

**OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE
117 WEST DUVAL STREET
SUITE 480
JACKSONVILLE, FL 32202
PHONE: (904) 255-5055**



MEMORANDUM

TO: Special Investigatory Committee on JEA Matters
Honorable Council Member Rory Diamond, Chair
Honorable Council Member Randy DeFoor
Honorable Council Member Brenda Priestly Jackson
Honorable Council President Scott Wilson

CC: Jason Gabriel, General Counsel
Smith Hulsey and Busey

FROM: Margaret M. Sidman, Deputy Legislative Affairs & Managing Deputy *MMS*

RE: **Status Report to the Special Investigatory Committee as of May 19**

DATE: May 19, 2020

I. Document protocol.

Smith Hulsey and Busey (SHB) currently has 366,988 JEA documents in their review workspace after a successful completion of the agreed process. OGC has been actively working with SHB to perform final reviews of relevant documents for release and use by the Special Investigative Committee. That process is ongoing as new documents are identified. JEA is also working to locate any additional responsive documents on both network and individual drives that have not already been produced as part of the targeted collection process or email search.

II. Witness Interviews.

The Special Investigatory Committee had previously asked SHB to interview Melissa Dykes, Lynne Rhode, Joseph Orfano, Randall Barnes, and Robin Smith. As of this writing, Smith Hulsey and Busey has been in touch with each of the above mentioned and have scheduled the requested under oath interviews as follows:

- a. Melissa Dykes will appear for an interview on May 22.
- b. Lynne Rhode will appear for an interview on June 28 or June 29.
- c. Joe Orfano will appear for an interview on May 19.
- d. Stephanie Burch will appear for an interview on June 11.
- e. Randall Barnes will appear for an interview on June 2.

- f. SHB have communicated with Robin Smith, but his interview has not been set.

- III. Subpoena for documents to the Bidders and the Banks.** On April 21, 2020, subpoenas were issued to all the ITN bidders and two financial institutions to produce documents or in alternative to appear at the May 18 Special Investigatory Committee meeting. Specifically the subpoenas asked for i.) a list of all lobbyists, attorneys and consultants employed by the Company; and ii.) any documents showing that the company was or was not given an opportunity to physically inspect JEA assets at any time after January 1, 2018. Twenty entities were issued subpoenas, 17 of those have been served (11 have responded, 3 entities have requested an extension of time, 2 have been in communication with OGC, and 1 has not responded). To date there have been eleven responses:
- a. Argo Infrastructure Partners responded that the company employed no lobbyist, attorney or consultant in conjunction with ITN, and that they did not communicate with JEA to have a physical inspection of JEA assets, nor did they have a physical inspection of JEA assets.
 - b. Duke Energy responded that they employed the following attorneys and consultants: Shutts & Bowen LLP (Attorneys); Hunton Andrews & Kurth LLP (Attorneys); Citigroup Global Markets Inc (consultants); PricewaterhouseCoopers LLP (consultants); Willis Towers Watson PLC (consultants); No lobbyists were employed. Duke Energy provided one document regarding physical inspections which indicates that physical inspections would have taken place the week of January 20, 2020.
 - c. Hargray Communications Group Inc. provided several documents which appears to be documents received by Hargray from JEA including ITN 127-19 Addendum #4 with the related attachments.
 - d. Veolia Water North America – South, LLC responded that the company does not have any records for the information requested in the subpoena.
 - e. American Water Works Company, Inc. responded that they had jurisdictional concerns regarding aspects of the subpoena and the authority of the City Council Special Investigatory Committee on JEA Matters to issue any valid subpoena to American Water pursuant to Fla. Stat. §166.021 and related provisions of the Municipal Home Rule Powers Act. Subject to objections and understandings, American Water identified the following outside counsel and consultants retained in connection with the ITN: McGuire Woods Consulting; McGuire Woods LLP; RBC Capital Markets; Beggs & Lane; and Willis Towers Watson. American Water provided one document related to an opportunity to physically inspect JEA assets.
 - f. Olympus Power, LLC responded that the company has no documents responsive to either paragraph 1 or paragraph 2 of the subpoena.
 - g. American Public Infrastructure, LLC responded that the company has nothing to report or submit with respect to items #1 and 2 of the subpoena. The company further stated that

API, LLC had informal discussions with law firms and diligence experts regarding potential representation of the team if the API/Argo Team was to advance to a formal bid process for JEA, but API was not invited to the Atlanta management presentation and never advanced further in this process, so API never engaged anyone.

- h. Algonquin Power & Utilities Corp. responded that without waiving its rights, they have no documents responsive to the subpoena for either items 1 or 2.
- i. Emera Incorporated responded to the subpoena with documents and responses.
- j. NextEra Energy, Inc. responded that without waiving any objections to the validity or enforceability of the subpoena or waiving any attorney-client privilege, NextEra responded to the requests in the Subpoena as follows: 1. List of all lobbyists, attorneys, and consultants employed by NextEra in connection with the JEA ITN: U.S. Water Services Corporation, Daniel Consulting Group, LLC, Sundstrom and Mindlin, LLP, Rogers Towers, P.A., Skadden, Arps, Slate, Meagher & Flom LLP, Squire Patton Boggs, Gunster, Yoakley & Stewart, P.A., The Law Office of Paul Harden, BCSP, LLC, Dean Mead, and The Fiorentino Group, Inc.; 2. NextEra Energy provided one document regarding physical inspections which indicates that physical inspections would have taken place the week of January 20, 2020.
- k. Macquarie Infrastructure & Real Assets, Inc. responded to the subpoena with a list of advisors and was not aware of any other documents in its possession that would be responsive to the request.

The Special Investigatory Committee on JEA Matters subpoena log is attached hereto as **Exhibit 1**.

IV. Confidential Vendor Information.

McKinsey & Co. and Willis Towers Watson (WTW) have previously identified confidential, proprietary, or trade secret information that was provided to JEA. This includes a claim by WTW that any prior releases (including those in the Board materials) were done without their permission. They continue to maintain that information is exempt from disclosure under the Public Records Act and object to JEA's production of unspecified confidential, proprietary, or trade secret records pursuant to Section 119.0713(4)(a)(5), Fla. Stat. Intentionally disclosing exempt trade secrets could constitute a felony under Section 815.045, Fla. Stat.

OGC lawyer, Jody Brooks has communicated with McKinsey and WTW as to their intent to continue to claim exemptions for the requested documents, and is updating JEA CEO, Paul McElroy.

- V. Smith Hulsey & Busey Second Amendment to the Engagement Letter.** The engagement letter dated December 18, 2019 between Smith Hulsey & Busey and OGC for special private counsel related to the Future of JEA contained a "not-to-exceed" amount of \$500,000, with the requirement for the firm to notify OGC when \$450,000 of the budget has been expended. On

May 11, 2020 SHB provided notice to OGC, as part of its April Invoice, that it is anticipated that the firm's May invoice will exceed the \$450,000 notification amount in the initial engagement letter. Total invoices received to date from SHB total \$444,285.26, leaving a remaining balance of \$55,714.74 of the total "not-to-exceed" amount (\$500,000). Attached hereto as **Exhibit 2** is a copy of the draft second amendment to the SHB engagement letter, which increases the "not-to-exceed" amount to \$750,000 for all of the Firm's charges and fees, with the agreement to notify OGC when \$700,000 has been expended.

VI. Action Items.

- a. Reissue subpoenas not served to the following entities:
 - i. 3Degrees Group (Corrected) c/o Steven Mickelson, RA
 - ii. IFM Investors Pty LTD - (Australia) (Delivered via FedEx 5/19/20)
 - iii. New Solutions for Business, LLC
- b. Entities served but no response:
 - i. E&W Development Corporation c/o Corporate Creations Network, RA
- c. Entities served and have communicated with OGC:
 - i. Intralinks, Inc. (Responded – Requesting Exemption)
 - ii. Uniti Group, Inc. (Paul Harden Informal Response – waiting for formal correspondence)
- d. Grant entities more time:
 - i. JP Morgan Chase & Co. c/o CT Corporation System – Requesting extension.
 - ii. Morgan Stanley & Co., LLC c/o CT Corporation System – Requested 30-day extension.
 - iii. JEA Public Power Partners, LLC – Requested extension of two weeks (June 1).

SUBPOENA LOG
Jacksonville City Council Special Investigatory Committee on JEA Matters
TABS 5000.2000001

Recipient	Date Served	Name of Person Served	Response Received Date	Notes
3Degrees Group (Corrected) c/o Steven Mickelson, RA				Not served.
3Degrees Group c/o Kerry Anne Schultz, RA	4/15/2020	Kerry Ann Schultz	4/17/2020	This was the wrong company – see corrected service above.
Algonquin Power & Utilities Corp. c/o CT Corporation System, RA			5/15/20	Responded – no documents.
American Water Works Company c/o CT Corporation System, RA	4/14/2020	Donna Moch	5/1/2020	Represented by McGuire Woods – Emily Rottmann. Responded with responses and documents.
American Public Infrastructure (API) c/o Cogency Global Inc., RA	4/14/2020	Jolita Quindara	5/14/20	Responded – no documents.
Argo Infrastructure Partners, LP c/o Corporation Service Company, RA	4/14/2020	Jason Nally	4/27/2020	Natalie Booth at AIP contacted. Responded – no documents.
Duke Energy Corporation c/o CT Corporation System, RA	4/14/2020	Donna Moch	4/21/2020	Represented by Shutts & Bowen – Michael Silver. Responded with documents and responses.
E&W Development Corporation c/o Corporate Creations Network, RA	4/15/2020	Krystal Parker		No contact.
Emera Incorporated c/o Corporation Service Company, RA	4/16/2020	Sheena Kruse	5/13/2020	Represented by Ausley & McMullen – Stephen Emmanuel. Responded with documents and responses.
Hargray Communications Group, Inc. c/o CT Corporation System, RA	4/14/2020	Donna Moch	4/27/2020	Responded with documents and responses.
IFM Investors Pty LTD. (Australia)	5/19/2020	Via Fedex		No contact yet.

Intralinks, Inc. c/o Corporation Service Company	4/16/2020	Sheena Kruse	5/19/20	Represented by Mary Pennisi, Legal Dept. Intralinks has responded. However, it has identified its response as trade secret. We are seeking further clarity before distribution of the materials.
JEA Public Power Partners, LLC c/o CT Corporation System, RA	4/14/2020	Donna Moch		Represented by Akerman – Jacqueline Arango. Intends to comply. Have been provided an extension through June 1, 2020 to respond.
JP Morgan Chase & Co. (local)	5/14/2020	Daniel Waeghe - Served at 50 N. Laura Street #2000		Duplicative of subpoena below. Only expecting 1 response from JP Morgan.
JP Morgan Chase & Co. c/o CT Corporation System	4/14/2020	Donna Moch		Represented by WilmerHale - Ronald Machen. They intend to comply and are working on gathering documents. Will need an extension.
Macquarie Infrastructure & Real Assets, Inc. The Corporation Trust Center	4/14/2020	Amy McLaren		Represented by Paul Sirkis, Macquarie Legal Dept. They intend to comply and hope to be able to email me a response/documents by May 18.
Morgan Stanley & Co., LLC (local)	5/14/2020	Daniel Waeghe accepted service - Served at 50 N. Laura Street #2000		Duplicative of subpoena below. Only expecting 1 response from Morgan Stanley.
Morgan Stanley & Co., LLC c/o CT Corporation System	4/14/2020	Donna Moch		Represented by Akerman – Cindy Laquidara. Intend to fully comply, need 30 day extension.
New Solutions for Business, LLC c/o N B Doueck, RA				Not served.
NextEra Energy, Inc.	4/15/2020	Byron Floyd		No contact yet. Kyle reaching out to

c/o David M. Lee, Registered Agent Olympus Power LLC	4/16/2020	Roy Ott	5/11/2020	local counsel. Represented by DLA Piper – Abigail Reardon. Responded - no records
Uniti Group Inc.	5/1/2020	Jeff Johnson		Represented by Paul Harden. Has informally stated that Uniti did not hire any lobbyist or consultants and did not physically inspect any JEA assets.
Veolia Water North America – South, LLC c/o CT Corporation System, RA	4/14/2020	Donna Moch	4/21/2020	Responded – no records.

Exhibit 2
**OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE**

JASON R. GABRIEL*
GENERAL COUNSEL



CITY HALL, ST. JAMES BUILDING
117 WEST DUVAL STREET, SUITE 480
JACKSONVILLE, FLORIDA 32202

KAREN M. CHASTAIN
DERREL Q. CHATMON
ARIEL P. COOK
JULIA B. DAVIS
STEPHEN M. DURDEN
SHANNON K. ELLER
CRAIG D. FEISER
GILBERT L. FELTEL, JR.
LOREE L. FRENCH
CHRISTOPHER GARRETT
KYLE GAVIN
MARY MARGARET GIANNINI
SEAN B. GRANAT
SUSAN C. GRANDIN
SONYA HARRELL
KATY A. HARRIS
LAWSIKIA J. HODGES
PAIGE HOBBS JOHNSTON
RITA M. MAIRS

BRETT G. MERENESS
JAMES R. MCCAIN, JR.
WENDY L. MUMMAW
KELLY H. PAPA
TIFFINY DOUGLAS PINKSTAFF
JON R. PHILLIPS
CHERRY SHAW POLLOCK
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JOHN C. SAWYER, JR.
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JASON R. TEAL
ADINA TEODORESCU
KEALEY WEST
STANLEY M. WESTON
GABY YOUNG

***BOARD CERTIFIED CITY, COUNTY
AND LOCAL GOVERNMENT LAW**

May __, 2020

Stephen D. Busey, Esquire
Smith Hulsey & Busey
One Independent Drive, Suite 3300
Jacksonville, FL 32202
Email: busey@smithulsey.com

RE: Engagement of Smith Hulsey & Busey for special private counsel legal services on matters related to the future of JEA; Second Amendment

Dear Mr. Busey:

This letter will serve as the Second Amendment to the Engagement Letter with Smith Hulsey & Busey (the “Firm”) dated December 18, 2019, with regard to the legal services described therein and provided to the City of Jacksonville, Office of General Counsel (“OGC”) on behalf of the City of Jacksonville (“City”) for special private legal counsel related to the future of JEA.

The Engagement Letter is hereby amended to increase the “**not-to-exceed**” amount of **\$750,00.00** for all of the Firm’s charges and fees. The Firm agrees to notify OGC when \$700,000.00 has been expended as a result of the Firm’s charges and fees. The Firm acknowledges that the “not-to-exceed” amount cannot be modified without a further written amendment to the Engagement Letter authorized by OGC. Accordingly, in order to prevent the disruption of the Firm’s services, the Firm will timely notify OGC in the event of a further amendment is required.

Except as specifically modified by this Second Amendment, the Engagement Letter, as amended, remains in full force and effect.

Sincerely,

Jason R. Gabriel
General Counsel

The foregoing is approved and agreed to:

By: _____
Stephen D. Busey, Esquire
Smith Hulse & Busey
Approved:

Date: _____

Scott Wilson
Council President

Date: _____

Approved:

Cheryl Brown
Director/Council Secretary

Date: _____

Approved:

Margaret M. Sidman
Managing Deputy General Counsel

Date: _____

I have confirmed that funds are appropriated and can be encumbered to support this retention.

Name: _____
Title: _____

Date: _____