

**From:** Stephen D. Busey <[busey@smithhulsey.com](mailto:busey@smithhulsey.com)>  
**Sent:** Thursday, September 10, 2020 2:34 PM  
**To:** 'BPJackson@coj.net' <[BPJackson@coj.net](mailto:BPJackson@coj.net)>; 'RDiamond@coj.net' <[RDiamond@coj.net](mailto:RDiamond@coj.net)>; 'SWilson@coj.net' <[SWilson@coj.net](mailto:SWilson@coj.net)>; 'RDefoor@coj.net' <[RDefoor@coj.net](mailto:RDefoor@coj.net)>  
**Cc:** Gabriel, Jason <[JGabriel@coj.net](mailto:JGabriel@coj.net)>; 'Sidman Martin, Margaret' <[PSidman@coj.net](mailto:PSidman@coj.net)>  
**Subject:** COJ/JEA - Update to the Committee

Special Investigatory Committee Members,

This memo summarizes our efforts on behalf of the Committee since our last interim report on August 20.

1. Sworn Witness Interviews: At its July 27 meeting, the Committee asked us to interview Alan Howard, Kevin Hyde, Sam Mousa, Michael Munz, and Tim Baker. Pursuant to this direction, we have obtained sworn statements and associated document productions from Alan Howard, Kevin Hyde, Sam Mousa, and Tim Baker. Michael Munz's interview is scheduled for Monday, September 14.

- *Alan Howard:* Our last report summarized our August 18 Alan Howard interview. We provided the transcript to Dr. Brown yesterday to post on the Committee's website.
- *Kevin Hyde:* We interviewed Kevin Hyde on August 21 (for approximately seven hours). Before the interview Foley & Lardner and JEA provided us more than 3,600 pages of documents responsive to our requests, including:
  - A July 7, 2019 draft of the PUP agreement prepared by Foley & Lardner with "performance units redeemed for cash at the end of 2020 based on a formula which increases \$10 for 1% of the applicable enterprise value change percentage in excess of the target." (JEA's SLT disclosed only a "framework" for the PUP at the JEA Board meeting on July 23, 2019.)
  - August 15, 2019 emails among Foley & Lardner attorneys after the JEA Board authorized the PUP on July 23, 2019. The emails state, "Is there a cap on the unit payout? If not, could be very expensive which can expose a board to charges of corporate waste, etc." The same attorney reiterated his concern again in a separate email: "My earlier comment about a cap on unit payouts is hopefully in the plan document that is an exhibit." (An email exchange between Aaron Zahn and Shawn Eads on November 22, 2019 confirms the SLT did not include a cap.)

- An August 22, 2019 email in which a Foley & Lardner attorney wrote, “The total [PUP payout] could be \$5 billion. We missed the math again by 2 decimals.”
- An August 23, 2019 email from a Foley & Lardner attorney stating, “Herschel suggested that we not have any more emails about the PUPs since it is a potential public record.”

Mr. Hyde testified Foley & Lardner’s work for JEA included assessing the legality of the PUP. Foley & Lardner began its “in-depth” analysis of the PUP *after* the JEA Board authorized the PUP on July 23, 2019. Moreover, the SLT did not disclose material information about the PUP to Mr. Hyde. As an example, Mr. Hyde first learned about the May 20, 2019 Nixon Peabody memo in 2020. The memo concluded JEA’s long-term incentive plan violated Florida law. Mr. Hyde said it “would have been helpful” to have the memo. Mr. Hyde also said he believed “the PUP was an incredibly bad idea and would kill the whole deal,” but disclosed his concerns about the PUP only to Herschel Vinyard and Melissa Dykes, not to Aaron Zahn or the JEA Board.

We provided the transcript to Dr. Brown yesterday to post on the Committee’s website.

- *Sam Mousa:* We interviewed Mr. Mousa on August 27. After resigning as Mayor Curry’s Chief Administrative Officer effective June 28, 2019, Mr. Mousa entered into a consulting agreement signed by Florida Power & Light on July 23, 2019, the day the JEA Board authorized privatization. Mr. Mousa discussed a “success fee” with FPL, but that fee never came to fruition.

According to Mr. Mousa, FPL retained him as part of a dream team to raise FPL’s profile in JEA’s service territory. The team included Susie Wiles, Marty Fiorentino, and Paul Harden. Their work included inviting influential members of the Jacksonville community to attend Jaguars games in NextEra’s suite.

While a consultant to FPL, Mr. Mousa executed a sole-source consulting contract with the City with a September 1, 2019 effective date. Mr. Mousa also attended an Atlanta Braves game on October 4, 2019 with Mayor Curry, Brian Hughes, Tim Baker, and Scott Wilson. Conventus, LLC, owned by Mr. Mousa and Tim Baker, paid for the trip, including the attendees’ chartered aircraft.

We will send the transcript of Mr. Mousa’s interview to the Committee as soon as we receive it from the court reporter and OGC approves its release.

- *Michael Munz:* We had scheduled Michael Munz's interview for September 1, but agreed to reschedule to September 14 at Mr. Munz's request. To date, Mr. Munz provided us 543 documents responsive to our requests.
- *Tim Baker:* We interviewed Tim Baker on September 8. Mr. Baker objected to our document requests on several grounds, including unspecified privileges and constitutional rights. Accordingly, we did not receive a significant document production from Mr. Baker (as an example, Mr. Baker declined to provide us his consulting contract with FPL). Mr. Baker also declined to answer material questions about his relationship with FPL, polling he performed regarding JEA privatization, and whether FPL promised him a success fee. If the Committee chooses to challenge Mr. Baker's claims of privilege, the Committee will need to subpoena the documents and his testimony.

We did obtain Mr. Baker's July 1, 2019 notice of terminating his company's, BCSP, LLC's, consulting contract with FPL. The notice shows Baker terminated his December 21, 2017 consulting contract with FPL on July 31, 2019, just eight days after the July 23, 2019 JEA Board meeting.

Mr. Baker confirmed he consulted with SLT members during the term of his contract with FPL. Mr. Baker provided advice to Aaron Zahn and Herschel Vinyard beginning in April or May 2019 regarding regulatory and legislative issues with JEA's strategic planning. Mr. Baker also discussed those issues at the SLT's Club Continental meeting on July 10, 2019. Mr. Baker provided input to the SLT's privatization communications plan on July 22, 2019. Contrary to Kerri Stewart's testimony, Mr. Baker said he did not receive the July 23, 2019 JEA Board meeting package before the meeting.

We also questioned Mr. Baker about his October 4, 2019 trip to an Atlanta Braves baseball game with Mayor Curry and Messrs. Hughes, Mousa and Scott Wilson. Like Mr. Hughes and Mr. Mousa, Mr. Baker denied the trip related in any way to the ITN. Mr. Baker confirmed Conventus, LLC paid the expenses for the trip, which the attendees partially reimbursed.

2. SHB's Document Review: SHB has reviewed more than 15,000 files since our August interim report, including documents produced by Alan Howard, Foley & Lardner, Sam Mousa, Tim Baker, the City, and JEA. Additionally, our document review team, eDiscovery CoCounsel, has nearly completed its review of the 35,000 files JEA provided to the FBI with high predictive coding scores for relevancy to our investigation. Altogether, we have collectively reviewed in excess of 500,000 files. Our

recent review has yielded a number of insightful documents. As an example, we discovered a previously undisclosed Nixon Peabody invoice for legal services in 2018. The invoice, entitled “GENERAL—PRIVATIZATION MATTERS,” explains how Nixon Peabody helped JEA assess privatization from January 12, 2018 through May 15, 2018, the date the JEA Board prohibited further privatization work without Board approval. The invoice is responsive to the requests we submitted to JEA earlier this year. We are inquiring to determine why JEA’s prior productions did not include the invoice.

3. JEA’s Document Production: OGC informs us JEA has produced all documents responsive to the Committee’s document requests. We have document requests pending with additional material fact witnesses, including JEA’s outside consultants.

4. Looking Forward: Assuming the Committee does not request additional information, we propose the following investigative timeframe, subject to the Committee’s review and approval:

- complete the Committee’s interview of Mr. Munz on September 14, 2018;
- complete our interviews of material fact witnesses by the end of September;
- complete the search for all documents responsive to the Committee’s requests by the end of September;
- complete our document review by the middle of October; and
- prepare a draft Committee report by the end of October.

Please let me know if you have questions or suggestions.

Steve

Stephen D. Busey

Chairman

SMITH HULSEY & BUSEY

One Independent Drive | Suite 3300 | Jacksonville, Florida 32202

904-359-7700 | Direct 904-359-7777

[busey@smithhulsey.com](mailto:busey@smithhulsey.com) | [www.smithhulsey.com](http://www.smithhulsey.com)