 24th day of January, 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 24th day of January, 2022.

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