

## Merritt, Rachel

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**From:** Miller, Carla  
**Sent:** Tuesday, January 7, 2020 11:19 AM  
**To:** CM; SS  
**Cc:** Gabriel, Jason; Gavin, Kyle; Hodges, Lawsikia; Burch, Stephanie  
**Subject:** JEA ITN Negotiation Meetings/ Ethics Director's notes from Dec. 10-23  
**Attachments:** JEA ITN MEETINGS Dec 10-23.docx

Dear Council Member,

On December 24<sup>th</sup>, I sent you my notes from the confidential JEA negotiation sessions that were held prior to the meetings in Atlanta. (Nov. 25-Dec. 6)  
(When the ITN was withdrawn on 12/24, these notes became public records.)

Attached is the report of all the remaining JEA negotiation meetings from December 10<sup>th</sup> to December 24<sup>th</sup>, which include the Atlanta meetings.

I would have sent this report earlier, but OGC gave all of the bidders time to review my report to redact any parts they thought were trade secrets or confidential.

I didn't think any of the material fit into an exempt category—I thought, and still do, that 100% of it is a public record.

But, there are some redactions in my report pending additional discussion between OGC and the bidders.

I will continue to work with OGC to ensure that all of the JEA ITN documents become public as soon as possible.

Carla Miller  
Ethics Director

**JEA ITN MEETINGS IN ATLANTA, Dec. 10-13, 2019**  
**(Also: Meetings from Dec. 16-23, Jacksonville)**



*Photo taken by C. Miller 12/10/2019*  
*Location of Meeting. Holland and Knight. 1180 W. Peachtree St. NW, Atlanta*

There were 5 meetings held in Atlanta (12/10-12/13/19) and one in Jacksonville (12/16/19). The following Respondents (Bidders on the ITN) attended 6 separate meetings: Next Era (2-6pm, 12/10); Duke (8am-12pm, 12/11); Emera (8am-12pm, 12/12) and JEA PPP (2-6pm) and American Water (11-3pm, 12/13). MIRA met with the JEA team on Monday, 12/16, 8-12pm in Jacksonville.

The following JEA staff were in attendance: Aaron Zahn, Melissa Dykes, Ryan Wannemacher; Herschel Vinyard, Lynne Rhode, Ted Hobson, Paul Steinbrecher, Kerri Stewart, Caren Anders, Deryle Calhoun, Steve McInall, Shawn Eads, Jon Kendrick, John McCarthy, Jenny McCollum; and, the 3 Negotiators: Stephanie Burch, Randall Barnes and Robin Smith. Aaron Zahn was not at the 12/16 meeting in Jacksonville.

Also in attendance: Carla Miller, Ethics Director; Lisa Green, Inspector General and Debra Anderson, IG's office; and Ben Grossman, Foley and Lardner (law firm for JEA).

Each meeting was 4 hours long; the first half was a presentation/powerpoint from JEA officials. Then there was about a 20 minute break. Then, the Respondent's officials and experts were able to ask questions and present any of their information for the second 2 hour session.

First, I will summarize the 2 hour JEA presentation, as it was exactly the same for each of the 6 sessions.

## JEA PRESENTATION

This outline corresponds to the JEA powerpoint presentation; the actual powerpoint presentation is the best detailed record of what was said by each of the JEA executives, as they tracked it very closely. Each section of the presentation was handled by a different JEA executive. For example, Caren Anders, who is JEA's General Manager of Energy handled Section 3 on electric.

### **Section 1. Intro (Aaron Zahn for the first 5 meetings; M. Dykes for the 6th meeting on 12/16)**

We are unique; best in class statistics. Constraints in the law inhibit evolution. Can JEA do all of this? No. Except we can cut costs/staff; increase prices, reduce investments. Cannot sell more KWats to existing customers, invest in research and development; sell alternative products; sell equity and retire debt; acquire new businesses; sell assets or create partnerships.

3 core enabling factors: Scale/capital/evolution unlock value in 3 previously constrained applications in energy and water; capital enabled regulated opportunities; unregulated opportunities and market expansion.

Strategic Planning and development; 4 types of initiatives: operational improvements; strategic capital investment; core growth opportunities and additional growth opportunities.

2030 Strategy. Scorecard under new strategy versus current government ownership. Goals of ITN, 3 billion. Customers, Environmental and community

### **Section 2. Key Investment Highlights**

Business highlights; discussion of strategy development; and aspirational goals. P. 24: Potential timeline to prepare for strategy execution. Overview of Operational Improvements. Overview of Strategic Capital. Description of specific potential investments.

### **Section 3. Electric (C. Anders)**

Overview: service territory; customer info; generation fleet. 4 plants and ages. Fuel mix; dispatch stacks (gas, coal and heat). Solar Purchase Agreement information. Gas pipelines, FPSC jurisdiction to regulate.

Current OPS: Transportation and Distribution System Metrics; Resiliency programs; underground power lines; generation metrics; decommission of St. Johns River Power Park (SJRPP). Northside Generation Station; limestone utilization improvement.

Strategic and Capital Improvements. Evolution of Portfolio in next decade. Replace Northside Unite 3 with a natural gas facility. JEA expects solar and storage and offset of costs. Northside Generation Station. Utility Scale Battery Storage. Virtual Power Plant (VPP)-battery based.

Capital Growth Opportunities. 3 trends create opportunities. 1. Electrical transport, 2. Solar and Storage, 3. Energy efficiency.

Initiatives: expand incentives for electric vehicles; build out chargers to public.

#### **Section 4. Water (D. Calhoun)**

Highlights: number of customers; aquifer information; chilled water plants and innovation. Virtual pump station inspection. Current Operations: water system consumption use permits; meeting water challenges; use of reclaimed water. "One Water Philosophy". Water supply planning cycle; purified water; Pelletizer replacement; renewable natural gas; environmental compliance; resiliency metrics.

Strategic Capital Improvements. Septic tank phase out; Investment opportunities (Greenland WRF), wastewater treatment plant. JEA has accumulated numerous local utilities in the area. (Gate Marine, Regency Utilities and Florida Water, etc.). There is potential for future growth and acquisitions across Florida transit arteries.

#### **Section 5. Financial Overview (Ryan W.)**

Financial Model information and rate base information. What Assets and Liabilities would transfer to a new company? Accounting and Balance sheets and capital expenditures.

Risk Management (FEMA), other liability insurance; environmental liabilities and liabilities for Kennedy Generation Station and St. Johns River Power Park.

#### **Section 6. Customer Engagement (Kerri S.)**

Analysis of customers (# of years, payment type, etc.); wages will grow more than electrical bills. Customers are satisfied. Many payment methods and programs. Many communication initiatives. Home energy management tools.

#### **Section 7. IT (Shawn Eads)**

He gave network and server information. Cybersecurity efforts. Described dark fiber networks. They closely align IT with their safety program.

Compliance: Ted Hobson. Described regulatory systems and audits and security. He also described JEA's ethics program. Description of ERM, Enterprise Risk Management: they have risk scores and develop programs based on that.

#### **Section 8. Supply Chain (John McCarthy)**

Described emergency Preparedness; hurricanes. Procurement Overview; public purchasing process described. Inventory, JSEB program, Fleet. Capital Improvements. New JEA headquarters building discussed. Capital Investments.

### **Section 9. People Culture**

JEA's Guiding principles. Cultural Values. Breakdown of Workforce. Summary of Collective Bargaining Agreements; Pension agreements/liabilities. JEA has employee Learning and Development and Safety Programs. JEA has received lots of awards.

### **Section 10. Additional Growth Ideas**

Dark fiber; Lot J development; land—St. Johns River Power Park.

### **Appendix 1: Operational Incentives**

Generation Initiatives (i.e. negotiate lower rates for materials and services)

Transmission and Distribution initiatives; increase crew production; digitize front operations.

Water and Waste initiatives

Customer Initiatives

**Appendix 2:** Organizational Detail (organization charts of JEA)

**Appendix 3:** Accounting and Sales. Revenues, sales and billing

**Appendix 4:** Risks. Carbon Emission; Nuclear Power Plant (Vogtle). Black Swan events.

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## **THE MEETINGS WITH THE RESPONDENTS (BIDDERS)**

NOTE:

Each of the 4 hour meetings with the bidders started with the 2 hour management presentation (see above). Then there was a break and then the bidders could ask whatever they wanted to of the JEA management for 2 hours. Each group had their executives, lawyers, subject matter experts (SMEs) on water and electric and their financial advisors. Most of the discussions were highly technical—expert to expert—and I did not try to take notes on this. The transcripts would be the best record of these details that were discussed. There is an agenda for each meeting with the names of the participants at each meeting (the JEA reps were the same for each meeting; see above note on management presentation).

I did take some basic notes on the process, which I will highlight.

**12/10 Next Era**

Next Era had 20 representatives at the meeting. (see Meeting Agenda for details)

Next Era commended JEA on their systems for reclaimed water and sewer; doing a good job. There was a long discussion on water; how to evaluate it; more detail on expenses, allocation of costs. Discussion of impact analysis if counties go out of JEA; how it impacts capital in the future. Need more detailed analysis of other counties in JEA. Are there legal agreements with counties in place?

Does JEA have regulatory support? Legislative support? Discussion.

More water discussion. City required developers to put in pipes with developers; can private entity do that? More water questions.

At the end of the meeting, they were asked if they had any feedback on timeline (end of January for deal to be completed). They said they could do it in January if they get the documents they need. They were told the draft purchase agreement and schedule on timing would be out this week.

### **12/11 Duke Energy** (8am-12)

(11 representatives from Duke) 8 am Powerpoint presentation by management for 2 hours. Break. 10:23 Respondent

#### **\*Information deleted per Duke Energy's request; with OGC.**

Discussions on: costs of "retirement/shut down" costs; regulation, tax issues, reserve funds. Cash basis questions. Duke needs to do theoretical analysis for regulators. There is already a JEA depreciation study. Recovery of rebates is included in the figures.

Melissa D.; must implement strategic plan; how to achieve affordability and create new investment for ROI. Finance Discussion; rates are in the middle; 10 years ago, JEA had 90% debt and rates had to be increased. How to reflect lapses in employees in cost projections.

#### **\*Information deleted per Duke Energy's request; with OGC.**

S. Burch: we want documents executed by the end of January.

When will "process letter" go out with dates?

Aaron Zahn: we want transparency in the process so that is why there is a tight deadline for January; but he will follow the lead of the Negotiators on the timeline.

(Carla M. Note: from the beginning of the Negotiation meetings, the timeline was to have a signed contract by the end of January; this is the first time the factor of "transparency" to citizens was mentioned as a reason for the timeline.)

S. Burch: does not anticipate any change in the timeline (end of January); says “transparency is important, we want to wrap up procurement.” Ben (attorney) states that the documents will all be made public when the vendor is announced in a “notice of intent to award”.

### **Dec. 11 Negotiation Strategy meeting (2pm)**

Draft process letter and get it out asap. Can there be site visits? Discussion on “aggressive time line”; do site visits later after revised responses. Revised replies should come in the last 2 weeks of Jan. Add to process letter after next JEA Board meeting.

Lynne Rhode: APA (Asset and Purchase Agreement) and ancillary documents are with OGC for review.

### **12/12. Emera (8-12)**

Mainly electric questions. Wanted update on Vogtle project—there will be a legal discussion on this later that is being set up (L. Rhode). Finance questions; permitting issues. Process on transition of rates. How to define 440 million in assets better. Discussion on depreciation of facilities as assets. How to handle shared insurance/legal services. Timing of transfer of Assets—not prior to closing (A. Zahn). Pension discussion. In 2020, there will be a rate discussion by JEA board on Plant Vogtle liability.

S. Burch: Process—we need signatures on a document by end of January—driven by transparency to the Community.

Respondent: Surprised as to sudden change; timeline impractical. They need the process letter. We are interested, and want to provide the best proposal, but time is needed. We need draft contract (Lynne—it is with OGC). Wants to pair up, but that takes time. SB: if partnering up, there needs to be simultaneous closing—must close at same time. Process letter will have details and you can call JEA procurement reps. Asked for draft contract: Lynne Rhode: OGC has it to review.

R: “very challenging timeline” and to do it with a partner even more challenging

### **12/12 JEA PPP (2-6pm)**

Partnership. 18 representatives at meeting. They emphasized that the high value stays with the City; jobs remain and grow. They have relationships with Unions. Rates can be locally determined. They believe they can explain the process well to the community. They don’t have many regulation hurdles. They do not have a traditional approach. Suez handles water and

wastewater and has 100 plus years of experience. Most of Suez employees are in the public sector; coming in to improve, not displace.

Discussion about rate assumptions; reversion of assets.

S. Burch: Our job is to negotiate agreement that brings the most value to the citizens. SB: Interesting—in PPP proposal, assets would continue to be owned by City of Jax. Complex; there would be tradeoffs on the financial side. 5:54pm S.B.: discussion on growth options.

Respondent noted Council Vote coming up on Jan 14th on ending ITN. (Aaron Zahn; there are emotions; can't know what Council would do; timeline up to Negotiators.)

5:47pm feedback on timeline; JEA PPP: aggressive timeline—we need until mid-February to do our due diligence.

### **12/13 American Water (11am-2:00)**

10 representatives from American Water. They started with a video on their company.

(This group would have to partner up; only wants one side of the business)

S.B.: but consider timelines; we need one closing by end of January, with a partner.

Discussion on employee relations and how to incentivize with programs. Discussion on water metrics. Discussion of who and how to partner with someone for electric.

Resp.: we need process letter. Timing is not a problem for them on the water side: "it is a complicated time frame to get a partner".

### **12/16 MIRA In Jacksonville (not Atlanta). (8am-12)**

11 attendees. Aaron Zahn not running the meeting; Melissa Dykes was.

Introduction on their company: MIRA is the largest infrastructure company in the world; holds investments in pensions and utilities across the world; most experienced financial investor in utilities. They like local input on Boards. They support local management. In Jax, there is enough scale and the demographics are great; strong position.

Inquired about safety metrics. Incentive plans discussed. Plant Vogtle discussed. They are interested in both electric and water or just one of them. They would not fold JEA into another business. How did you determine rates? How did you come up with management forecast? Inexpensive water in the community coming to an end. Electric load discussions. Talked about Florida PSC and rate agreements.

R: January time frame is extremely challenging. We need a process letter.



R: wanted to know about process with Community in Jax; integral piece. What is process in Community? M. Dykes: JEA Board has 5 alternative plans they are looking at and until they make a decision, we can't comment on process with community.

R: we have focused on other options, alternative solutions. SB: if it adds 2-3 months to process not good.

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## **MEETINGS WITH BIDDERS CONCLUDED.**

After the Meetings with the 6 bidders, there were 2 strategy meetings with the negotiators. One was before the JEA Board meeting of 12/17 and one was after the JEA Board meeting.

### **12/16 Strategy Meeting (after all 6 Respondent meetings)**

Meetings have to be set up with Respondents to discuss APA (Purchase Agreement) and Financial Models in more detail. Maybe set up meetings with individual staff. SB: would have to be in formal, recorded negotiation meetings.

2:23 It will be hard to fit in all with deadline; narrow Respondents that will have to do due diligence? Wait for revised replies and then narrow down. Then, they can go on site visits.

Todd on Process: full markups due first week of January; Revised valuation and reply 7 days later.

2:41. Goal—2 parties coming in for best value.

### **JEA Board Meeting, 12/17**

Meeting was recorded and is online. Discussion on PUPs. Aaron Zahn terminated and discussion on with or without cause.

12:18 Henry Brown, JEA Board member; should "suspend" ITN process; lack of transparency; JEA Attorney Hosay: see what does the market have to offer; pausing would endanger the process; compare options. H. Brown: it is a procurement process or an informational process? Discussion on presenting all bidders/options to the Board.

### **Dec. 17, 2019 Negotiation meeting post JEA Board meeting in the morning**

Strategy Meeting. 3pm ("R"=Respondents)

1. Process letter is now prepared. (Steven Anders discusses). Time: Revised purchase agreements marked up by Rs and submitted by Jan. 8.

Revised replies also include Rs financials; internal approval process; regulatory process.

SB, page 5 on contingency section. Open question as far as to what our intention is to do at end of January; actual award? Recommend a single respondent for an award? SB did not think that Board wanted more than one entity to choose. So, not “top 3”—got idea that it needed to be narrowed down to one. Randall—charged to continue process by JEA board; to do one partner. There was no indication to provide top 3. And JEA Board wants to see other Rs replies. Randall asks to try to move all parties with documents but make one recommendation. Then are we publically disclosing all? Yes, they all come out anyway. But prior to signing? RHosay—at the end all become public; when does process end is a question.

All bids become public prior to signing a deal? Problem and subsequent discussion.

OGC interprets charter of JEA now; do those mechanics require CC approval prior to purchase agreement? Or enter Contract and then go to City Council? Threshold question. A separate question is whether full details, including the economic amounts of all bids, released to public prior to finalization of contract with bidder. If all bidders are given financial info, prior to execution, then certainty of numerical value lowered. Releasing values prior to award creates risks. Some of the Delta between top 2 bids evaporates. If people know their bids are going to be public; and they don't bid, just to see what comes up, what happens to the process? RH: legal questions; not for negotiators. SB does it affect process letter? Is there a way to say: before the closing, if you try to reduce your bid, you can't. Legal: don't know how it is binding. SB needs to be done by end of January. What if we aren't done by the 28th. Did you watch the Board meeting? SB- Board said something presented to them 1/28; all of the options being out there. But they want to see all of the bids. The JEA Board can also choose someone else. We can't guarantee the process. Legal question important. Can we award something? Randall; maybe we get to the point where all but one opt out; SB hopefully we will only have a few left b/c of timeline.

SB if we get to end; and we issue an intent to award; that is a legal doc; that is what closes procurement. Intent (notice of intent to award) should say you can't now change your bid when Intent comes out. Have meeting at 8am then JEA Board at 9. Now that all is public, here it all is.

Atty: is there any way numeric values to be provided to Board, confidentially. Values are not released to public

Robert: we will advise; we will recommend an award to the JEA Board.

3.3.8 ITN. Get to best value; then team does a recommendation for award. Randall is concerned about Board member; anyone who watches will know what will happen on 1/28; make clear to them we make recommendation; that info will be public on 1/28 unless we figure out how to get info to Board confidentially.

Randall; what does it say in ITN about going public. Intent to Award is determinative as to when released; could be after meeting.

All confidential until recommendation done. If we don't issue an "intent" all is exempt at that point.

Transparency is key. Details on how it happens will evolve. Randall if we are in Cone of Silence; how do we discuss on 1/28? Can we invite Board to the strategy session? Individually

Process letter will say "make an award". SB; needs more legal work.

Board expects info on 1/28.

Jenny-- are you asking for SMEs to research this more on a plan? How we wrap it up?

We have to get out process letter. SB how do we close procurement out?

Can we invite Board to negotiation session? So they can review prior to Board Meeting?

Does Board want all responses released? Yes Process is fluid.

End of process all is transparent; timing is important. Must educate Board members on how sensitive info is between bidders. Then that will influence what happens on the 28th.

Page 5. Due diligence until Jan. 7. Revised replies due Jan 8. Is that too close to deadlines?

Ongoing due diligence; site visits Jan 20th? Any guidance on partnering?

Eddie: partnering almost impossible now with timeline. Is it practical to get separate bids? SB; Melissa said OK to get separate bids from companies for parts of JEA.

SMES, because of time, easier to get separate bids.

There will be time after Intent to Award to work out details.

Eddie; what we have heard is that to separate assets was difficult—that is why we wanted them to pair up. Steve: legal complexities with 2 separate bids; 2 agreements; intercompany agreements—process of doing this lengthens time to close. Too complex.

Discussion on how to pair up.

Process letter can't be done if partnering process not worked out.

4:18 adjourned.

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#### **MEETINGS BETWEEN DEC. 18-24**

A meeting with all of the Bidder's attorneys to discuss the Plant Vogtle litigation was mentioned at the Atlanta meetings, but as of 12/17, it had not yet been scheduled. I don't know if it

occurred. Lynne Rhode OGC was coordinating that meeting and she resigned from OGC on 12/19.

**December 18.** Phone meetings with all 6 bidders on “Financial Models”. (Detailed phone calls on financial matters: determination of rates; assumptions for revenue forecasts; rate stability; key model assumptions and how developed; depreciation calculations.) **Note:** there was a “virtual data room” accessible to all Respondents—all questions answered by SME’s would be recorded here and any documents given to each of the R’s.

(December 18. Ethics Director sends email to OGC recommending that the ITN be withdrawn.)  
C. Miller did not attend the negotiation meetings past the 18<sup>th</sup> a she was out of town; the IG attended and would be sharing information.)

**December 19.** “APA” (Asset and Purchase Agreement) phone meetings with Duke and Emera. Draft contracts discussed. (Attended by the IG’s office.)

**December 20.** “APA” meetings with Next Era, American Water and Emera. (Attended by IG office). During the APA meetings, code names were given to the Respondents: Clipper, Jet Hawk, Hot Rod, Sea Wolf, Cyclone.

**December 23.** (meetings attended by IG’s office):

Note: although Code names were used, the actual name of the Respondent was in the Agenda for each meeting.

8am—negotiation session—HR (Clipper) on employee packages/compensation

9-9:45am FTI Regulatory Reports with “Cyclone”

10-10:45am “Hotrod” on FTI reports

11-11:10am Negotiator S. Burch received news alert that the Mayor was making a statement on the ITN. This meeting was going to be rescheduled since the Pillsbury law firm hadn’t called in.

12-12:47 “Clipper” meeting on FTI regulatory issues.

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**December 24. The JEA Board voted to withdraw the ITN.**