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Subject: RE: COJ/JEA - Committee Update

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Members of the Special Investigatory Committee:

This memo summarizes our activity on behalf of the Committee since our June 17 interim report.

Sworn Witness Interviews. At the request of CM DeFoor and OGC, we shared our work and resources with Nelson Mullins, the attorneys retained by JEA to investigate terminating JEA's senior leadership team ("SLT") for cause. We also obtained sworn testimony from other key witnesses. We have briefly summarized material testimony below. We will also provide interview transcripts to the Committee after review by OGC.

1. *Herschel Vinyard, former Chief Administrative Officer:* Mr. Vinyard's interview occurred on June 17. He confirmed his receipt of the Nixon Peabody memorandum on May 20, 2019. Mr. Vinyard said he disregarded this memo (which concluded JEA's proposed long-term incentive plan "could not clear legal hurdles under Florida law"), because it suggested JEA retain Florida counsel to provide additional analysis. Although Mr. Vinyard testified he objected to the PUP at the SLT's Club Continental meeting in July, Mr. Vinyard did not disclose to the JEA Board either the Nixon Peabody memorandum or his objections. Instead, he appeared at JEA's July 23, 2019 Board meeting and gave a factually misleading presentation in support of the sale of JEA, which would have resulted in a significant PUP payout to Mr. Vinyard.
2. *Michael Weinstein, former Chief Financial Officer for the City of Jacksonville:* We interviewed Mr. Weinstein on June 26. Mr. Weinstein discussed recent JEA privatization efforts, including (i) the City's December 20, 2017 request for proposals to provide strategic initiatives financial advisory services (the "RFP"; available [here](#)); (ii) Exelon's discussion with the City about purchasing JEA through an unsolicited bid, which led to Mr. Weinstein meeting with Exelon in Mr. Vinyard's office when Mr. Vinyard worked at Foley &

Lardner; and (iii) JEA's subsequent privatization exploration through the ITN. After retiring as the City's CFO in 2018, an ITN bidder, JEA Public Power Partner ("JEA PPP"), retained Mr. Weinstein as a consultant for the ITN process. Mr. Weinstein advocated for the benefits of JEA PPP's ITN proposal, which would have allowed the City to retain JEA ownership. He also believed the ITN favored bidders who wanted to purchase JEA.

3. *Jon Kendrick, former Vice President and Chief Human Resources Officer:* Nelson Mullins interviewed Mr. Kendrick on June 29. Mr. Kendrick acknowledged JEA's Board did not have adequate information about the PUP. Mr. Kendrick said JEA attempted to outsource senior employee payroll to ADP in 2019 to make the PUP less visible. JEA terminated the ADP project on November 22, 2019, after postponing the PUP.
4. *Shawn Eads, former Chief Information Officer:* Mr. Eads testified on July 1. He took over strategic planning responsibilities in July 2019. Mr. Eads supervised McKinsey's work after that time. Additionally, Mr. Eads acknowledged he omitted documents from the ITN negotiation team's @jea.com emails and JEA-issued tablets from JEA's prior productions to the Committee. (We have again requested those documents.) Mr. Eads also acknowledged he deleted data on Melissa Dykes' tablet by entering an erroneous password multiple times.
5. *John McCarthy, former Vice President and Chief Supply Chain Officer:* Mr. McCarthy's interview occurred on June 29. Mr. McCarthy edited the solicitation document containing the ITN's requirements. He also observed that he thought there was at least an appearance of impropriety when Aaron Zahn and the NextEra consultants, Tim Baker and Sam Mousa, attended an Atlanta Braves game together on October 4, 2019, before JEA's negotiations with ITN bidders and after the ITN's cone of silence went into effect. He further testified Jenny McCollum, JEA's Chief Procurement Officer, retrieved ITN participants' negotiation materials at the end of negotiation sessions. (JEA has produced some of those materials to us, and we have again requested the remaining materials.)
6. *Steve McInall, former Vice President of Energy and Water Planning:* Mr. McInall testified on July 8. He agreed that JEA's "draconian" cost-cutting scenario 2 persuaded the JEA Board to move towards scenario 3 (including privatization). He also characterized McKinsey's assumed rates of solar adoption

and battery storage (part of the purported death spiral) as “aggressive” or “extreme.” As an example, McKinsey projected alternative energy grid parity by 2025, but Mr. McNall believed alternative energy grid parity would not occur until the early-2030s. Moreover, Mr. McNall admitted to slowing JEA’s integrated resource plan (“IRP”) because it conflicted with Mr. Zahn’s and McKinsey’s death spiral advocacy. Mr. McNall also opined the ITN bidders’ proposals did not address JEA’s Plant Vogtle liability to his satisfaction.

7. *Caren Anders, former Vice President and General Manager of Energy:* Ms. Anders was interviewed on July 8. Like Mr. McNall, Ms. Anders believes scenarios 1 and 2 made overly aggressive assumptions about technology disruption and its impacts on JEA.
8. *Kerri Stewart, former Chief Customer Officer:* The afternoon before Ms. Stewart’s July 10 interview, JEA provided us approximately 35,000 of text messages from her devices. A preliminary review of the texts has disclosed:
 - On July 22, 2019, Tim Baker received an “updated” version of the JEA Board package previously delivered to JEA’s Board members. Mr. Baker provided Melissa Dykes comments to incorporate into the Board package prior to the July 23, 2019 Board meeting.
 - On July 22, 2019, Ms. Stewart asked that references to Mayor Curry be deleted from a JEA communications plan.
 - Tim Baker sent text messages to Ms. Stewart on December 5, 2019, the day after a negotiation session in which JEA discussed ITN logistics with NextEra, and December 11, 2019, the day after NextEra’s Atlanta negotiation session with JEA.

Mr. Baker declined to appear for a voluntary interview with us; therefore, we do not have additional details about his texts with Ms. Stewart, his consulting work for NextEra prior to the ITN, or his involvement in the ITN.

Interview of Brian Hughes, COJ Chief Administrative Officer. Brian Hughes has agreed to an interview by us on Monday, July 20.

Other Witness Interviews. We continue to conduct other interviews. As an example, Nassau County argued the ITN triggered its right to purchase JEA assets in Nassau County. We interviewed Mike Mullin, Nassau County's attorney. On August 8, 2019, JEA representatives met with Mr. Mullin to discuss Nassau County's rights. Mr. Mullin recalls a JEA representative stating at that time that Florida Power & Light, NextEra's subsidiary, "would be the successful bidder of JEA's main assets" (attachment 1).

We also communicated with a representative of Standard & Poor's ("S&P"), one of JEA's bond ratings agencies, regarding an October 11, 2019 email (attachment 2) in which an S&P analyst criticized JEA's push to privatize JEA. The analyst found "no other utility suggesting this [JEA's predicted] level of decline in sales related to energy efficiency . . ." (p.1). The S&P analyst further stated, "It seems that the McKinsey study, and scenarios 1&2, are being held up as the motivation for pursuing scenario 3 -- privatization" (p.2).

Recent Document Productions. JEA produced over 160,000 documents to us on July 7 (last week), including approximately 144,000 de-duplicated documents JEA produced to the FBI. We will complete our preliminary analysis of the documents and provide the Committee with an estimate of the time it would take us to efficiently review the documents.

We are also working with OGC to resolve issues with recent third-party document productions. As an example, we received J.P. Morgan's long-delayed production of 1,152 documents on July 8. J.P. Morgan requested, without citing legal authority, we obtain its permission before disclosing any of its "confidential" documents. We object to that limitation and will work with OGC to resolve it.

We have gained valuable insight from our initial review of the Morgan Stanley and J.P. Morgan document productions. For instance, Morgan Stanley prepared "Discussion Materials" for JEA in *February 2018* and June 2019 (attachment 3). Those documents provided a multi-year (at least 2017-2019) perspective of the City and JEA's SLT's effort to sell JEA. The June 2019 document also provides evidence JEA's SLT disregarded the Board's May 15, 2018 prohibition against any further privatization work.

Pending Requests. We have pending requests to JEA for documents and information:

1. documents produced by JEA in response to public records requests by Aaron Zahn, Lynne Rhode, and other terminated SLT members;

2. documents JEA withheld from prior productions as a result of pending JEA ITN litigation with bidders;
3. documents from JEA's accounting system regarding ITN expenses;
4. hardcopy documents JEA produced to the FBI;
5. documents from the ITN negotiator's JEA-issued tablets and @jea.com email accounts;
6. documents retrieved from Melissa Dykes' tablet or its back-up;
7. documents from the Intralinks data room, including deleted documents (to the extent they can be restored);
8. notes taken by ITN participants during the ITN negotiation process;
9. Holland & Knight's bills for JEA strategic planning work;
10. password-protected documents from Foley & Lardner's FTP site;
11. all versions of specified PUP documents, including emails transmitting them;
12. documents in Relativity pending OGC clearance or redaction;
13. confirmation from JEA and OGC we have received all documents responsive to the Committee's first and second document requests; and
14. JEA's final answers to the Committee's second set of interrogatories.

We will be able to provide the Committee a better estimate at the noticed July 27 public meeting of the status of our review of the recently produced, and yet to be produced, documents and electronically stored information, and the time required to prepare the Committee's report.

Steve

Stephen D. Busey

Chairman

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