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Subject: COJ/JEA - Second Interim Investigation Report

Special Investigatory Committee Members,

This report provides you an update on our work to date. It may also help the Committee address issues at its meeting tomorrow, May 5.

Federal Investigation of JEA: The Department of Justice's grand jury subpoena JEA received on April 21 requires JEA to produce the specified documents by May 20. The DOJ subpoena mirrors the Committee's pending document requests. In light of the overlapping federal investigation, we have worked with OGC to develop options for the Committee's continued work. We have discussed these options with each of you and OGC. As a result, we plan to continue our efforts to obtain documents from JEA, take sworn testimony of persons identified by the Committee who will voluntarily appear, and to subsequently consider subpoenaing witnesses as necessary, but in a manner that avoids interfering with the federal investigation.

Document Production Protocol: JEA's counsel Hill Ward Henderson reported that our search terms generated 1.3 million documents responsive to the Committee's 84 document requests. JEA will not produce those documents to us or the Committee, however, until after OGC reviewed the documents for public record exemptions. OGC estimated its exemption review could take weeks, if not months, to complete. For these reasons, we designed, negotiated, and implemented a protocol to balance the Committee's desire to expedite document review with JEA's desire to protect confidential or privileged documents, including documents relating to the Plant Vogtle litigation. Under the protocol, we can share new documents with you as soon as OGC reviews those documents for public record exemptions.

Relativity Access: This past Friday, on May 1, we obtained access to JEA's online Relativity database containing documents responsive to the Committee's requests. Although we expected to receive over one million documents, the database to date contains only approximately 171,800 documents. Of these, we have already identified a number of material documents that we will share with the Committee once authorized by OGC. We will work with our Relativity vendor, KLDDiscovery, and OGC to further assess JEA's production. Our top priority is identifying documents needed for our interviews with Melissa Dykes and the other witnesses identified during the April 21 Committee meeting. If there are other document searches you want us to prioritize, please let us know. We anticipate our review of JEA's documents will take at least a

month to complete even if we focus on critical issues through targeted searches. That timeframe may expand if JEA does not produce responsive documents.

Witness Statements: At its April 21 meeting, the Committee directed us to obtain sworn statements from six witnesses. The Committee stated it would consider requesting the Rules Committee to issue subpoenas if the witnesses did not appear voluntarily. We report the following progress with respect to the witness statements:

- Melissa Dykes' attorney, Hank Coxe, confirmed she still intends to give a voluntary statement. Mr. Coxe requested that we take Ms. Dykes' statement after COVID-19 subsides. We provided Mr. Coxe with alternatives that would address his health and safety concerns, including using videoconference technology. Mr. Coxe has not confirmed whether Ms. Dykes agrees to our proposal or provided us a date.
- Lynne Rhode's attorney, Rut Liles, confirmed Ms. Rhode intends to give a voluntary statement. We are working with Mr. Liles the date and manner of Ms. Rhode's statement.
- Stephanie Burch's attorney, Warren Lindsey, indicated Ms. Burch will *not* give a voluntary statement. Therefore, the Committee needs to decide if it wishes to issue a subpoena to compel her testimony.
- We have reached out to Joseph Orfano, Randall Barnes and Robin Smith, and have not received a response from Messrs. Barnes or Orfano. Mr. Smith told us today he will have his counsel contact us about an interview.

SHB Document Review: We summarized JEA's partial document productions in our March 30 memorandum (attachment 1). JEA has made additional productions since that time:

- March 31 production of 264 files, including PUP planning documents, expense documentation for the ITN and off-site SLT meetings, reports from PFM and other privatization consultants, planning documents for the 2018 JAX Infrastructure Innovation Summit, and JEA's 2018 and 2019 rating agency presentations.
- April 5 production of 39 files, including 2018 and 2019 calendar entries for Aaron Zahn and documents relating to JEA's ITN due diligence.
- April 14 production of 3 files relating to SLT travel expenses and the promotion of the 2018 JAX Infrastructure Innovation Summit.

- April 20 production of 1,559 files, including Alan Howard emails.
- April 23 production of 51 files, including redacted documents relating to the work performed for JEA by McKinsey and Willis Towers Watson.
- April 24 production of 14 files, including consultant agreements and invoices.
- April 26 production of 66 files, including redacted Willis Towers Watson reports.

The Committee may access these JEA productions on Dropbox using the information in the email sent by Chris Dix on March 30 (please let me know if you need assistance with this). The productions contain some previously produced or publically available documents, but also contain new items of interest, including a spreadsheet (attachment 2) with various PUP calculations, including a “Proposed LTI Value” of \$4,231,286.74 *without* a recapitalization event. The spreadsheet also (i) allocates 1,079 performance units to each JEA executive and between 8 and 80 performance units to each non-executive JEA employee depending on his or her job classification; and (ii) estimates 125,086 performance units worth \$109.43 each would be issued by FY2022. Those numbers could generate a potential PUP payout of \$13,688,160.98 *without* a recapitalization event. Metadata from the spreadsheet indicates it was last modified on July 10, 2019, shortly before the June 18, 2019 Compensation Committee meeting (available [here](#) at p. 24 of 28) and the July 23, 2019 Board meeting (available [here](#) at p. 336 of 352) where it was represented the PUP would only cost \$3.4 million.

Concerns about JEA’s Productions: JEA has not yet produced documents supporting representations made by the SLT or its consultants at the May, June and July 2019 Board meetings regarding the PUP, JEA’s actual or projected financial status and other investigatory issues. We have drafted a second set of interrogatories and second request for documents to, among other things, obtain additional documents and information needed for the Committee to assess those representations.

JEA’s interrogatory answers and partial document productions give us additional cause for concern. JEA’s answers to the Committee’s interrogatories (attachment 3), which were supplemented on April 24, did not disclose all relevant consultants. Further, JEA has not produced all contracts, invoices and payment records for its consultants. We have requested that information since the beginning of the investigation (attachment 4). As an example, JEA’s answers to the Committee’s first set of interrogatories did not disclose nFront Consulting Inc., the entity which contributed to one or more integrated resource plan (“IRP”) drafts for JEA in late-2018/early-2019. Steve McNall, JEA’s Vice President of Energy and Water Planning, “tapped the brakes on it [the IRP] to try to get some alignment with the McKinsey work [regarding JEA’s strategic planning]” (attachment 5). JEA’s answers to the Committee’s interrogatories also omitted Burns & McDonnell, a high-profile utility consultant who prepared a report in 2018 identifying

opportunities for JEA to address declining electric system sales (available [here](#) at pp. 85-111 of 352). The testimony of Michael Brost, JEA's former vice president and general manager of electric systems, suggests that JEA terminated Burns & McDonnell's services in September 2019—the same month Pillsbury executed a subcontract with McKinsey to provide JEA with strategic planning services—because Burns & McDonnell helped prepare a Florida Municipal Power Association report that contradicted central aspects of JEA's "doom and gloom" recapitalization narrative (Brost testimony available [here](#) at pp. 82-84 and 98; FMPA report available [here](#)).

JEA also produced in April *redacted* versions of Willis Towers Watson reports. JEA and/or OGC contend the redacted information is confidential and proprietary under Section 119.0713(4)(a)(5), Florida Statutes. However, numerous *unredacted* versions of the Willis Tower Watson reports have been previously published. As an example, unredacted versions of the June 18, 2019 Willis Towers Watson reports are published online (available [here](#) at pp. 8-21 and [here](#) at pp. 162-202). Those reports were used by the SLT at public meetings to convince JEA's Board and/or Compensation Committee to authorize, among other things, the PUP and the form employment agreements providing post-termination retention and consulting payments to JEA's executives. JEA should not withhold the Willis Towers Watson reports or their underlying data and methodologies from the Committee. That information goes to the heart of the Committee's investigation. We communicated our concerns to OGC on Friday, May 1 (attachment 6). If JEA withholds that information or other similar information, we may recommend the Committee ask the Rules Committee to issue subpoenas to JEA to (i) compel production of the information and (ii) obtain testimony from the persons responsible for withholding the information.

Once we complete our search for documents, and complete the sworn interviews you request, we will begin, in consultation with you, to draft a final report for the Committee's consideration. Please let me know if you have any questions regarding this interim report.

Steve

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Chairman

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