

Wilkes, Melanie

From: Stephen D. Busey <busey@smithhulsey.com>
Sent: Thursday, March 19, 2020 4:52 PM
To: Jackson, Brenda; Diamond, Rory; Wilson, Scott; DeFoor, Randle
Cc: Gabriel, Jason
Subject: COJ/JEA - Update to the Committee
Attachments: JEA Memorandum Regarding Employee Incentive Programs (May 20, 2019)
4820-9203-1639 v.2.docx

Follow Up Flag: Follow up
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Because we are not able to meet for the time being, we are providing this report on the status of our work for the Committee:

- Interview of Melissa Dykes: Thursday of last week Office of General Counsel suggested to us that we communicate with Melissa's lawyer, Hank Coxe, to arrange her recorded statement. I spoke to Hank on Friday, and he said he would let me know this week if Ms. Dykes will voluntarily appear for an interview. If she will not, we told Hank we will ask the Council to issue a subpoena.
- Interview of Jody Brooks: We are interviewing Jody Brooks this Friday, March 20. Steve Powell with the Office of General Counsel will attend. Jody has not retained counsel.
- Interview of Paul McElroy: We are interviewing Paul McElroy Thursday, March 26. Michael Abel represents Mr. McElroy.
- Aggregation of Information: We continue to collect documents relating to the Committee's investigation, including documents from JEA, OGC and the Council's Special Committee on the Future of JEA. We are going to combine those documents onto a single review platform to allow for a comprehensive assessment of the available information.
- Public Records Requests and Subpoenas: We are preparing public records requests and subpoenas for service on JEA consultants and ITN respondents.
- JEA Consultants: We requested OGC provide us with all engagement letters and invoices for any consultants who advised JEA in connection with the ITN and PUP. OGC provided us a number of engagement letters and invoices. We supplemented our request on March 12 to include additional consultants identified by JEA in its March 10, 2020 response to the Committee's interrogatories. We anticipate shortly OGC's (i) production of the remaining engagement letters and invoices, and (ii) confirmation that all engagement letters and invoices from JEA consultants have been provided to us.
- Document Production by JEA: Our efforts on behalf of the Committee to obtain documents from JEA began on February 3, 2020 and are continuing. Recent messages from Hill Ward Henderson and OGC evidence our continued frustration with JEA's cooperation. We have asked JEA to provide us with an update at the end of each week containing (i) the work performed by JEA thus far to respond to the

Committee's requests, (ii) the work that remains to complete JEA's response to the Committee's requests and (iii) when JEA will complete its response to the Committee's requests. Other than the professional engagement letters and billing statements mentioned above, the productions we have received from JEA to date (through OGC) are (i) JEA's initial and amended bond counsel agreement with Nixon Peabody (received March 4); (ii) 663 JEA and/or OGC emails dated between April 2, 2019 and December 31, 2019 that relate to investigatory matters (received March 6); (iii) a flash drive with four folders entitled "other," "privatization," "PUP" and "WhatsNextJax" (received March 9); (iv) a May 20 memorandum from Nixon Peabody assessing the legality of JEA's long-term incentive plan (received March 10; attached above); (v) a flash drive principally containing documents on the "What's Next for JEA" website (received March 17); JEA documents published online, including the documents on the "What's Next for JEA" and "Future of JA" websites. (There are some JEA documents on those websites that were not separately produced to our firm, including a production of emails from the Dalton Agency). We discovered references to the Nixon Peabody memorandum in an invoice and requested its production. Please let me know if you would like us to deliver any of these documents to your council office.

- Access to Documents. By this coming Monday, March 23, we intend to set up a secure, cloud-based platform (e.g., Dropbox) for the Committee to view the documents we have gathered so far. JEA's pending document production will require a separate, more comprehensive platform (e.g., Relativity) to effectively search, organize and analyze their voluminous production. When the documents are produced by JEA, Chris Dix of our office will send a separate email discussing how to access and use that platform.
- The Nixon Peabody Memorandum. We discovered Nixon Peabody's 2019 retention by JEA through online sources. JEA did not produce Nixon Peabody invoices in its initial February 18 production, so we requested the invoice from OGC on February 20. We subsequently received the invoice and discovered references to a memorandum. OGC provided us the memorandum when we asked for it. When we saw the memorandum we learned that Nixon Peabody told the JEA in May 2019 that JEA's proposed a long-term incentive program violated Florida law, including statutes governing conflicts of interest. We have attached a copy of the memorandum and Nixon Peabody's email transmitting it to several JEA executives.

Even in the current disruptive environment, we are continuing our efforts to obtain information for the Committee. Please call me if you have any questions.

Steve

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Chairman

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