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FCRU Response to JEA's Motion to
Compel Discovery

Affidavit of Robert Kennelly

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: February 24, 2021
Baker and Nassau Counties, Florida by)	
FIRST COAST REGIONAL UTILITIES,)	
INC.)	
)	

FIRST COAST REGIONAL UTILITIES, INC.'S RESPONSE TO
JEA'S MOTION TO COMPEL DISCOVERY
FROM FIRST COAST REGIONAL UTILITIES, INC.

First Coast Regional Utilities, Inc. (First Coast) responds to JEA's Motion to Compel Discovery from First Coast filed in this docket on February 16, 2021, as follows:

JEA's INTERROGATORIES TO FIRST COAST

JEA Interrogatory No. 2 to First Coast states:

Identify all persons that own a five (5) percent or greater interest in the Applicant, either through a direct ownership interest in an Applicant or through an ownership interest in an entity (such as 301 Capital Partners, LLC) that in turn has an ownership interest in the Applicant, and for each such person provide their ownership percentage.

JEA correctly cites Rule 25-30.033(1)(e), F.A.C. which requires each applicant to provide to the Commission the "names, addresses and percentage of ownership of each entity or person that owns or will own more than five percent of the utility".

First Coast correctly stated that 301 Capital Partners, LLC owns 100% of the Applicant. First Coast has complied, by its answer, with Rule 25-30.033. Any implication or insinuation by JEA that First Coast is somehow being nefarious in its response is offensive and unwarranted. The questions before the Commission in this case are: (i) Is there a need for water and wastewater utility services in the area envisioned? (ii) Is the

Applicant “fit” to meet that need, both financially and in a professional manner? and (iii) Will the granting of the Application be in competition with or duplication of an existing provider? First Coast is, through these proceedings, addressing these issues. 301 Capital Partners founded First Coast for the purposes of providing quality utility services to its lands and to ensure that the utility has the financial ability to do so. JEA’s request for the details on the parent company ownership is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

JEA Interrogatory No. 21 to First Coast states:

Please describe the proposed timeframes for each phase of the development proposed by 301 Capital Partners in Duval, Nassau and Baker Counties.

Attached hereto, please find the Affidavit of Robert Kennelly, President of First Coast, designed to address JEA’s Motion to Compel response to JEA Interrogatory No. 21. Said Affidavit is intended to supplement First Coast’s previous response.

JEA Interrogatories Nos. 96-100 and 102 to First Coast states:

96. Do any of the assets and liabilities identified on the Fair Market Value Balance Sheet pertain to any properties other than the Development referenced in First Coast’s Application? If so, please specify which portion(s) relate to other properties.

97. When did 301 Capital Partners, LLC purchase the Development from ICI Villages, LLC and what was the total purchase price?

98. On the Fair Market Value Balance Sheet, the line marked as “Total 13000 - Land” shows a fair market value of \$122,623,556.05. Identify all individual assets that comprise this “total,” and for each individual asset state the cost, date acquired, asserted fair market value, and all information supporting the fair market value calculation.

99. On the Fair Market Value Balance Sheet, the line marked as “Total 13400 - Rights to Baker County Land” shows

a fair market value of \$13,184,100.00. Describe this “right,” the amount paid, date acquired, and all information supporting your fair market value calculation.

100. On the Fair Market Value Balance Sheet, total long term liabilities are shown as \$8,721,684.60. Identify and describe each individual liability comprising this total and state whether any such liability is secured by a mortgage or other pledge of Development property.

102. State the net worth (total assets less total liabilities) of 301 Capital Partners, LLC effective May 18, 2019 with assets valued at cost instead of at the asserted “fair market value.”

JEA’s Interrogatories 96-100 and 102 to First Coast all relate to the financial strength of 301 Capital Partners, LLC. and conflagrate the obligations of a regulated water and wastewater utility to present its financial statements prepared on a cost basis, rather than a fair market value basis. That said, attached hereto, please find the Affidavit of Robert Kennelly, President of First Coast, which seeks to address JEA’s complaint in this regard. Said Affidavit is intended to supplement First Coast’s previous response.

JEA’s REQUESTS FOR PRODUCTION TO FIRST COAST

JEA Request for Production 7 to First Coast

JEA #7 Request for Production seeks:

All documents that evidence that ownership interests in the Applicant of all persons who own five (5) percent or more of the Applicant either through a direct ownership interest in the Applicant or indirectly through an ownership interest in another person that has an ownership interest in the Applicant.

Moreover, and of a related nature, see: JEA’s Request for Production 27 to First Coast:

Exhibit G to your Application contains a letter from 301 Capital Partners, LLC to the Commission attaching “[a]s evidence of our financial capability . . . a copy of our recent

balance sheet” followed by a page entitled “Fair Market Value Balance Sheet May 18, 2019.” Please produce all documents supporting each line item on the Fair Market Value Balance Sheet including without limitation all documents supporting the “fair market value” calculation of each asset of 301 Capital Partners, LLC.

Again, JEA requests that First Coast be compelled to provide additional information as to the financial wherewithal of 301 Capital Partners to support First Coast’s financing capital needs. Attached hereto and made a part hereof is the Affidavit of First Coast President, Robert Kennelly, addressing JEA’s demands in this regard, which is intended to supplement First Coast’s previous response.

First Coast continues to assert its objections to the discovery of JEA as previously stated.

Counsel for JEA did confer with counsel for First Coast on Monday, February 15, 2021, relative to several matters, but First Coast counsel does not recall, nor do First Coast’s counsel’s notes reveal, any discussion concerning the subject matter of the Motion at hand.

Respectfully submitted this 24th day of February, 2021.

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/s/ Robert C. Brannan
Attorneys for First Coast Regional Utilities, Inc.

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 February, 2021:

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STATE OF FLORIDA
COUNTY OF DUVAL

AFFIDAVIT OF ROBERT KENNELLY

BEFORE ME, the undersigned authority, personally appeared Robert Kennelly who being first duly sworn, deposes and says:

1. My name is Robert Kennelly. I am over the age of eighteen (18) years, am competent to attest, and have personal knowledge as to the matters stated herein.

2. I am the same Robert Kennelly who filed direct testimony in this matter on May 15, 2020. I also filed rebuttal testimony in this matter on July 31, 2020 and I incorporate herein by reference my direct and rebuttal testimony as referenced above.

3. I am a member of BHK Capital, which is co-owner of 301 Management Group. 301 Management Group provides management services to 301 Capital Partners. I am also President of First Coast Regional Utilities, Inc.

4. I file this Affidavit to reply to JEA's Motion to Compel Discovery from First Coast, filed on or about February 16, 2021.

5. JEA Interrogatory No. 2 asks First Coast to identify all persons who own a 5% or greater interest in First Coast. 301 Capital Partners, LLC, owns 100% of First Coast Regional Utilities, Inc. Rule 25-30.033(1)(e), F.A.C., does not require the identification of the entities or individuals that own 301 Capital Partners, nor could it as 301 Capital Partners, LLC is not jurisdictional; First Coast is jurisdictional. While the answer to this question might be amusing to JEA, it has no more bearing on these proceedings than asking Florida Power & Light Company the names of the individual shareholders of NextEra Energy.

6. JEA Interrogatory No. 21 to First Coast asks for a description of the proposed timeframes for each phase of the development proposed by 301 Capital Partners in Duval, Nassau,

and Baker Counties. First Coast's reply was that "the proposed timeframes are dependent upon the provision of utilities to the site and the resolution of the current matters pending before the Commission". JEA has asked, in effect, for a more definite statement in this regard. I wish to supplement First Coast's original response to JEA Interrogatory 21 by saying there is an urgent and growing need for housing within the proposed First Coast service area, especially work force housing. Thus, for example, if JEA had not objected to First Coast's application in December of 2019, the construction of the First Coast utility facilities would now be underway, as would be site preparation such as grading and drainage, layout of roads and planning for the construction of homes. Since the time of the filing of the First Coast application, the demand for housing sites in northeast Florida has grown significantly. So, our answer remains the same. From the time of the vesting of the certificates to First Coast until the time of actual provision of service to customers can be fairly stated at 30 months. Moreover, projects similar to ours throughout Florida are experiencing unprecedented demand. Based upon our discussion with national homebuilders and others, we believe that we could have easily sold out phase 1, consisting of approximately 2,800 housing units, and now be under design for phase 2, and beyond. JEA's statement that more than 80% of the connections within the city are more than a decade away is false, based upon the current housing market. The need is real and it is growing. The timeframe for the need for these utility certificates is yesterday, but the more definitive timing estimate is largely dependent on how long it will take to conclude this case.

7. JEA's Interrogatories 96-100 and 102, in composite, pertain to the fair market value balance sheet of 301 Capital Partners. When 301 Capital Partners purchased ICI Village, 301 Capital Partners' rights to parts of the Baker County lands were also secured. The fair market value of its assets and the long-term liabilities and net worth of 301 Capital Partners was largely

established at the closing thereon. Finally, there is a request that 301 Capital Partners value its assets at cost, rather than at fair market value.

8. First of all, 301 Capital Partners acquired 11,368 acres within the proposed First Coast service area at a purchase price of \$27.5 million, of which \$14 million was paid out of owner's equity and \$13.5 million was paid via an acquisition loan. Immediately after the purchase, 301 Capital Partners sold 1,850 acres to the JEA for the development of a solar farm at a purchase price of \$18.5 million, which works out to be approximately \$10,000 per acre. We presume that, by law, JEA had the property appraised prior to consummating the purchase, thus supporting the purchase price of approximately \$10,000 per acre.

9. In order to understand the size and the location of the properties hereunder consideration, attached hereto please find a map showing the First Coast Regional Utilities' service area. Please notice the area in white bordered on the north by Interstate 10, on the west by the Nassau-Duval county line, on the south by First Coast and on the east by US 301. That parcel in white is the 1,850 acres that 301 Capital Partners sold to the JEA as referenced in paragraph #8 hereinabove.

10. On that comp alone, the remaining 9,568 acres would be valued in excess of \$95 million. Respectfully, 301 Capital Partners factored in a reasonable reduction in JEA's favor, as it anticipated having a great working relationship with the JEA going forward. Note these transactions took place in 2017. It is beyond question that the value of our land has increased greatly over the last 3.5 years.

11. None of the assets and liabilities identified on the fair market value balance sheet pertain to properties other than the development referenced in First Coast's application.

12. 301 Capital Partners stands by the fair market value balance sheet submitted with its application to the Commission. Due to the relative paucity of land available for projects of our

size, the currently hot housing market, and the demand for a product, our fair market value balance sheet is, if anything, conservative.

13. As to the rights of the Baker County land, we acquired the right to purchase that land when Chemours has finished its mining operations, as part of the ICI Village acquisition. Chemours will be ready to tender that land to us in approximately three years and we will exercise our re-purchase options and proceed with development of that land at that time. So there is no confusion on the matter, 301 Capital Partners is not acquiring all of the Chemours' property that is included in this application. Chemours has asked us to include within our application 2,400 acres that it owns that will not become the property of 301 Capital Partners.

14. As to the total long-term liability shown on the subject fair market value balance sheet, 301 Capital Partners has an outstanding loan to a commercial institution which is secured by a mortgage on the property.

15. 301 Capital Partners has no reason to value its assets at cost, rather than fair market value and, as stated above, any effort to conflagrate original rate making for First Coast (with which we agree) has no impact on the fair value of 301 Capital Partner assets.

16. The items requested in JEA's Request for Production No. 7 have been adequately addressed hereinabove.

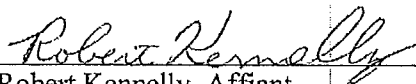
17. The last thing I would like to add is that JEA seems to be saying on the one hand, somehow, that the owners of First Coast do not have the ability to finance a \$30 million utility regulated by the Florida Public Service Commission, and then, on the other hand, saying that the owners of First Coast should build a \$30 million utility out of pocket and give it to the JEA for no consideration. These thoughts are totally incongruous.

18. JEA's latest published financial statements demonstrates that it primarily relies on debt to finance its capital needs. It is prudent for JEA to do so and it is prudent for First Coast to

do so. First Coast envisions itself and is modeling its utility financing along the same path as other fine water and wastewater utilities around the state have done; such as Ave Maria Utility Company in Collier County, Bonita Springs Utilities in Lee County and MSKP Town & Country Utilities (Babcock Ranch) in Charlotte County. The professionals that those enterprises utilized to create their successful financings are some of the same people that are working for First Coast. In preparing for this response, I reconfirmed that First Coast will be in a position to finance its construction activities using tax exempt industrial development revenue bonds, just as have the three utilities referenced above.

19. Bond rates are stable, and have been so for a significant period of time, and we do not envision any material change due to the publicly stated stance of the Federal Reserve Bank, among others. 301 Capital Partners does not need to guarantee 30 years of debt. It only needs to guarantee a few years of debt service until the revenues of this utility will be self-sufficient to digest its cost of operations, including debt service, on a going forward basis. The prospects for First Coast are bright and we look forward to having this case heard and decided by the Commission.

FURTHER AFFIANT SAYETH NAUGHT.


Robert Kennelly, Affiant

The foregoing instrument was acknowledged before me by means of physical presence on this 27th day of February, 2021, by Robert Kennelly, as President of First Coast Regional Utilities, Inc. Such person (Notary must check the blank)

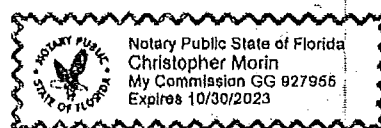
☐ is personally known to me.

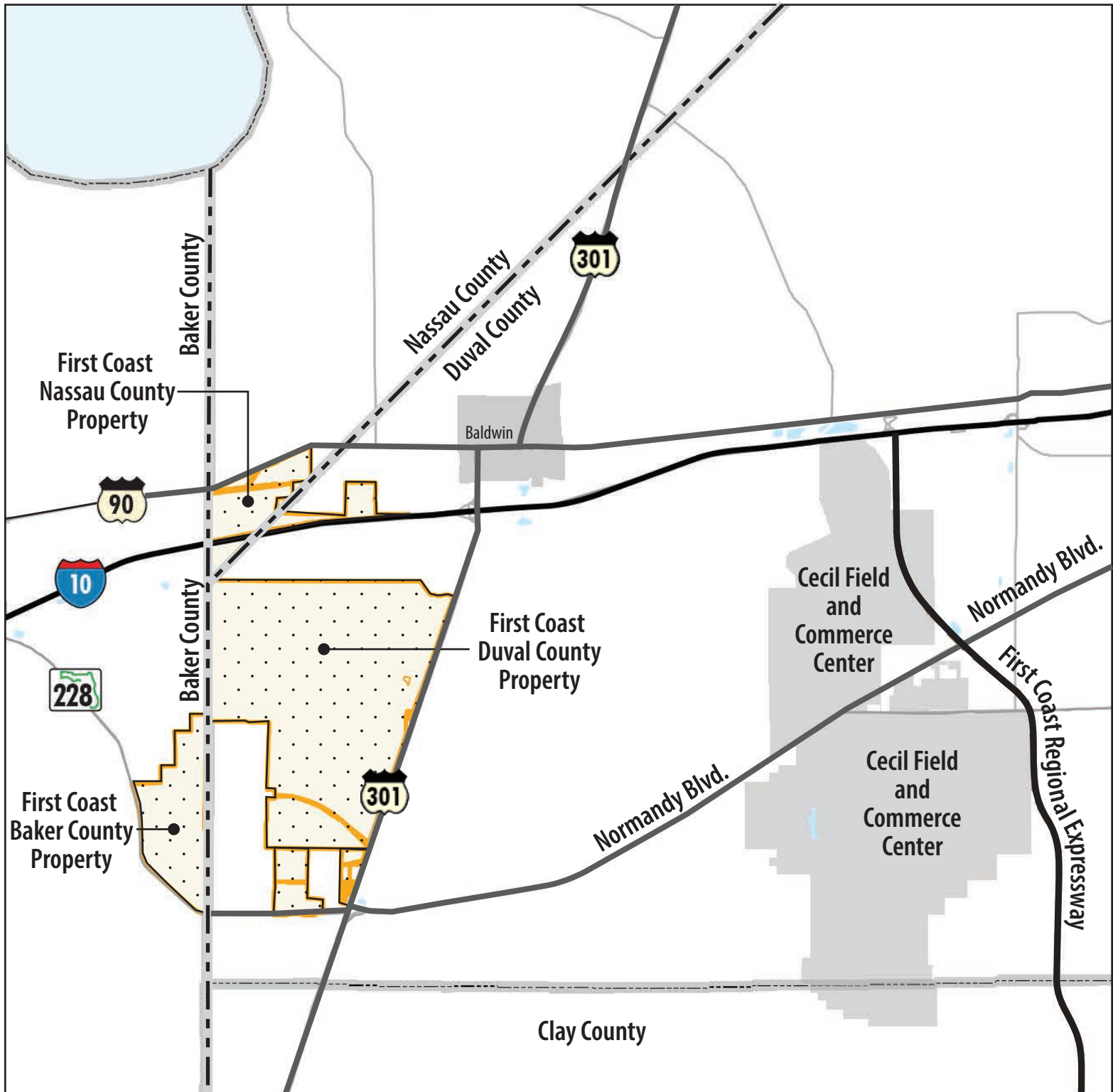
☐ produced his current driver license.

☒ produced FDL as identification.


Notary Public

My Commission Expires: 10/30/2023





First Coast Regional Utilities Location Map

