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Sent: Wednesday, June 17, 2020 4:09 PM
To: Jackson, Brenda; Diamond, Rory; Wilson, Scott; DeFoor, Randle
Cc: Brown, Cheryl; Gabriel, Jason; Sidman Martin, Margaret
Subject: RE: COJ/JEA - Committee Update

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This memo updates our May 13 report and outlines our plan to accomplish the tasks identified to date by the Committee.

Scope of Investigation. We told the Committee during its June 8 meeting that we had gathered sufficient evidence to prepare a report and satisfy the two primary components of the Committee’s charge: (i) investigate the circumstances regarding the attempt to recapitalize JEA through ITN 127-19 (“ITN”) and (ii) recommend legislative changes to increase oversight and transparency in any future sale of material JEA assets. Nevertheless, the Committee suggested we obtain sworn witness testimony from Mike Weinstein, Brian Hughes, Sam Mousa, Tim Baker, G. Alan Howard, and Kelly Flanagan. We are in the process of inviting those interviews. We may also interview additional witnesses to satisfy the Committee’s directives. We anticipate completing these interviews and associated document reviews (addressed below) before the end of September. We would then prepare a draft report for the Committee.

ITN Negotiation Team’s Testimony. We recently obtained testimony from Randall Barnes (June 2), Robin Smith (June 9), and Stephanie Burch (June 11) (collectively, the “Negotiation Team”). The evidence suggests JEA’s former senior leadership team (“SLT”), attempted to side-step potential ethics violations arising from their prospective financial interests in the Performance Unit Plan (“PUP”) by controlling the ITN process through the Negotiation Team. The SLT and JEA’s consultants trained the Negotiation Team, determined the agendas for each negotiation session, prepared the draft purchase and sale agreement (and ancillary contracts), and answered all or virtually all substantive questions from ITN bidders. We will provide you with the transcripts and additional highlights from the sworn statements after OGC redacts information subject to a confidentiality order (described below).

Confidentiality Order. In February, the ITN bidders American Water Works, Duke Energy, and NextEra (collectively, the “Bidders”) filed a civil action to prevent JEA from disclosing allegedly confidential information relating to the ITN (the “Confidential Information”). In March, the Court—without opposition from JEA—entered an interim

confidentiality order (“Confidentiality Order”) prohibiting JEA and others from using the Confidential Information. American Water Works and Duke Energy subsequently dismissed their claims against JEA. Only NextEra’s confidentiality claims remain.

We believe JEA’s former SLT should have opposed the overbroad Confidentiality Order. It has inhibited our ability to obtain information regarding the ITN, including the gross proceeds offered to JEA by the Bidders. Moreover, JEA recently asked for and received relief from the Confidentiality Order to comply with the federal grand jury subpoena; however, it has not requested similar relief in connection with the Committee’s document requests. With the recent change of JEA leadership, we will again request JEA provide us with all ITN documents, including unredacted recapitalization proposals from American Water Works and Duke Energy. By dismissing their claims against JEA, those Bidders waived the allegedly confidential status of their ITN documents.

Document Review. We have completed our targeted review of approximately 350,000+ documents produced by JEA to date. We will continue to include material documents in our yet to be released chronology, which now approaches 220 pages. Our document review has yielded significant insight into the origins of the failed ITN process. As an example, we have learned that the City and JEA purposefully explored privatizing JEA in 2017 and 2018:

- On November 28, 2017, Tom Petway asked the JEA Board to consider the financial benefits of privatizing JEA.
- The City’s finance department issued in December 2017 a request for proposals to provide strategic initiatives financial services related to “the lease, sale, and/or disposition of City assets” (“RFP”; available [here](#)). The RFP required bidders to submit proposals to JEA’s financial advisor, Public Financial Management, Inc. (“PFM”).
- On December 20, 2017, Mark Weinberg, a director of public finance at Citi bank, responded to the City’s’ RFP with an email to Melissa Dykes, Joseph Orfano, and Michael Mace, a managing director at PFM. Weinberg wrote, “Apparently the primary reason for this [RFP] is the potential privatization of JEA that a few members of the JEA Board asked for last month.”
- On December 21, 2017, Michael Mace of PFM visited JEA. Ryan Wannemacher also sent Michael Mace an email with three articles regarding merger and acquisition trends and termination fees. That same day, Jason Gredell of J.P. Morgan sent Wannemacher documents regarding TECO Energy’s 2015 merger with Emera. The investment bank Moelis & Company (“Moelis”), J.P. Morgan,

and Morgan Stanley served as financial advisors to TECO Energy in the transaction.

- On January 24, 2018, Michael Mace sent an email confirming Moelis representatives would participate in a meeting regarding the “City of JAX Advisor RFP” at the Jacksonville International Airport.
- On February 1, 2018, Michael Mace received an email with a draft nondisclosure agreement attached. The agreement discussed “exploring a potential engagement . . . to provide financial advisory services to the Disclosing Party [JEA] in connection with a transaction” that could involve “a sale of all or a portion of its [JEA’s] assets”
- On February 2, 2018, Michael Mace sent JEA a copy of the nondisclosure agreement executed by J.P. Morgan. Goldman Sachs executed the same or a similar nondisclosure agreement with JEA on February 7, 2018.
- On February 6, 2018, Jill Toporek of Goldman Sachs and Jason Gredell of J.P. Morgan sent separate emails to Michael Mace with recommendations for merger and acquisition attorneys.
- Ryan Wannemacher, on behalf of JEA, executed a Master Services Agreement with Intralinks on February 7, 2018. The contract required Intralinks to set up one or more data rooms in connection with a “M&A Transaction[.]” (Data rooms are commonly used in connection with mergers and acquisitions. Intralinks also managed the data room used by JEA to exchange information with ITN bidders in 2019.)
- On February 9, 2019, Ryan Wannemacher sent an email to Graeme Conway, the chief executive office of Macquarie Infrastructure & Real Assets Inc. (“MIRA”), confirming Conway could access JEA’s data room, which included JEA financial data. (MIRA became one of the ITN bidders who advanced to the negotiation phase in late-2019.)
- On March 22, 2018, after significant public controversy about the City’s proposal to sell JEA, Aldan Whitfield sent an email to Ryan Wannemacher confirming Intralinks would close the “Project JEA” data room.

It therefore appears that the City's 2017-2018 exploration of JEA privatization concluded (at least publically) in early-2018. We suspect that effort nevertheless proceeded and evolved into the 2019 ITN.

Outstanding Document Productions. Several Committee requests for documents remain outstanding:

- Our May 13 interim report to the Committee identified documents from five sources we have not received: (i) mobile devices used by JEA employees; (ii) electronic data rooms used in JEA's privatization efforts; (iii) Diligent, a tool used to organize JEA Board meeting materials; (iv) network file shares and personal folders used to store JEA information; and (v) information from Oracle, JEA's financial and accounting system. We continue to work with OGC and JEA's new SLT to obtain documents from these sources.

- With regard to the Committee's subpoenas to ITN bidders and JEA consultants:
 - E&W Development Corporation, the ITN bidder who did not participate in negotiations despite its initial recapitalization proposal obtaining the highest average evaluation score from JEA, has agreed to produce responsive documents by June 18.

 - Morgan Stanley produced 64 documents on June 2 and 3,926 documents on June 15. We will review those documents and notify the Committee of our material findings.

 - J.P. Morgan has not produced documents or confirmed a date for its production. We previously provided search terms and parameters to expedite the document production. We will follow up with J.P. Morgan this week if we do not receive its subpoenaed documents.

 - On June 1, 2020, McKinsey produced 60 documents in response to the Committee's subpoena. They include reports and presentations given to JEA's SLT. McKinsey indicated it has other responsive documents; however, we do not have a date for their anticipated production.

 - The Committee's subpoenas returned unserved for 3Degrees Group and New Solutions for Business, LLC. OGC is assessing how to perfect service.

- Stephanie Burch identified several sources of additional documents during her sworn statement. As an example, JEA provided the Negotiation Team with electronic tablets and [@jea.com](mailto:jea.com) emails. The Negotiation Team used the [@jea.com](mailto:jea.com) emails to communicate with the former SLT and JEA consultants, including J.P. Morgan and Morgan Stanley. The Negotiation Team also used the tablets to take notes during negotiations with ITN bidders. JEA has collected the emails and will produce them to the Committee after OGC performs an exemption review.
- We requested a copy of the documents JEA produced in response to the grand jury subpoena. We anticipate receiving a copy of the production by June 19.
- We expect JEA to respond to the Committee's second set of interrogatories and second request for documents by June 19.

We will coordinate with OGC to obtain all of the outstanding documents.

Please let me know if you have any questions.

Steve

Stephen D. Busey
Chairman

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