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President

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

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PRESS STATEMENT

For Immediate Release

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The Jacksonville Branch NAACP, The Florida State Conference of NAACP Branches and The National NAACP calls on Congress to open a criminal investigation into the proposed sale of JEA

On behalf of the Jacksonville Branch NAACP and the Florida State Conference of NAACP Branches along with the National NAACP, we write with a sense of urgency to request that you open a criminal investigation into the proposed sale of JEA. We do not support the sale of this public utility company which is owned by the people.

“We recommend that Mayor Lenny Curry and his administration be investigated along with JEA Executives and the JEA Board of Directors. Furthermore, JEA CEO, Aaron Zahn should be terminated immediately along with Herschel Vinyard, JEA's Chief Administrative Officer (formerly with Foley & Lardner), and the JEA Board of Directors” said Isaiah Rumlin, President of the Jacksonville Branch NAACP.

Finally, all contracts dealing with the proposed sale of JEA should be terminated immediately. Moreover, certain City Council members, who have already publicly supported the sale of JEA, should recuse themselves from any involvement with JEA decisions at this point in time until a full investigation has been completed.

For the last four years Mayor Curry and his administration have developed a pattern of lies, deception, and lack of transparency when it comes to spending taxpayer dollars. These conflicts of interest have taken place with various entities:

- ***Kids Hope Alliance:*** Hiring practice issue and lack of transparency - The most qualified candidate did not receive the top job and a great deal of taxpayer dollars were mismanaged.
- ***JEA:*** Hiring practice issue and lack of transparency - Again, the most qualified candidate did not receive the top job, but rather a former board member did. Aaron Zahn, the CEO of JEA, and his business partner Dano Hick, a local lobbyist, entered into a contract to purchase land, while Mr. Hicks was on retainer with JEA. There are numerous companies, law firms, and consultants who are currently being paid millions of dollars to assist with the sale of JEA.
- ***Duval County Public Schools:*** The Mayor wants to control the school district by having an elected Superintendent. He denied a referendum that would have gone on the ballot in November for a half cent sales tax for public school facilities. This denial was because the School Board would not agree to give the charter schools \$150 million of the referendum money. Sam Mousa (former CAO for the City of Jacksonville) and Tim Baker (Political Consultant for Mayor Curry) attempted to extort money from DCPS to obtain a contract to assist with the passage of the sales tax referendum.
- ***Downtown Investment Authority (DIA):*** The Mayor appointed his former Chief of Staff Brian Hughes to be the Interim Director of the DIA to decide which projects will receive city incentives with taxpayer dollars. Brian Hughes immediately supported the idea of privatizing parking downtown. This parking proposal he urged was for a 30-year contract for Dane Grey (Elite Parking) and a former board member of the DIA and a close friend of Aaron Zahn and the Mayor. The DIA should be investigated in terms of contracts, hiring, and potential conflicts of interest with incentives for companies that deal in real estate who were awarded incentives or REV Grants over the last four years.

What is going on in Jacksonville is unprecedented and the Jacksonville Community deserves answers following a full criminal investigation.

"On behalf of the Florida State Conference of the NAACP, I strongly support the Jacksonville Branch of the NAACP in calling on Mayor Lenny Curry, the CEO of JEA, and the JEA Board to stop the sale of JEA immediately for the following reasons to name a few:

- The process has been riddled with conflicts of interest from the CEO of JEA, the Mayor, JEA Board Members, law firms, consulting firms, and business leaders/companies.
- Officials have been deceptive from the onset in their desire to privatize the utility and have falsely claimed the utility is not profitable.

- The community deserves a process that is open, honest, fair, and most importantly transparent.
- JEA is a publicly owned utility and the citizens are not in favor of the sale of JEA.

The Florida State NAACP is not in favor of the sale and supports a full criminal investigation," said Adora Obi Nweze, President of the Florida State Conference of NAACP.

"Privatization of what should be a public good has not historically worked in favor of our constituents. Specifically regarding the energy sector, we've seen the extremely harmful impacts of profit driven systems of delivering electricity whether it's the 76,000 coal miners who have died of black lung disease while the mining industry has fought against regulations that would have protected them, or our pursuit of the cheapest form of energy production which has resulted in polluting communities of color and low income community, or the utility business model that has rendered people in poverty without vital heat or lights to sometimes fatal effect. As such, the NAACP stridently supports publicly owned systems where structures and decisions are governed by the people and for the people, with human rights and wellbeing at the center, versus wealth creation for shareholders and company executives," said Jacqueline Patterson, Senior Director, NAACP Environmental and Climate Justice Program.



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December 11, 2019

The Honorable Frank Pallone, Jr.
Chairman of the Finance Committee
2107 Rayburn HOB
Washington, DC 20515

The Honorable Maxine Waters
Chairman of the Energy Committee
Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Scott
Chairman of the Education Committee
1201 Longworth House Office Building
Washington, DC 20515

The Honorable Bennie Thompson
Chairman of Homeland Security
Rayburn House Office Building
Washington, DC 20515

The Honorable Jerry Nadler
Chairman of the Judiciary Committee
2132 Rayburn House office Building
Washington, DC 20515

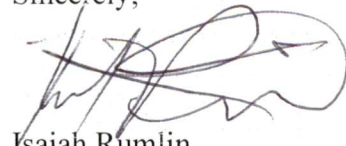
RE: Proposed Sale of the Jacksonville Electric Authority

Dear Chairman:

On behalf of the Jacksonville Branch NAACP, we write with a sense of urgency to request that you open a criminal investigation into the proposed sale of the Jacksonville Electric Authority. We do not support the sale of this public utility company which is owned by the people; and this opposition is strongly supported by the Florida State Conference of NAACP Branches as well as the National NAACP.

Attached, please find the pertinent document for your review.

Sincerely,



Isaiah Rumlin
President, Jacksonville Branch NAACP

cc: Leon Russell, Chairman, NAACP, National Board of Directors

Derrick Johnson, President and CEO, NAACP

Adora Obi Nweze, President, Florida State Conference of NAACP Branches

Hilary Shelton, Director, Washington Bureau and Senior Vice President Advocacy and Policy,
NAACP



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Formal Request to Open an Investigation

In the summer of 2019, the senior administration and board of directors of the JEA began a process to privatize the utility. JEA provides electric, water, sewer, and reclaimed water services in Jacksonville, Florida and surrounding communities. It was created by the City of Jacksonville and is owned by the community. In order to sell the utility, the Jacksonville City Council must vote to do so. If more than 10% of the utility is sold, then the voters will have an opportunity to vote whether to sell the utility.

Almost immediately upon being elected in 2015, Mayor Lenny Curry replaced the JEA board of directors with his allies. In "a move unprecedented in the history of Consolidation," Mayor Curry removed hard working public servant board members before their terms were over and replaced them with his allies. In 2018, Mayor Curry attempted to sell JEA after dozens of meetings between his office and JEA leadership. He described it as establishing the value of JEA, but his attempts to sell JEA were very unpopular and city council members managed to stop the process and pass a bill making sure the owners of JEA, the citizens, would have a say in whether the utility was sold.

JEA's CEO at the time, Paul McElroy, resigned over the "firestorm of controversy" involved in the underhanded scheme to sell JEA. Board member Aaron Zahn resigned from the board of directors after serving for only 2 months and applied to become the Interim CEO. Naturally, he was hired for this position. He also applied to become the permanent CEO of the utility. Zahn was clearly the least qualified applicant and a well-qualified applicant even withdrew his name from consideration because it was known that Zahn would be hired and that the process was not an open or fair attempt to hire the best person for the job. As expected, Zahn was hired as CEO.

For months, Mayor Curry and Zahn adamantly claimed there were no plans to privatize JEA. These assertions were made during the city elections in March and May. Despite these representations, on July 23, 2019, the JEA board of directors (1) approved seeking proposals for the sale of JEA, (2) approved an astonishing employment contract for CEO Zahn making him the highest paid person in city government, (3) approved restrictive employment agreements and golden parachutes for Zahn and the executive team, and (4) approved a lucrative retention program for employees in the inevitable event of a sale. Within 2 weeks, an 87-page solicitation package was revealed.

JEA's value is estimated to be \$7.5 to \$11 billion. The net from a sale is likely to be \$2.9 to \$6.4 billion. The sale of JEA would be the largest and most complex utility sale in US history according to Public Financial Management. To date, 16 bids have been submitted. JEA has advised that negotiations will take place with 9 unnamed bidders.

The entire process has been plagued by misrepresentations that can be described as outright lies and deception, lack of transparency, conflicts-of-interest, lucrative incentives to sell, and an attempt to commit fraud on the owners of the utility, which are the citizens of Jacksonville.

Misrepresentations, Lies & Deception

- On July 23, 2019, Board Member Alan Howard, who was a former board chair, said the utility faced a "slow but certain *death spiral*" if it didn't explore privatization. However, in early October, JEA administrators used descriptions like "phenomenal success story," "incredibly strong," and "best in class" to describe JEA's past year for its financial strength, service reliability, customer satisfaction scores, and environment improvements. Zahn said JEA's "financial operating performance is better than it's ever been." He said JEA "is not predicting that the sky is falling or that we are in a death spiral." However, a mailer sent to customers in October Chairwoman April Green referred to a Times-Union editorial that said "JEA is facing a death spiral." JEA put a disclaimer on the mailer telling investors they should not rely on the study cited by Green to make decisions regarding their investments in JEA. The utility further said the study is not a "financial forecast or most likely scenario for JEA." In other words, JEA is blatantly telling the owners/customers information contrary to what it is telling its investors.
- The Florida Municipal Power Agency (FMPA) said Zahn's dire talking points do not square with the utility's own 10-year projections it filed with state regulators.
- Councilwoman Randy DeFoor questioned JEA leaders' assessment that the utility is headed toward a future "death spiral". Sworn public security filings by JEA, along with other public documents present a "very different picture".
- In November 2019, JEA officials intentionally misled the public regarding the conflict-of-interest issues raised by the City's Ethics Director Carla Miller. JEA executives claimed negotiations were continuing; however, JEA attorneys claimed they had been paused. It remains unclear whether negotiations were ongoing or paused.
- JEA falsely claimed that Miller "punted" on the conflict issues. The truth is that JEA intended to move forward with negotiations until Miller expressed concerns contrary to JEA's representation that it was taking "Steps to Ensure Lawful and Equitable Procurement Process". JEA falsely claimed that it asked the state's ethics commission for an opinion out of an "abundance of caution" when in fact Miller was responsible for prompting this action. This is yet another example of JEA misleading the public regarding critical developments around the privatization process.

- JEA falsely claimed it “invited” the city’s inspector general’s office and ethics director to oversee the sale process. In fact, the city’s inspector general wrote a letter to Zahn informing him of the oversight. Once this deception was pointed out by the media, JEA changed its “fact-check” web page to replace “invited” with “welcomed”.
- JEA has engaged in “scare tactics” with the public. Enclosed within JEA customers’ November bills was a brochure titled “The Facts About What’s Next for JEA” warning that customers face a future rate increase “as high” as 52 percent combined with worse service caused by “deep cuts” to JEA’s workforce and reduced spending on the utility’s system. However, JEA’s own studies conflict with these representations. JEA picked the worst parts of different scenarios to scare the public into supporting privatization. JEA told bond-rating agencies something quite different than what it is telling customers. The brochures also note that privatization will benefit customers by giving them rebates of \$350 per customer account which could add up to \$1,400 if a customer has electric, water, sewer, and irrigation accounts with JEA. Many have viewed these rebates as attempts to buy customer favor and votes if the sale goes to a voter referendum.
- Prior to seeking bids to sell JEA, the utility’s website contained a section devoted to touting the benefits of public power. After the vote to “explore” privatization, this section of the website was removed and replaced by an advertisement offering “A Path to a Promising Future,” which aims to promote privatization.
- Chairwoman April Green sent a letter to City Council claiming in the last 10 years “JEA raised customer rates by 71 percent.” JEA’s own reports state residential electric bills are actually less than they were 10 years ago. In fact, the rate has decreased by 8 percent. Mayor Curry also cited the deceptive figure (rate increase) when he appeared on WJXT-Channel 4 on October 7, 2019. It is industry standard to use base rate and fuel prices in doing a rate comparison per the Executive Director at FMEA. JEA was using only the base rate instead of combining the rates in an effort to further deceive the public.
- JEA announced it was canceling a long-term incentive program but failed to mention the impending report from the City Council Auditor highlighting significant problems with the program and its failure to respond to the list of questions he submitted.
- If a private entity were deceiving investors like JEA is deceiving the owners, they would be held accountable. JEA must also be held accountable for either lying to the owners or lying in sworn public filings.

Lack of Transparency

- In violation of the First Amendment, JEA initially sought to forbid employees from making any public statements critical of JEA and any other city official or agency as a condition of earning the retention bonus. Employment Agreements language advised money would be withheld from utility workers if they “make any unauthorized public statements about, among others, JEA and government officials of the city of Jacksonville. Thankfully, JEA unions refused to accept this unconstitutional language.

- Initially, JEA insisted they would not publicly disclose the names of the negotiating team. Miller advised “[i]t was the Ethics Director’s view that they could not be kept confidential... and public policy would favor disclosure to the citizens.” Several days later a JEA attorney informed Miller that the utility would disclose the names of the negotiating team members.
- The City’s Office of General Counsel has called it a “Cone of Silence Period” “strictly prohibiting” city council members from voicing opinions about the terms of the sale even extending this to conversations with constituents. Zahn has even called it a “cloaked process.” City council members were told they risk being forced to recuse themselves from the vote whether to sell JEA if they violated the Cone of Silence. Once again, Miller had to intervene to make sure council members understood they could discuss the sale with their constituents.
- JEA plans to withhold from the public any details and records of the bids including the names of the bidders for as long as 6 months, which is contrary to a normal transparent procurement process.

Conflicts of Interest

- On July 23, 2019, former chairman of the board Alan Howard voted to allow JEA to seek proposals from potential buyers. On August 28, 2019, Howard, now no longer on the board, signed a contract to provide “specialized legal counsel” for \$500 an hour limited to \$75,000. Was this a reward for his vote and leadership in the quest to privatize the utility?
- New JEA board member Dane Grey has a significant conflict of interest. He is friends with JEA CEO Zahn, who is clearly advocating for privatization of the utility. Grey is courting City Hall to privatize the city’s public parking. On November 25th, Mayor Curry finally publicly admitted that he is in favor of selling JEA. Obviously, an individual wanting to conduct business with the city will seek to appease the mayor who demands absolute loyalty from those around him. Grey’s company has hired Tim Baker and Sam Mousa as lobbyists. Baker is Mayor Curry’s political consultant. Mousa is Mayor Curry’s former chief administrative officer.
- JEA board member Andy Allen is CEO of Corner Lot Development, which also employs Baker and Mousa. The company contracts with JEA for services.
- JEA board member Kelly Flanagan is the Senior VP and CFO for the Jacksonville Jaguars NFL team owned by Shad Khan. Khan is a major donor to Mayor Curry and is currently negotiating an incentive package with the mayor for private development of “Lot J”.
- JEA board member Henry Brown is CEO of Miller Electric Company, which contracts with JEA for various work projects.
- JEA board member Fred Newbill co-chaired a fundraiser for Mayor Curry earlier this year.
- JEA Board Chairwoman April Green was also on the fundraiser committee for Mayor Curry. She is married to Eric Green, the CEO of the Jacksonville Port Authority, who answers to a board of directors appointed by Mayor Curry.

- Accordingly, at least 6 of the 7-member board of directors have significant and well-known conflicts of interests. They all have an interest in fulfilling Mayor Curry's desire to sell JEA.
- JEA's 13 member senior leadership team are entitled to more than \$1.5 million in special post-employment benefits noted as "monthly consulting fees" if they leave JEA as long as they are not terminated for cause. Carla Miller, Jacksonville's Ethics Director, red-flagged this special benefit as a potential conflict-of-interest for Melissa Dykes and Herschel Vinyard, who were set to negotiate the privatization deal on behalf of JEA.
- The Florida Ethics Commission has been asked to determine whether there is a conflict. When the JEA board voted on the provision it did not include the value of the payments. Instead, the media had to request the actual contracts and revealed its findings to the public. The 13 members would receive the consulting fees on top of 20 weeks of severance payment. The total value of the consulting fees and severance payments exceed \$6.2 million. If JEA is privatized, the senior administrators would also be entitled to 6-figure retention bonuses equal to their salaries if they stay employed by JEA for 3 years or are terminated without cause by the new owners. All JEA employees are eligible for a bonus equal to their salary, which would be paid in 3 installments over 3 years. As a result of media reporting and public outrage, JEA replaced the entire negotiating team with city employees on November 25, 2019. This move creates other concerns since the city employees are Mayor Curry's "people" which means the mayor is now negotiating the deal to sell JEA.
- On November 1st, a JEA attorney told Miller that the utility "barring any emergency, would not proceed with substantive action" until the state ethic's commission issued an opinion. On November 14th, JEA provided Miller with written confirmation that no negotiations had taken place and that none were scheduled. However, the next day, Kerri Stewart, a JEA vice president said the process "was not on hold" and the utility plans to proceed with all aspects of the negotiations except discussions about employee benefits. Again, the public remains uncertain whether negotiations have taken place.

Lucrative Incentives to Sell

- City Council Auditor Kyle Billy noted JEA's newly created long-term incentive pay plan could allow JEA employees to pocket astronomical financial gains described as "a financial windfall" particularly if the utility were sold. Only after the plan came to light did JEA leadership state they would recommend termination of the plan to the JEA board. The plan was hastily approved by the board on the same day the board authorized staff to seek offers from outside entities for the utility.
- The plan would have an unlimited cost to JEA ratepayers and no cap on the amount individual employees could have received. The cost could exceed \$600 million and provided Zahn with too much control over the plan. One such outrageous feature of the plan would allow Zahn and the plan administrator the power to decide that non-JEA employees could participate in this plan. Why was this included? Who was it meant for?

- The incentive plan faces legal questions about whether JEA even has the legal authority to put such a performance plan into effect. Despite these concerns, the Office of General Counsel allowed this incentive plan to proceed.
- If Zahn can sell JEA, he could receive more than \$1 million in severance, consulting fees, and the bonus on top of his \$520,000 yearly salary. His contract terms are far more generous than those his predecessor, Paul McElroy, received. Florida law limits the severance payments public employees can receive to 20 weeks. In a blatant effort to circumvent Florida law, JEA provides Zahn with a “consulting contract” for one year in an amount equal to his “total compensation statement” for the previous 12 months in addition to 20 weeks severance pay. McElroy had extensive utility experience. Since Zahn lacks direct utility experience, JEA created 2 new positions – Chief Operations Officer and Chief Administration Officer – to perform duties normally handled by the CEO. In other words, Zahn is paid substantially more than McElroy and does substantially less work. The difference is that Zahn was specifically hired by the Mayor Curry appointed board the Mayor Curry appointed board to usher through the sale of JEA. Zahn's contract, making him the highest paid person in city government, was approved with little to no scrutiny noted on the record. In contrast, McElroy's contract was highly scrutinized by the board.
- “This is such a magnitude and is so significant that this is the kind of thing you would see a federal grand jury investigation or U.S. Attorney's Office or the State Attorney's Office,” said Rick Mullaney, pointing out that a grand jury can investigate a mismanagement in government. Rick Mullaney is a former General Counsel for the City of Jacksonville and currently the Founding Director of the Public Policy Institute at Jacksonville University. “First of all, it's important that we get to the bottom of this, whether an investigation by the City Council issuing subpoenas, whether it's by the city inspector general, whether it's by a council auditor, whether a grand jury investigation who often look at these kinds of numbers – whether it's federal or state,” Mullaney said.

As noted above, the mayor and JEA administrators have engaged in fraud and deception in their attempt to privatize the utility. The process has been fraught with conflicts-of-interests and conducted in violation of the sunshine laws and public policy. Billions of dollars are at stake and the public is entitled to a process that is open, honest, transparent, and fair. The mayor and JEA administrators have deliberately engaged in a concerted pattern of behavior to defraud the citizens of Jacksonville. Accordingly, all relevant agencies should investigate this process, which should be stopped until any and all investigations are complete.