



OFFICE OF THE CITY COUNCIL

Report of the Special Investigatory Committee on JEA Matters

DECEMBER 2020

***Government without transparency is a
breeding ground for mischief. . . .***



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I. Executive summary.

On July 23, 2019, the JEA Board of Directors authorized JEA's senior leadership to start a process, the Invitation to Negotiate, to sell JEA (the "ITN"). At that same meeting, the JEA Board also authorized senior leadership to implement a long-term incentive plan, the Performance Unit Plan, that would compensate participants based, in part, on the amount of proceeds the City received from the sale of JEA (the "PUP").

In the following months, members of the City Council, the Council Auditor's Office and the public grew increasingly skeptical of the ITN and the PUP, both of which appeared to lack transparency.

In an attempt to quell public discourse regarding the ITN, JEA amended the ITN on August 30, 2019 to impose an expanded "Cone of Silence" about the ITN process, purportedly prohibiting members of City Council (and others) from talking about the merits of the ITN.

Further, on September 24, 2019, at the request of Mayor Lenny Curry, the City Council passed Ordinance 2019-566-E transferring to the City liability for JEA's unfunded employee pension plan upon the occurrence of a JEA "Recapitalization Event" (a sale).

Following these circumstances, Council Member Garrett Dennis moved, and the City Council passed, Ordinance 2019-694 in October 2019, appropriating funds for the Council to retain its own special counsel to investigate JEA's ITN and PUP.

On November 12, 2019, JEA's chief executive officer, Aaron Zahn, "postponed indefinitely" the PUP after the City's Office of General Counsel ("OGC") determined the PUP violated Florida law and the Council Auditor's Office asked JEA probing questions about the PUP. Shortly thereafter, the Council Auditor issued a report on November 18, 2019, that disclosed the PUP would provide JEA senior executives with grossly excessive compensation. According to the Council Auditor, the PUP could result in payouts to PUP participants in excess of \$600 million dollars.

The firestorm resulting from the Council Auditor's disclosure ultimately led to the cancellation of the compensation plan, and in turn, the cancellation of the City's efforts to sell JEA.

Because of the public's concern that the proposed sale of JEA, and the accompanying compensation plan, were developed and advanced without adequate public scrutiny, the President of the City Council convened the Special Investigatory Committee on JEA Matters on February 4, 2020. The President's Charge to the Committee was to investigate "the recent pursuit . . . to potentially privatize JEA" and to determine what problems "could be prevented in the future through legislative action."

From February through December 2020, the Committee and its Special Counsel interviewed dozens of witnesses and reviewed over 600,000 documents.

The investigation revealed that the Curry administration and JEA engaged in a multi-year effort, from at least 2017 through 2019, to explore selling the City's municipally-owned utility. Knowing that public sentiment disfavored transferring JEA to private ownership, the City's effort to market JEA was conducted with a purposeful lack of transparency. In a move that would further burden the opaque sale effort, the Mayor positioned Aaron Zahn as CEO of JEA to facilitate a sale of JEA.

Mr. Zahn and JEA's senior leadership advanced the sale effort with intentional misrepresentations and omissions regarding JEA's financial health. Mr. Zahn also used his position to design and to cause the JEA Board to approve an ill-conceived "Long-Term Performance Unit Plan" for JEA. The PUP would have provided senior JEA executives millions of dollars in compensation in the event of the City's sale of JEA.

The Mayor apparently hoped that he could advance a JEA sale effort to a point that a purchaser would offer billions of dollars to the City, and that with so much money on the table the Mayor would have sufficient support in the City Council to secure Council approval, and, with a further promise of \$400 million distributed to JEA customers (approximately \$840 per electric customer), the public would pass a referendum approving the sale.

By early 2019, the Mayor's plan appeared to many to be on a path to success. The plan ran afoul through Aaron Zahn's greed, coupling the JEA sale effort to the PUP—designed to have senior JEA employees benefit exorbitantly from a JEA sale.

Following the Council Auditor's disclosure of the potential magnitude of the PUP, and subsequent public scrutiny of the proposed sale of JEA, the JEA Board cancelled the PUP, and ultimately halted the JEA auction process. The ultimate cost to JEA and the City

was millions of dollars. In accordance with the Council President's Charge, this report, its appendices and chronology of supporting documents summarize what happened, how it happened and recommend legislative action to prevent such an effort in the future.

[Report continues on next page]

II. JEA sale phase one: the City's December 2017 RFP.

The effort to privatize JEA evolved in three successive phases: (i) the City's December 20, 2017 request for proposals for financial advisory services (the "RFP;" December 2017 through April 2018), (ii) JEA's purported "strategic planning process" led by Aaron Zahn (May 2018 through July 2019) and (iii) JEA's Invitation to Negotiate #127-19 for Strategic Alternatives (the "ITN;" August 2019 through December 2019). This report describes each phase in turn.¹

1. The Mayor and the JEA Board said they would explore privatizing JEA.

This first phase of JEA privatization began when JEA Board Chair Tom Petway recommended JEA explore its transfer to private ownership ("privatization") during his last JEA Board meeting on November 28, 2017. Mr. Petway, one of Mayor Curry's principal donors and supporters, began his remarks by observing that "JEA is at or near peak performance" and "JEA has significantly improved the balance sheet over the last few years." Mr. Petway then recommended JEA's Board determine JEA's value to help the Board answer two questions:

1. Would the customers of JEA and the people of Jacksonville be better served in *the private marketplace*?
2. Should the JEA and the City of Jacksonville consider the financial benefits that would come from *the privatization of JEA*?

(Emphasis added.)

¹ From time to time since consolidation, the City has considered whether to privatize municipal assets or functions. The focus of this investigation and report is Mayor Curry's administration's efforts with regard to JEA beginning in 2017.

JEA Board Chair Alan Howard responded to Mr. Petway:

I couldn't agree more with everything you said I expect that [JEA CEO Paul] McElroy and his team will take up that challenge and evaluate our prospective position in the marketplace and report back on what the private market value of JEA may be so that the citizens of Jacksonville and the Mayor and other constituencies—City Council—can evaluate that opportunity.”

That same day, Mayor Curry announced he would explore privatization of JEA:

With this challenge to explore privatization, he [Mr. Petway] has made a simple request that citizens and city leaders explore the value of their public assets and how utility customers in our city can best be served As a reform-minded mayor, I welcome this challenge and will work with City Council leadership to answer these questions.

The next week, on December 4, 2017, Brian Hughes (who Mayor Curry named his chief of staff two days later on December 6, 2017) gave a statement to Sunshine State News confirming that Mayor Curry would take “a serious look” at privatizing JEA because “[h]e’s a free market Republican. It’s consistent with his ideology.” The article further stated, “How the deal works out and which buyers are being considered will be worked out in the coming weeks, sources close to Curry’s office and the JEA told SSN.”²

² During his statement to the Committee, Mr. Hughes elaborated upon these comments:

[W]hat Petway was talking about is not inconsistent with the ideology of the Mayor The Mayor believes that if you can demonstrate that there is a more efficient, less costly way for people to get access to a service or a thing that government does, . . . you should take it as a responsibility to explore that.

2. The Curry administration issued the RFP to find JEA sale advisors.

Paul McElroy told the Committee that, on December 5, 2017, he had a meeting with Mayor Curry and JEA Board Member Alan Howard in which they agreed Michael Weinstein, the City's chief financial officer, and Melissa Dykes, JEA's chief financial officer, would lead a joint effort by the City and JEA "to move forward with Mr. Petway's recommendation to seek an evaluation" of JEA.

Three days later, on December 8, 2017, Randall Barnes, a senior debt manager in the City's treasury division, sent an email to Jeremy Niedfeldt, a financial advisor at Public Financial Management, Inc. ("PFM") with experience managing complex municipal transactions. Mr. Barnes wrote, "Here is the RFP we put together. We'd like to get this out as soon as possible. . . ." Mr. Barnes attached to his email a draft of the RFP.³ The RFP sought financial advisors in connection with "complex financial transactions which are similar (but not limited) to public private partnerships or the lease, sale, and/or disposition of City assets"—that is, the privatization of unspecified assets.

On December 20, 2017, PFM, a longtime financial advisor for both the City and JEA, emailed the RFP to dozens of prospective financial advisors, including Citibank, Goldman Sachs, J.P. Morgan and Morgan Stanley. PFM's transmittal described the purpose of the RFP as including privatization of unspecified assets: "The City intends to select a pool of qualified firms" for "alternative delivery/ P3 [public private partnership] transactions which are strategic in nature."⁴

A January 9, 2018 email from David Moore, a managing director at PFM, to Randall Barnes and Joey Greive, then the City's treasurer, shows a more precise understanding of the RFP's purpose: "I saw an article or blog or something talking about privatization of JEA. Obviously there is a lot of work to be done, *and the RFP on the street relates to this*" (emphasis added). Prospective financial advisors understood the RFP similarly. As an example, Mark Weinberg, a director of public finance at Citibank, emailed his colleagues

³ Sam Mousa, the City's former chief administrator officer, testified that he and Michael Weinstein authorized the issuance of the RFP.

⁴ In their sworn statements the Committee, Randall Barnes, Sam Mousa, Michael Weinstein and Patrick ("Joey") Greive echoed PFM's explanation for the RFP. However, after seeing evidence regarding the RFP process, both Mr. Mousa and Mr. Weinstein agreed JEA may have used the RFP to explore privatization.

stating, “Apparently the primary reason for this [RFP] is the potential privatization of JEA”⁵

The RFP had three characteristics that helped conceal it from City Council and the Council Auditor.⁶ First, the RFP was a *procurement* document, although the City’s treasury division, not the City’s procurement division, issued the RFP pursuant to section 126.313, Jacksonville Code of Ordinances.⁷ Second, according to former Council Auditor Kyle Billy, the City did not publish the RFP on its procurement website. Third, the City delegated RFP responsibilities, including sending the RFP to respondents and receiving responses, to the third-party consultant PFM.⁸

On December 20, 2017, the *same day* PFM issued the City’s RFP, Michael Mace, a managing director at PFM, began working on the JEA evaluation report requested by JEA Board Chair Alan Howard in response to Tom Petway’s privatization suggestions.

3. The RFP was a predicate to explore a sale of JEA.

A. *Consultants understood the RFP related to JEA privatization.*

On December 21, 2017, the *day after* PFM issued the City’s privatization RFP, two material events occurred:

- Tim Baker, one of Mayor Curry’s former political consultants, entered into a consulting contract (through a wholly-owned entity, BCSP, LLC) with Florida Power & Light Company (“FPL”).⁹

⁵ Mr. McElroy told the Committee that, in response to the RFP, three investment banks asked Mr. McElroy about the potential sale of JEA.

⁶ The Council Auditor’s Office did not discover the RFP until February 2018.

⁷ Section 126.313, Jacksonville Code of Ordinances, states, “[F]inancially related services, including . . . financial and/or investment advisors . . . that involve complex negotiations . . . may be procured in accordance with the City’s Pension and Treasury Procurement Procedures.”

⁸ When asked in his interview by the Committee why PFM and not the City received the responses from RFP bidders, Alan Howard testified, “I would speculate there was an effort to shield the responses from . . . Florida sunshine laws and open reference laws.”

⁹ Michael Weinstein testified that “on the fourth floor [referring to the location of the Curry administration’s offices] it wouldn’t have been that unusual for Brian [Hughes] to be around the floor or Tim [Baker] to be around. . . . I mean, they were very close to the mayor”

- Jason Gredell, head of public infrastructure mergers and acquisitions for J.P. Morgan, sent Ryan Wannemacher, then JEA’s director of financial planning and analysis, documents regarding a 2015 merger between TECO Energy, Inc. and Emera US Inc. Mr. Wannemacher forwarded the documents to Michael Mace (PFM).

On January 11, 2018, Mr. Mace sent Melissa Dykes an email with a “brief overview of PFM” attached. The attachment stated, “PFM also assists our utility clients with a wide variety of unique transactions and services. The transactions include restructurings, securitizations, prepayments, asset sales and purchases, etc.” Later that same day, Mrs. Dykes sent an email asking Scott DeGhetto, a managing director at Moelis & Company LLC (“Moelis”), which has electric utility mergers and acquisitions expertise, to include Mr. Mace “in our intro call.” (Moelis served as TECO’s financial advisor in connection with TECO’s 2015 merger with Emera.)

J.P. Morgan and Morgan Stanley responded to the RFP on January 15 and 16, 2018, respectively. Both responses show the banks understood the purpose of the RFP included the sale of JEA. For example, J.P. Morgan’s response stated, “The robustness of the City’s economy, combined with JEA’s scale and financial stability, makes it a substantial source of value should the City considers [sic] a strategic sale or P3 [public-private partnership]. . . . J.P. Morgan believes that the current market trends and the quality of the JEA system would have a market value in excess of \$10.0 billion”

On January 18, 2018, two days after Morgan Stanley’s RFP response, Mr. Wannemacher sent William Pedersen at Morgan Stanley an email with financial data for JEA, including projected electric system sales increasing from 12,492,000 MWh (2018) to 13,481,000 MWh (2027).

A First Coast News article reported that, on January 23, 2018, “a senior leadership team” from Moelis met with Michael Mace and Michael Weinstein at JEA before meeting with Mayor Curry at City Hall.¹⁰ Mr. Mace told the Committee the Moelis representatives gave “a presentation of their credentials and a general discussion of the components involved in consideration related to an asset sale of the type of JEA.”

¹⁰ Michael Mace’s billing records reference multiple “meetings in JAX” on January 23, 2018.

B. The Curry administration and JEA selected Morgan Stanley to help sell JEA.

On January 24, 2018, the day after Moelis reportedly met with the City and JEA, representatives of Moelis and Morgan Stanley, advisors to TECO in connection with its merger with Emera, attended an off-site meeting at the Jacksonville International Airport with representatives of the City, JEA and PFM.¹¹ The subject line of an email exchange between Mr. Mace and Scott DeGhetto (Moelis) shows the meeting was about the RFP: “Re: City of JAX Advisor RFP.” Alan Howard testified the “meeting involved discussions around valuation, process and timeline *for possible sale of JEA*” (emphasis added).

On January 25, 2018, the day after the previously described JEA airport meeting, Randall Barnes exchanged emails with PFM and the Greenberg Traurig law firm discussing the tax implications of “privatization” on JEA’s bonds.

In anticipation of a JEA sale, Nancy Kilgo sent Melissa Dykes a January 31, 2018 email with a “template retention letter” for JEA “employees in leadership positions.” The letter offered a retention incentive of “up to” one times the employee’s annual base salary upon a “change of control” event at JEA.¹²

Joey Greive sent a letter to Michael Weinstein on February 1, 2018 identifying four RFP respondents the City selected as potential privatization advisors. That *same day*, Jody Brooks, JEA’s chief legal officer, sent Mr. Mace and Mrs. Dykes a draft nondisclosure agreement referencing the JEA “Transaction.” Mr. Mace then coordinated with Joe Orfano and transmitted the nondisclosure agreement by email to three of the four successful RFP respondents—Goldman Sachs, J.P. Morgan and Morgan Stanley.¹³ Mr. Mace’s February 1, 2018 transmittal email asked each of the banks to have the “lead representative” from its mergers and acquisitions group execute the nondisclosure agreement in preparation for an interview with “JEA and the City” on February 15 or 16, 2018.

¹¹ The City’s attendees included Michael Weinstein; JEA’s attendees included Paul McElroy, Melissa Dykes and Alan Howard (then JEA’s Board chair); PFM’s attendee was Mr. Mace.

¹² JEA rescinded the letters after OGC concluded the letters violated Florida law.

¹³ During his September 2020 statement to the Committee, Mr. Orfano was asked, “[H]ow were the banks, as of February 1, 2018, that received the nondisclosure agreements, how were those banks selected?” Mr. Orfano responded, “Recall that they were three of the four parties, what were selected by the City through their RFP process.”

Several days later, the three successful RFP respondents sent revised, signed nondisclosure agreements to Mr. Mace. J.P. Morgan’s agreement expressly contemplated JEA’s sale: “In the event that the Disclosing Party [defined as JEA] determines to pursue a sale of all or a portion of its assets, securities or business”

On February 4, 2018, J. Allen Maines, an attorney with Holland & Knight, sent Mrs. Dykes and Jody Brooks an email stating, “HK would like to serve as lead counsel preparing the documents as part of the privatization/auction process.”¹⁴ The email also referenced a memo that “coordinates lobbying, etc., with the overall privatization goal.” Mr. Maines sent Ms. Brooks a second February 4 email in which he elaborated on that goal: “Jacksonville’s new young Republican mayor is out to shrink government, and wants to privatize JEA—quickly, while the market is ‘right.’ He says within 3-5 months. Obviously, Plant Vogtle and the PPA greatly affect valuation.”¹⁵ The email reiterated that “[s]peed and time are of the essence to Jacksonville’s mayor.”

Consistent with the urgency suggested by Mr. Maines in his February 4, 2018 email, City Council president Anna Lopez Brosche stated Brian Hughes asked her on February 5, 2018, four days after the City selected the three successful RFP respondents, to consider emergency legislation that would authorize the “next steps” in a JEA sale process—a request for proposals from potential JEA buyers. The Curry administration, however, has denied it intended to introduce emergency legislation to privatize JEA.¹⁶

On February 6, 2018, after receiving Morgan Stanley’s nondisclosure agreement, Mr. Mace sent J.P. Morgan, Morgan Stanley and Goldman Sachs an email with attachments “in preparation for” a meeting on February 15, 2018. The attachments included Morgan Stanley’s recommendations for “the sale” of JEA assets and for disposing of the MEAG power purchase agreement “so as to maximize potential sale proceeds.”

¹⁴ Holland & Knight subsequently represented JEA in its Plant Vogtle litigation with the Municipal Electric Authority of Georgia (“MEAG”). Paul McElroy described the lawsuit as having “a one in a million chance to -- to possibly prevail with that and you had the whole industry against you.”

¹⁵ Estimates of JEA’s Plant Vogtle liability have varied over time, but JEA’s “Frequently Asked Questions” website estimated JEA’s Plant Vogtle liability as “more than \$2.9 billion, an uncapped and rising amount.” (Available at www.jea.com/about/electric_systems/plant_vogtle/).

¹⁶ For example, on February 12, 2018, the Jacksonville Daily Record reported, “A mayor’s office spokeswoman said Monday afternoon Curry had no plans to introduce emergency legislation Wednesday [February 14, 2018].”

Ryan Wannemacher signed a contract on behalf of JEA with Intralinks, Inc. on February 7, 2018 to establish an electronic data room for a “M&A Transaction.”¹⁷ That same day, Mr. Wannemacher sent an email to Graeme Conway, the chief executive officer of Macquarie Infrastructure & Real Assets Inc. (“MIRA”),¹⁸ stating Mr. Conway would receive access to the data room. Documents in the data room included JEA’s financial information and JEA’s 2017 rating agency presentation.

Paul McElroy sent a letter to Council President Brosche dated February 9, 2018 in which he requested the City Council hold a *special* meeting for JEA to present the PFM report on February 14, 2018, the day of the report’s completion. Consistent with Council President Brosche’s recollection of her February 5, 2018 meeting with Brian Hughes, Mr. McElroy told the Committee that Mr. Hughes added the request for a “special” meeting to Mr. McElroy’s letter. (City Council can take action at special meetings, including voting to approve the exploration of JEA privatization.) Mr. McElroy stated he did not appreciate the significance of Mr. Hughes’s change to his letter.

Four days later, on February 11, 2018, Joe Orfano sent an email to Anthony Terrell, an attorney at Pillsbury Winthrop Shaw & Pittman LLP (“Pillsbury”) with utility transaction expertise. Mr. Orfano wrote, “[I]f the prospective *buyer* is an IOU [investor owned utility], transaction would need to be approved by FPSC and FERC” (emphasis added).¹⁹ Mr. Terrell responded, “Does JEA itself have its own counsel who practices before FPSC or FERC?”

The next day, on February 12, 2018, attorneys with Pillsbury and OGC met to discuss Pillsbury serving as legal counsel in connection with JEA’s sale. After the meeting, Stephen Amdur, leader of Pillsbury’s mergers and acquisitions private equity team, emailed OGC thanking them for “the opportunity to be considered for such a monumental potential transaction.” The Times-Union reported in a September 4, 2020 article that Mr. Amdur and Aaron Zahn, who became JEA’s interim CEO in April 2018, were friends in college.

¹⁷ Melissa Dykes, Joe Orfano, Juli Crawford and Ryan Wannemacher all received an email from Intralinks confirming they had access to a password-protected data room as part of “Project JEA.”

¹⁸ MIRA later submitted a bid to purchase JEA during the ITN process.

¹⁹ The Florida Public Services Commission (“FPSC”) and Federal Energy Regulatory Commission (“FERC”) are governmental agencies that regulate electric utilities.

On February 13, 2018, the day after its meeting with Pillsbury, OGC provided Mayor Curry, the City Council and the JEA Board a memorandum entitled “Process for the evaluation of a potential JEA privatization.” The memorandum states, “Upon receipt of the PFM final report, the JEA Board could make a recommendation to City Council on pursuing a potential privatization opportunity and exploring the market to do so, however the JEA ultimately does not have the power to complete such a transaction without City Council approval.”

The next day, on February 14, 2018, the City Council held a specially noticed meeting called by Mayor Curry at which Mr. Mace presented PFM’s evaluation report. The report estimated the City would receive \$2.9 billion to \$6.4 billion in *net* proceeds from a JEA sale. The report cautioned, however, that focusing on the highest possible upfront price for a utility asset “may lead to outcomes that are not optimal for long-term customers.”

That same day Council Member John Crescimbeni called for legislation amending the City Charter to require a voter referendum in connection with any JEA sale.

On February 15, 2018, the day after the Council’s special meeting, representatives of the City, JEA and PFM held off-site meetings at the SpringHill Suites JAX Airport with representatives of the three successful RFP respondents—Goldman Sachs, J.P. Morgan and Morgan Stanley.²⁰ Each bank gave a presentation summarizing its recommendations for privatizing JEA. As an example, the executive summary in Morgan Stanley’s presentation materials stated:

Given our vast experience and expertise, we believe Morgan Stanley is uniquely qualified to execute the potential privatization of JEA. . . . We are confident JEA can execute a sale transaction within 12 months.²¹

²⁰ Joe Orfano told the Committee that the City’s attendees were Sam Mousa, Michael Weinstein and Joey Greive, but Joey Greive told the Committee Michael Weinstein, Randall Barnes and Mr. Greive attended the meeting. Mr. Orfano said JEA’s representatives were Paul McElroy, Melissa Dykes, Ryan Wannemacher and Mr. Orfano. Mr. McElroy told the Committee, however, he did not attend the meeting. Michael Mace attended on behalf of PFM.

²¹ Morgan Stanley’s 67-page presentation regarding its utility team’s experience and expertise was obviously prepared well in advance of the February 15 SpringHill Suites meeting.

After meeting with the banks, Messrs. Orfano, Greive and Mace selected Morgan Stanley as the City's and JEA's advisor in connection with a JEA privatization.²²

On February 16, 2018, the day after the SpringHill Suites meeting, the Times-Union published an article stating, "Mayor Lenny Curry said Friday he will be meeting with City Council Members about whether the city should seek offers from private companies for JEA, . . . [w]hich he said would require ensuring terms and conditions are crafted up front to protect the interests of taxpayers and utility employees."

4. The City Council formed a special committee on the potential sale of JEA.

The JEA Board agreed on February 20, 2018 to hold a workshop on privatization. That same day, City Council President Brosche appointed the Special Committee on the Potential Sale of JEA (later renamed the "Special Committee on the Future of JEA"). The President's charge included: "Understand all aspects and implications (who, what, when, where, and why) of a potential sale of JEA, and the roles that various parties to such a potential sale will play in the process."

Mr. Orfano told the Committee that "a series of events" in March and early April 2018 "led to the privatization effort being halted." The series began when Council Auditor Kyle Billy first received in late February 2018 a copy of the City's December 2017 RFP. Mr. Billy requested and obtained the RFP and bidders' responses from the City's consultant, PFM. On February 21, 2018, Mr. Billy told President Brosche about the RFP. President Brosche was previously unaware the City had issued the RFP.

That same day, on February 21, Mr. Billy sent Sam Mousa, Michael Weinstein and Joey Greive, among others, an email stating, "The RFP appears to request Financial Advisory Services that would be needed to solicit bids to purchase JEA, evaluate those bids, assist City staff in negotiations, and assist in bringing the transaction to financial and commercial close."

Mayor Curry and Messrs. Mousa and Weinstein denied Mr. Billy's assertions. Mayor Curry wrote in an April 3, 2018 letter to President Brosche that "Kyle Billy made

²² Joe Orfano and Michael Mace told the Committee they participated in Morgan Stanley's selection as advisor for JEA's privatization. Mr. Greive told the Committee he participated in a selection process at the February 15, 2018 meeting, but he did not recall the subject matter of the meeting or any specifics about the selection. (Mr. Greive stated the meeting "potentially" concerned JEA's privatization.)

an erroneous assumption that an RFP for strategic initiatives was related to JEA.” Mr. Weinstein sent an email to Mr. Billy stating, “Your premise and opinions are totally incorrect and I am extremely disappointed in you.” Likewise, after declining to testify about the RFP, Mr. Mousa sent Council Member Crescimbeni an email on March 15, 2018 stating, “[T]he subject RFP authorized by the Administration had nothing to do with the potential sale of the JEA.”

Contrary to these assertions, the evidence of the bankers’ responses to the RFP shows both the City and JEA used the RFP to explore the sale of JEA.

Further, on February 23, 2018, Jody Brooks sent Melissa Charleroy, Paul McElroy’s executive assistant, an email regarding a draft of a letter from Mr. McElroy to MEAG. The letter stated:

The JEA Board and the City are evaluating the possibility of privatizing JEA. JEA believes it would be in the best interest of MEAG’s members to come to a mutually agreeable commercial solution before the commencement of a privatization of JEA’s assets. Upon a privatization transaction, it is anticipated that the City would defease all outstanding bond obligations of JEA and terminate the corresponding bond resolutions.

5. Aaron Zahn became JEA’s interim CEO.

On February 28, 2018, Mayor Curry appointed Aaron Zahn as a JEA Board member. Mr. Zahn, who the Mayor said he “had worked with for years,” had no prior electric utility work experience.

JEA continued to explore privatization. For example, Allen Maines (Holland & Knight) sent Jody Brooks an email on March 8, 2018 that analyzed how the MEAG PPA’s rate covenant could affect “the ability of the JEA to sell its assets”²³ The email concluded, “[I]t may be possible for JEA to sell its assets and set up a reserve sufficient to make payments under the [MEAG] PPA without violating this rate covenant.”

²³ Section 307 of the MEAG PPA required JEA “to establish and collect rates and charges for electric service at levels sufficient . . . to make all required payments to MEAG under the PPA”

On March 20, 2018, the JEA Board held a workshop “on the Subject of Privatization.” Mr. Zahn, who attended his first meeting as a JEA Board member that day, congratulated JEA for increasing its value by approximately 500% since 2012.²⁴ Mr. Zahn cautioned, however, that JEA’s achievements happened “in the face of a trend that started in 2007”: “electrical sales have decreased by 10% [and] our water sales have decreased by 14%”

Mr. Zahn warned that JEA faces “new challenges,” including a “75% year-over-year” increase in solar panels during the last four years.

Mr. Zahn then proposed a two-prong “path forward” to address Mr. Petway’s suggestions at the November 28, 2017 JEA Board meeting. First, stop the “sell versus don’t sell” JEA discussion. Second, create a “strategic plan” to develop JEA’s ten-year business plan. Mr. Zahn also proposed a six-point “framework” for the strategic plan, including (i) “How does this authority, in whatever form it takes, serve the numerous stakeholders of JEA?” and (ii) “How do we limit the existing potential liabilities which may impair our value and our services? A perfect example of that is Plant Vogtle.”

After Mr. Zahn spoke, Mr. McElroy described the benefits of municipal utilities.²⁵

On March 21, 2018, just one day after the workshop, the Special Committee on the Future of JEA subpoenaed Paul McElroy for documents and testimony. The next day, Aldan Whitfield, an Intralinks employee, sent an email telling Mr. Wannemacher that Mr. Whitfield would delete the data room JEA set up, which contained evidence regarding JEA’s sale exploration.²⁶ Intralinks told the Committee it has no additional information regarding the data room.

Mr. McElroy appeared before the Special Committee at a meeting on March 29, 2018. Mr. McElroy projected that JEA would have “flat [electric] sales over the [next] five-year period and maybe marginally *up* 1 percent” (emphasis added).

²⁴ Mr. Zahn remarked, “I wish my stocks had done the same in that time.”

²⁵ The Council Auditor published a March 22, 2018 report summarizing JEA’s contributions to the City of Jacksonville. In addition to JEA’s annual contribution to the City General Fund, which exceeded \$114 million per year since 2015, JEA developed rate programs to attract new businesses to Jacksonville, managed the City’s \$75 million septic tank remediation project, contributed \$53 million of infrastructure for the Cecil Commerce Center, financed more than \$20 million towards the construction of the radio systems used by First Coast News and constructed a water plant to serve Jacksonville’s courthouse and main library.

²⁶ Mr. Whitfield wrote, “Per your request I will have the Dataroom deleted immediately.”

Paul McElroy subsequently resigned as JEA’s CEO at a special meeting of the JEA Board on April 6, 2018. Mr. McElroy told the Committee that the Curry administration’s desire to privatize JEA “was certainly part of the decision . . . to retire.”

A week later, Mr. Zahn, who had served on the JEA Board for less than a month, resigned from the Board and announced his candidacy as JEA’s interim CEO. Mr. Zahn’s resignation letter promised he would “establish JEA as ‘a utility for the future of Jacksonville’ prepared to navigate and take advantage of the current trends in the electric and water industries.”

At the JEA Board meeting on April 17, 2018, the JEA Board decided Aaron Zahn would serve as JEA’s interim CEO. After comments by the public,²⁷ Mr. Zahn pledged to (i) “immediately advocate to all policymakers that the conversation of privatization and sell versus don’t sell be halted” and (ii) “build consensus around the purpose, role and value of JEA in the community” The JEA Board unanimously selected Aaron Zahn.²⁸ The Board then appointed Mrs. Dykes as JEA’s chief operating officer, a position that previously did not exist at JEA.

6. Mayor Curry and JEA announced they would stop exploring a JEA sale.

The Curry administration’s and JEA’s privatization initiative, following Mr. Petway’s remarks in November 2017 and the City’s RFP in December 2017, generated significant concern in the Jacksonville community regarding the potential sale of JEA. That concern was manifested in the City Council’s early 2018 appointment of its Special Committee on the Future of JEA.²⁹

Therefore, on April 26, 2018, nine days after the selection of Aaron Zahn as interim CEO, Mayor Curry issued a statement announcing he would *not* submit a JEA privatization

²⁷ Andy Johnson, a former member of the Florida House of Representatives, gave a prescient public comment warning (i) JEA should only hire an executive director with electric utility experience and (ii) the JEA Board would find itself “consumed in scandal, corruption, baloney and tomfoolery” unless it declared JEA is not for sale.

²⁸ The successful candidate had to receive at least four votes of approval from the JEA Board. The Board first voted on whether Mrs. Dykes would become interim CEO. Mrs. Dykes received only one affirmative vote—Board Member Frederick Newbill. The Board, including Board Member Newbill, then voted unanimously in favor of Mr. Zahn.

²⁹ Alan Howard testified that, by March 2018, there was “a large community outcry around the potential sale of” JEA.

plan to City Council.³⁰ Mayor Curry’s statement mirrored Mr. Zahn’s comments at the JEA Board’s March 20, 2018 privatization workshop and the April 17, 2018 Board meeting. Mayor Curry said “a few special interests and politicians with an agenda . . . fixated on the false choice of ‘sell’ vs. ‘don’t sell’ . . . created an environment fostering misinformation and mistrust.” Mayor Curry also warned evolving technology would cause JEA’s revenues to decrease:

Technology and innovation are making renewable power more affordable, while efficiencies are reducing our water and electric needs. The result is data showing that JEA customers may increase in number, *but revenues will decrease*. We also learned that for a decade, a move toward nuclear power – although it was perhaps well-intended – *has left Jacksonville saddled with at least \$1.2 billion in obligations*. When you combine falling revenue and billions in liability on the balance sheet, *you have to take a hard look at the future*.

(Emphasis added).

Mayor Curry’s pessimistic JEA projection was inconsistent with Mr. McElroy’s statement at the March 29, 2018 Special Committee meeting that JEA would have “flat [electric] sales over the [next] five-year period and maybe marginally *up* 1 percent” (emphasis added).

At JEA’s May 15, 2018 Board meeting, Board Member Husein Cumber made a motion to prohibit further privatization activity: “Absent a future Board decision, any activities tied to a privatization effort would be put on hold.” The motion passed unanimously.

JEA Board Chair Alan Howard described the motion as an “attempt to calm some unrest amongst the employees. There had been robust opposition to any sale by the unionized work force of JEA.”

³⁰ Section 21.302(c), Jacksonville Code of Ordinances, requires the City’s mayor to “submit a privatization plan to Council for its review and approval” before privatizing an essential public function.

III. JEA sale phase two: JEA’s “strategic planning” process.

In spite of the public calls to cease any effort to privatize JEA, and in spite of the Board’s express direction to that effect, the senior leadership of JEA nevertheless continued for the balance of 2018 into 2019 to develop a plan intended to result in the sale of JEA. It is apparent that the forces driving the JEA sale initiative recognized the public opposition, and as a result chose to reframe the discussion from “sell/don’t sell” to a more subtle characterization of developing a long-term “strategic plan” for JEA.

1. JEA developed a “strategic planning” construct for the sale of JEA.

Angie Hiers, JEA’s chief human resources officer, told the Committee, “Everything that we did from the moment that Aaron Zahn walked into the door was geared towards privatization.” Others in JEA’s senior management confirmed Ms. Hiers’s observation.

Steve McInall, JEA’s vice president of energy and water planning, testified he believed JEA’s strategic planning was intended to drive the JEA Board to privatize JEA.³¹ When asked if Mr. Zahn’s “goal was just to sell the company” through strategic planning, Caren Anders, the former general manager of JEA’s electric system, answered, “I now think that was his goal.”

Senior leadership developed JEA’s strategic planning framework during a series of meetings after the Board’s May 15, 2018 directive to cease privatization efforts. On May 31, 2018, members of the senior leadership team attended an off-site “Future of JEA Workshop” at White Oak Conservatory in Yulee, Florida (the “White Oak meeting”).³² Ms. Hiers described the White Oak meeting as follows: “[I]t was *very evident* that the subliminal message there was we need to try to think about how do we position ourselves to *sell* JEA and that it was *very, very obvious*” (emphasis added).

³¹ Mr. McInall testified, with respect to the strategic planning performed by JEA:

- Q. Well, that was the whole point of Scenario 2 [JEA remains a municipal utility]; right?
- A. Yea. I think it was, yea.
- Q. To drive a discussion towards Scenario 3 [JEA privatization]?
- A. Yes. . . .

³² The meeting minutes identify the senior leadership attendees as Aaron Zahn, Melissa Dykes, Ted Hobson, Paul Steinbrecher, Angie Hiers, Ryan Wannemacher, Paul Cosgrave, Mike Hightower, John McCarthy, Kerri Stewart, Mike Brost, Jody Brooks and Brian Roche.

The White Oak meeting attendees participated in a question and answer session to define the goals of JEA’s strategic plan. The minutes characterized each answer as the “Truth.” One question asked, “What are the three conditions that limit the effectiveness of JEA?” The answer (stated as the “Truth”) identified “Sunshine law,” “Charter/independent,” and “Political intrusion” as JEA’s three limitations—immutable limitations arising from JEA’s municipal ownership. A separate question asked, “What three things would you change immediately in order to improve the effectiveness of the organization?” The answer (again stated as the “Truth”) stated, “Policy makers and external community creating instability and dysfunction.”

On June 26, 2018, JEA senior leadership attended another off-site “Future of JEA Workshop” at The Ponte Vedra Inn & Club to further develop JEA’s strategic planning framework. The meeting minutes identified JEA’s “problem” as Charter limitations (a feature of JEA’s municipal ownership): **“Problem: ‘Get bigger *or die*’ – Charter restrictions limit business type & service territory”** (bold in original; italics added). The meeting minutes also show senior leadership was urged to “re-think structure of JEA and how it fits into COJ.” A similar entry in the minutes stated, “Construct a campaign to educate employees about benefits to them from changing employment structure.”

On July 9, 2018, JEA senior leadership held another meeting to develop JEA’s strategic planning framework. The meeting minutes stated, “The goal of JEA is to increase (maximize) value of JEA, now and in the future.” The minutes also identify four measures of JEA’s “value”: customer, community impact, environmental and financial (“CCEF”).³³

By July 9, 2018, the “strategic planning” framework for developing JEA’s ten-year business plan defined JEA’s “problem” as JEA’s municipal ownership, including Charter restrictions and JEA’s “goal” as maximizing JEA’s value, which the City Charter restricted. The framework pushed JEA forward on an intentional path towards a sale.

Three days later, on July 12, 2018, JEA issued a request for information (“RFI”) to potential “strategic planning consultants.” JEA did not enter into a contract with a strategic consultant, however, until September 28, 2018, *after* the development of the strategic planning framework and *after* JEA had internally developed a negative financial forecast intended to drive JEA towards privatization.

³³ As noted by Mr. McElroy in his March 2020 sworn statement, “[M]unicipal businesses are not for profit.” Policy 1.4 of the JEA Board Policy Manual requires JEA to “[p]rovide all utility services at a reasonable and accurate cost . . . based on the cost to serve each consumer class,” not the cost most likely to maximize JEA’s value.

2. JEA developed a doom and gloom analysis to further promote privatization.

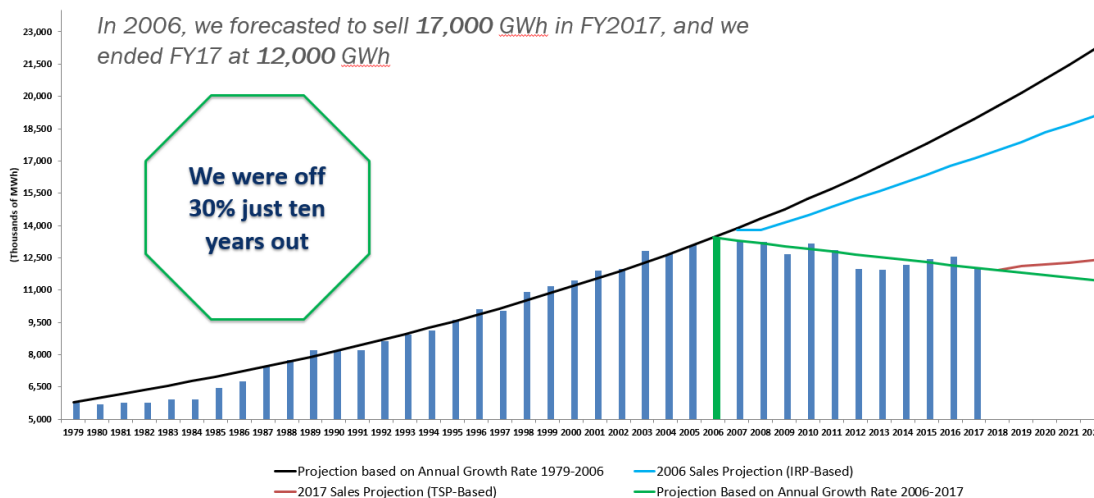
On September 10, 2018, Steve McNall, JEA's former vice president of energy and water planning, received a presentation from ICF International Inc. ("ICF"), a JEA consultant for electrification.³⁴ The presentation estimated JEA could expand electrification programs to increase annual electric sales 4.3% by 2024. In response, Mr. McNall sent the presentation in an email to Juli Crawford, a JEA manager of financial planning, teasing Ms. Crawford: "Good luck working this in with your 'doom and gloom' presentation." Mr. McNall's email was the first appearance of the term "doom and gloom" as an internal characterization of the future of JEA in the absence of a sale.

The next day, on September 11, 2018, Juli Crawford received a spreadsheet from Melinda Fischer, a manager in JEA's financial planning department, containing the assumptions and data for the first draft of JEA's forecast for its "status quo" projection of JEA's future electric sales (the "Doom Spreadsheet"). The spreadsheet had "low," "base," "high" and "extreme" projections for each of the following market forces affecting JEA's electric sales:

- "electric vehicles": increase JEA electric sales;
- "non-road electrification" (or "off-road electrification"): electrification initiatives other than electric vehicles, which increase JEA electric sales;
- "rooftop solar PV [photovoltaics]": a form of distributed generation that allows customers to produce their own electricity, which decreases JEA electric sales;
- "energy efficiency": customers use appliances and other technology requiring less electricity; and
- "new codes & standards": require or subsidize less electricity use by customers.

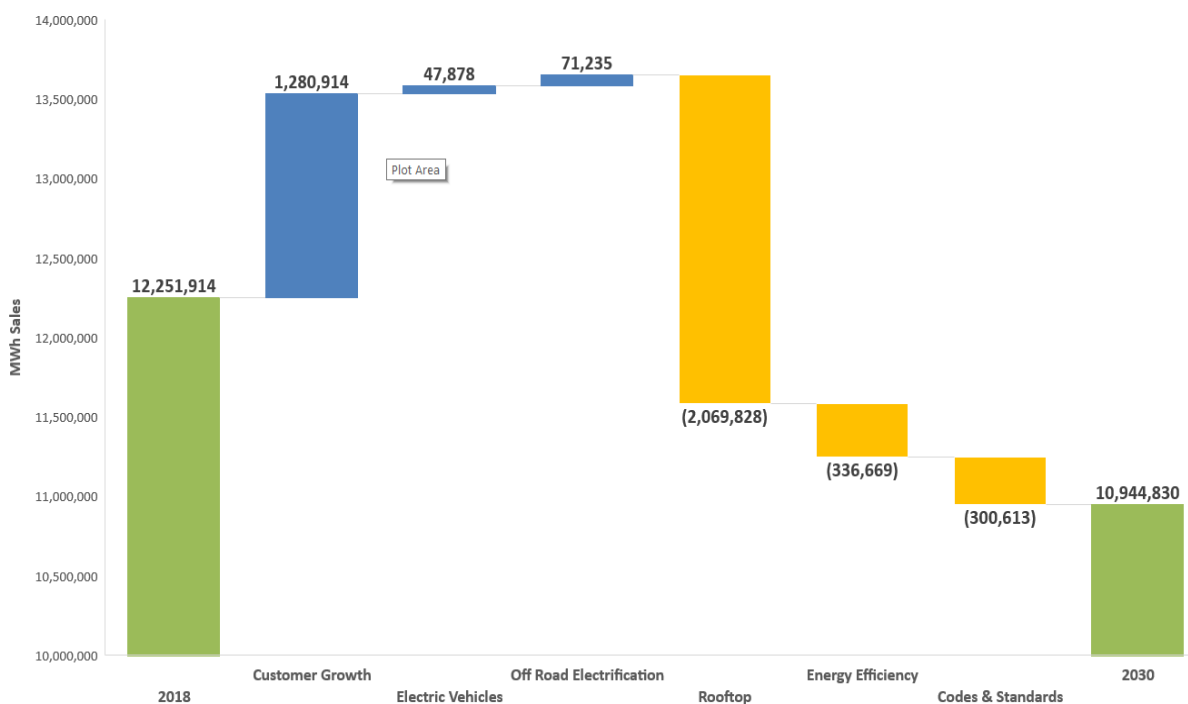
³⁴ "Electrification" refers to initiatives that increase demand for electricity by making machines or systems operate on electricity (e.g., motor vehicles running on electricity instead of fossil fuels).

On September 14, 2018, Ms. Crawford sent a first draft of the “status quo” presentation to Ryan Wannemacher. The presentation stated that JEA’s 2017 electric sales were 30% lower than were projected in 2006:



Note, this graph included JEA’s 2017 ten-year site plan (the short red line in the graph), which projected JEA would actually increase electric sales over the next ten years.

The presentation also had a graph showing energy efficiency and other market forces would decrease JEA’s future electric sales 10.7% by 2030, from 12,251,914 MWh in 2018 to 10,944,830 MWh in 2030:



The status quo projection made several pessimistic assumptions, including (i) the lowest rate of electric vehicle growth from the Doom Spreadsheet; (ii) the lowest rate of off-road electrification growth from the Doom Spreadsheet; and (iii) a rate of rooftop solar adoption 532% *higher* than the highest rate in the Doom Spreadsheet. The presentation concluded JEA’s “status quo” approach “results in” JEA needing \$1 billion in additional revenue from its customers and “significant rate increase to meet higher revenue requirements” (underlining in original).

3. JEA retained McKinsey to bolster the doom and gloom narrative.

On September 28, 2018, after internally developing a doom and gloom strategic plan framework and the status quo forecast, JEA retained a “strategic planning” consultant, McKinsey & Company, Inc. Washington D.C. (“McKinsey”). The reason JEA retained McKinsey was not to perform objective strategic planning, but to bolster JEA’s new doom and gloom “status quo” forecast. For example:

- McKinsey’s September 11, 2018 presentation to JEA, which stated, “JEA has articulated an understanding of trends and defined a Framework The goal of phase 1 [of McKinsey’s work] is to *supplement* view of trends and *drive organizational alignment*” with those views (emphasis added).³⁵
- McKinsey’s September 18, 2018 presentation, which stated, “[W]e have an initial view of JEA’s strategic priorities,” including “should JEA stay municipally owned or be privatized?” McKinsey included Aaron Bielenberg, McKinsey’s privatization expert, on its JEA team.³⁶
- McKinsey stated in a September 24, 2018 presentation that its strategic planning goals included implementing a “change story” to (i) “rally the organization around a change program, creating excitement and buy-in at all levels” and (ii) “make the change personal and relevant to each level of the organization[.]”

³⁵ Physical copies of this presentation were reportedly given to the JEA Board members prior to the Board meeting on September 18, 2018; but the Board package published online omits the presentation.

³⁶ The Committee found no evidence JEA’s senior leadership team ever informed the JEA Board in 2018 that exploring privatization was a “priority” for the utility.

- JEA’s September 27, 2018 addendum to JEA’s ITN 124-18 described one of McKinsey’s responsibilities as “meaningfully engage Board of Directors in construction of new strategic plan for JEA to *complement* the strategic planning work undertaken by the Senior Leadership Team” (emphasis added).
- Mike Hightower told the Committee, “We paid McKinsey a ton of money, and they were supposed to write a report saying things aren’t going well at JEA.”
- Jody Brooks told the Committee she believed McKinsey was hired, at the direction of Aaron Zahn, to bolster the doom and gloom narrative.
- Paul McElroy told the Committee he believed McKinsey “supported the -- the death spiral . . . narrative of the management.”

4. The Innovation Summit.

On October 5, 2018, JEA sponsored the JAX Infrastructure Innovation Summit at the Prime F. Osborn Convention Center (the “Summit”). The Summit had Ted Talk-style presentations, some of which focused on evolving technology disrupting existing businesses, a major theme in JEA’s doom and gloom narrative. Mr. Zahn, a principal organizer of the event, intended the Summit to align JEA stakeholders with JEA’s new strategic planning framework (which defined JEA’s problem as its municipal ownership and JEA’s goal as maximizing value).³⁷

Mr. Zahn and Mayor Curry gave opening remarks at the Summit. According to the Jacksonville Business Journal, Mr. Zahn urged the attendees to “[s]top thinking about a utility company That’s the JEA of the past. . . . Change is accelerating in our markets at a pace faster than we’ve ever seen before. . . .” Mayor Curry reportedly stated the JEA privatization “conversations were filtered to you through a media narrative that was not true.” Mayor Curry also reportedly stated reducing the City’s debt “will allow the City to invest in infrastructure ideas of the future, like those that will be presented today.”

JEA made two payments to Innovation Alliance of Florida, Inc., an affiliate of the JAX Chamber of Commerce, in connection with the Summit: one \$300,000 payment

³⁷ Michael Munz, a president at The Dalton Agency, told the Committee: “[I]t looked like this [the Summit] was all about Aaron promoting his points of view”

authorized by Aaron Zahn for a Summit “Presenting Sponsor” and one \$25,000 payment approved by Aaron Zahn for “Marketing and Business Promotion.”³⁸ The JAX Chamber subsequently made a \$25,000 payment to The Southern Group for Summit fundraising reportedly performed by Deno Hicks.³⁹

5. Aaron Zahn became JEA’s permanent CEO.

On November 27, 2018, the City Council enacted Ordinance 2018-142-E, which required a voter referendum for any sale of 10% or more of JEA.

That same day, the JEA Board met and selected Aaron Zahn as JEA’s new permanent CEO. Mr. Zahn discussed the “inevitability” of JEA’s “infrastructure transitioning” and promised the Board he would “continue to drive alignment on a pervasive commitment to value and profitability” using the strategic planning framework (which continued to define JEA’s problem as its municipal structure).

Among the evidence surrounding the JEA Board’s selection of Mr. Zahn as CEO:

- Ms. Hiers, JEA’s chief human resource officer, told the Committee that Mike Hightower and other JEA employees believed the JEA Board had decided to select Mr. Zahn in advance of the November 27, 2018 Board meeting. Mr. Hightower told the Committee that it was apparent during the interview process that Mr. Zahn would become CEO.
- Jody Brooks, JEA’s chief legal officer, told the Committee that “the feeling around the office was that the fix was in” to select Mr. Zahn as the new CEO.
- JEA’s CEO search firm, Heidrick & Struggles, created confidential reports assessing each CEO candidate’s qualifications. Mr. Zahn obtained and reviewed

³⁸ Alan Howard described JEA’s \$300,000 payment as “far more than I had initially been told [The Summit] was to be primarily underwritten by sponsorships of commercial entities.” Based on the documents obtained by the Committee, JEA made the largest Summit payment. The Jacksonville Transportation Authority (\$40,000) and TECO (\$25,000) made the second and third largest confirmed sponsor payments, respectively.

³⁹ Summit sponsors include TECO (merged with the ITN bidder Emera), Goldman Sachs (a successful respondent to the City’s December 2017 privatization RFP) and J.P. Morgan and Morgan Stanley (successful RFP respondents that served as JEA’s privatization advisors in connection with the ITN).

all of the reports prior to the November 27, 2018 JEA Board meeting. The Committee found no evidence the other CEO candidates received the reports.

- At the November 2018 Board meeting, a Heidrick & Struggles representative, Kay Fuhrman, told the JEA Board she did not receive negative references for any CEO candidate.⁴⁰ However, Heidrick & Struggles’s notes from the reference interviews have negative comments about Mr. Zahn, including “he doesn’t understand the technology” and is “really challenged on EQ [emotional quotient].”
- Consistent with the strategic planning framework, a November 15, 2018 draft of Mr. Zahn’s remarks to the Board regarding his CEO candidacy stated, “Privatization to focus.”⁴¹

6. McKinsey helped JEA refine its doom and gloom narrative.

With Mr. Zahn’s position as CEO secured, JEA senior leadership had a strategic planning “kick-off” meeting with McKinsey on December 6, 2018.⁴²

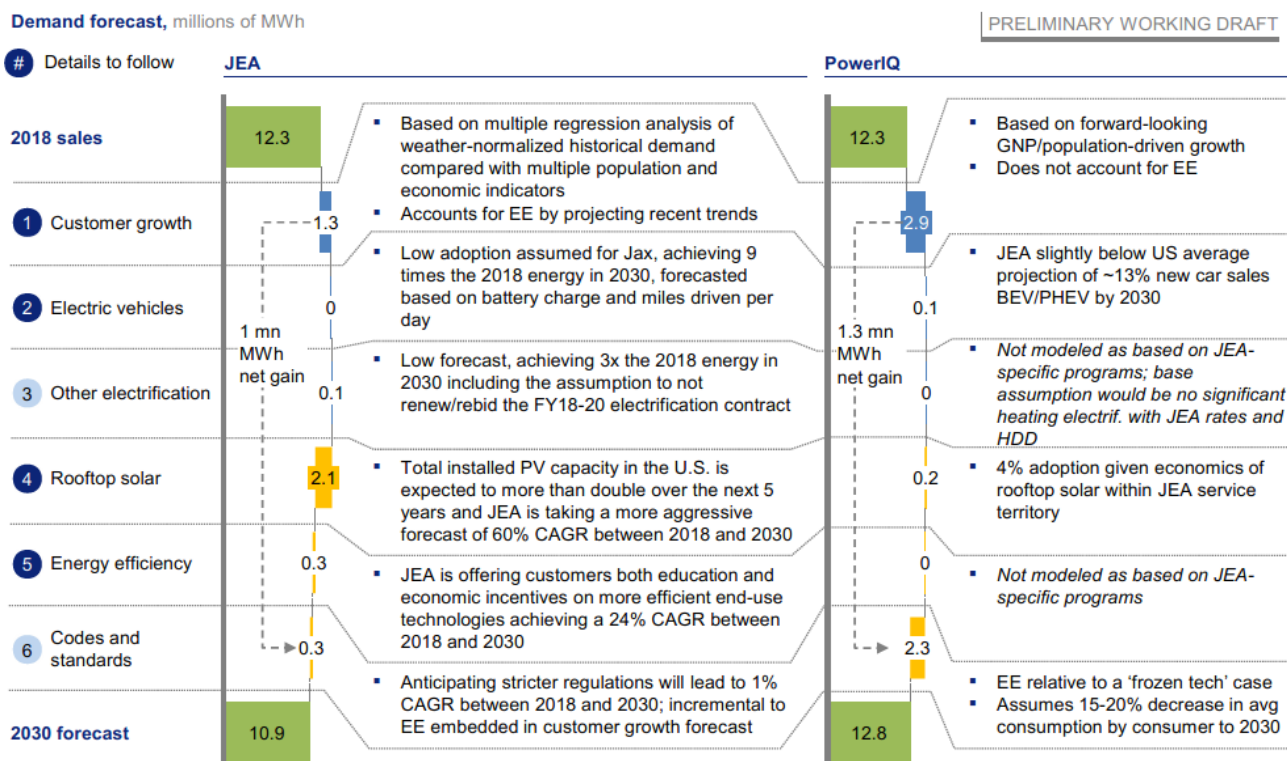
On December 17, 2018, Victor Blacksheer, a JEA manager of financial planning and rates, sent Aaron Bielenberg, McKinsey’s expert on privatization, a copy of JEA’s status quo forecast. That same day, Anton Derkach (McKinsey) sent Melissa Dykes and Ryan Wannemacher a “work plan” entitled “Building a strategic framework for JEA,” which stated McKinsey would provide “[f]ully vetted financial forecasts for base case / business as usual *and extreme but plausible alternative scenarios*” and help achieve “[a]lignment on full strategic planning roadmap with JEA leadership and Board” (emphasis added).

⁴⁰ Board Chair Alan Howard asked Ms. Fuhrman, “Did you receive a negative reputational reference as to any of the candidates from the persons that you or your team spoke with?” Ms. Fuhrman replied, “I did not”

⁴¹ Mr. Zahn’s focus on developing the doom and gloom predicate for selling JEA demoralized the JEA work force. Responses to a 2019 JEA employee survey initiated after Mr. McElroy’s return included “upset with false information on a downward spiral;” “ultimatums; bullying; saw good people fired for speaking up;” “you could smell the fear;” 69% said “something is not right;” “a sinking ship;” and “felt sale was a ‘done deal;’” and “train that could not be stopped.”

⁴² On September 28, 2018, the day McKinsey entered into its JEA consulting agreement, Kurt Peninger, a JEA director of corporate strategy, sent an email asking Ryan Wannemacher, “Do you have an idea of how long Aaron wants to push out the start [of the McKinsey kick-off meeting]?” Mr. Wannemacher replied, “Probably officially kick off the end of November or early December.”

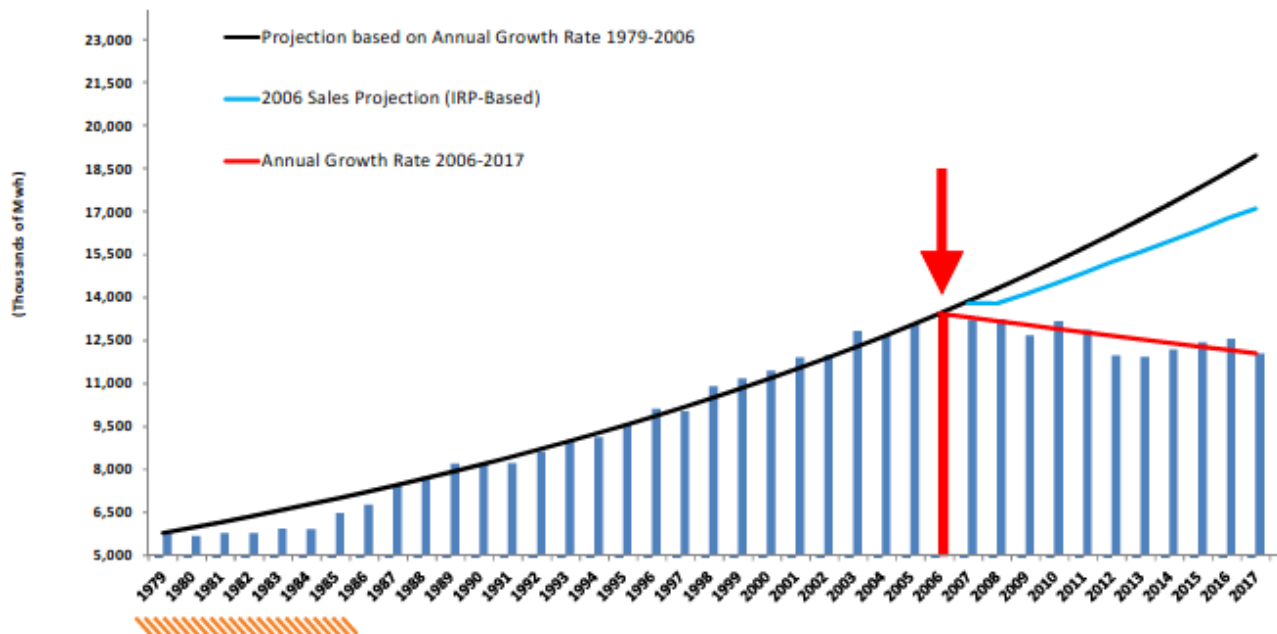
On December 20, 2018, McKinsey released a forecast (“PowerIQ”) showing how energy efficiency and other market forces would impact JEA’s electric sales between 2018 and 2030. McKinsey concluded that JEA electric sales in 2030 would be 15% *higher* than JEA’s doom and gloom status quo forecast (12.8 million MWh versus 10.9 million MWh):



Contrary to JEA’s initial forecast, McKinsey determined (i) JEA’s electric sales would *increase* by 500,000 MWh between 2018 and 2030, and (ii) rooftop solar would have a minor impact on JEA’s electric sales. McKinsey also identified laws that require or subsidize energy efficiency (referred to as “Codes and standards” above) as the greatest threat to JEA’s electric sales.

By January 2019, JEA senior leadership had begun working with McKinsey to prepare a negative forecast that would better complement senior leadership’s goal of privatization. David Goldberg, a director on JEA’s communications team, described the results-driven process in a December 21, 2018 email: “We need to use the status quo as only a set up for all the great things we want to do with our future.”

As an example, the following January 10, 2019 draft of the retooled status quo presentation *omitted JEA's 2017 ten-year site plan*, the little red line in the prior draft (*see page 21 above*), which had projected JEA's future electric sales would increase:



The omission of the ten-year site plan's projection of increasing electric sales on this draft was part of Mr. Zahn's purposefully misleading projections of JEA's future. Paul McElroy told the Committee the ten-year site plan data should have been provided to the JEA Board before it authorized privatization on July 23, 2019.

The status quo forecast evolved a new, two-pronged doom and gloom narrative. First, the Energy Policy Act of 2005 spurred increased energy efficiency, which decreased JEA's *past* electric sales from 2007 through 2017. Second, JEA's *future* electric sales purportedly would decline by 2030 because municipal constraints prevented JEA from adapting to market trends.⁴³

⁴³ The presentation came to have a picture of a frog in a fry pan on its cover because Mr. Zahn used the "boiling frog" theory to describe JEA's future. According to one version of the presentation, "The boiling frog theory states that if a frog is placed in boiling water, it will jump out, but if it is slowly heated, it will not perceive the danger and die"

7. JEA used the doom and gloom narrative to build support for a JEA sale.

Over the following months, Mr. Zahn gave the status quo presentation to JEA stakeholders, including JEA employees, the JAX Chamber Board of Directors and City Council.⁴⁴

JEA also awarded public relations firm The Dalton Agency a consulting agreement on February 19, 2019. The Dalton Agency provided talking points, co-authored or revised editorials and on-camera training to members of JEA's senior leadership team and Board. As an example, The Dalton Agency provided "pivot statements" to help JEA's senior leadership deflect privatization questions, including:

Q[uestion]. Isn't it inevitable that JEA will make layoffs or privatize?

A[nswer]. I think this is the wrong question, the right question is how can we address the challenges that JEA is facing so that we can offer high value utility services to our customers today, tomorrow and in the future? And the best way to answer this question is with a strategic plan.

(Bold in original).⁴⁵

Contrary to the internal status quo presentation, JEA provided optimistic presentations to JEA's rating agencies in late-February 2019. The presentations stated: (i) between 2017 and 2018, JEA had an "[i]ncrease in System MWh sales of 2.6%;" (ii) from

⁴⁴ Mr. Zahn remarked in a February 14, 2019 email that the presentation "won't burst the bubble of status quo but will set a stage" to show that status quo would cause JEA to fail.

⁴⁵ Mr. Zahn used this pivot statement to avoid answering privatization questions during a June 4, 2019 appearance on *First Coast Connect* with Melissa Ross. In response, David Goldberg (JEA) wrote a June 4, 2019 email recommending "a more direct response for him to use going forward." Mr. Goldberg reasoned in a June 8, 2019 follow-up email, "[I]f this [privatization] is truly the path we must pursue at some point, putting it out there now may lead to more perceived transparency and trust" The Dalton Agency and JEA's internal communications team ultimately developed talking points referencing "privatization." However, Mr. Zahn continued avoiding the word. Kerri Stewart explained Mr. Zahn's rationale as follows: "Because the board had been very clear that we were not supposed to be doing anything about privatization, Aaron was adamant that we not -- he, anyone, use the term privatization." In a July 24, 2019 interview, Mr. Zahn stated he did not use the word "privatization" prior to the July 23, 2019 Board meeting because he "didn't want the conversation to get hijacked again by this debate over sell or don't sell."

2019 through 2023, JEA’s energy system sales would increase 0.7%; (iii) JEA would implement electrification programs, including strategic partnerships for electric vehicle programs that “may . . . [s]ignificantly increase the revenue and values from the program” and “[p]ut down pressure on rates;” and (iv) JEA has “[r]ates stable for the five year planning horizon.”

In spite of these optimistic rating agency presentations, Mr. Zahn sent an email to Sarah Brody at McKinsey on March 6, 2019 stating, “It would seem to me that the ‘Status Quo’ case is locked now that we have the entire SLT consensus.”

On March 21, 2019, JEA’s consultant, Brad Kushner of nFront Consulting LLC (“nFront”), met with Aaron Zahn, Ryan Wannemacher and Steve McNall to discuss the preliminary results of JEA’s Integrated Resource Plan (“IRP”), a study JEA used to project long-term demand for JEA electricity. Contrary to the status quo presentation, nFront projected an estimated 0.87% average annual *growth* rate of JEA’s total net energy requirements under the baseline (status quo) scenario. The IRP results were inconsistent with the doom and gloom narrative. As a result, Mr. McNall said he “tapped the brakes” on JEA’s IRP “to try to get some alignment with the McKinsey work.”

On March 22, 2019, Banks Willis (The Dalton Agency) sent an email to JEA communication team members, including JEA Chief Customer Officer Kerri Stewart, with “key messages” for JEA’s senior leadership to use, including:

- We’ve started to dip our toe into the transformation pool, and as evidenced by this past year, its cold! New senior leadership, the privatization debate, Plant Vogtle lawsuit and ongoing search for a new headquarters.
- And yet, transformation is the only answer, **it’s time to pivot.**

(Bold in original).

At the March 26, 2019 JEA Board meeting, Aaron Zahn gave a presentation entitled “Where We Are Going: Goals and Priorities” with a video of a battleship captain demanding a land-bound lighthouse move to avoid a collision. The heading of the presentation slide states, “IT’S TIME TO PIVOT.” Mr. Zahn compared JEA to the

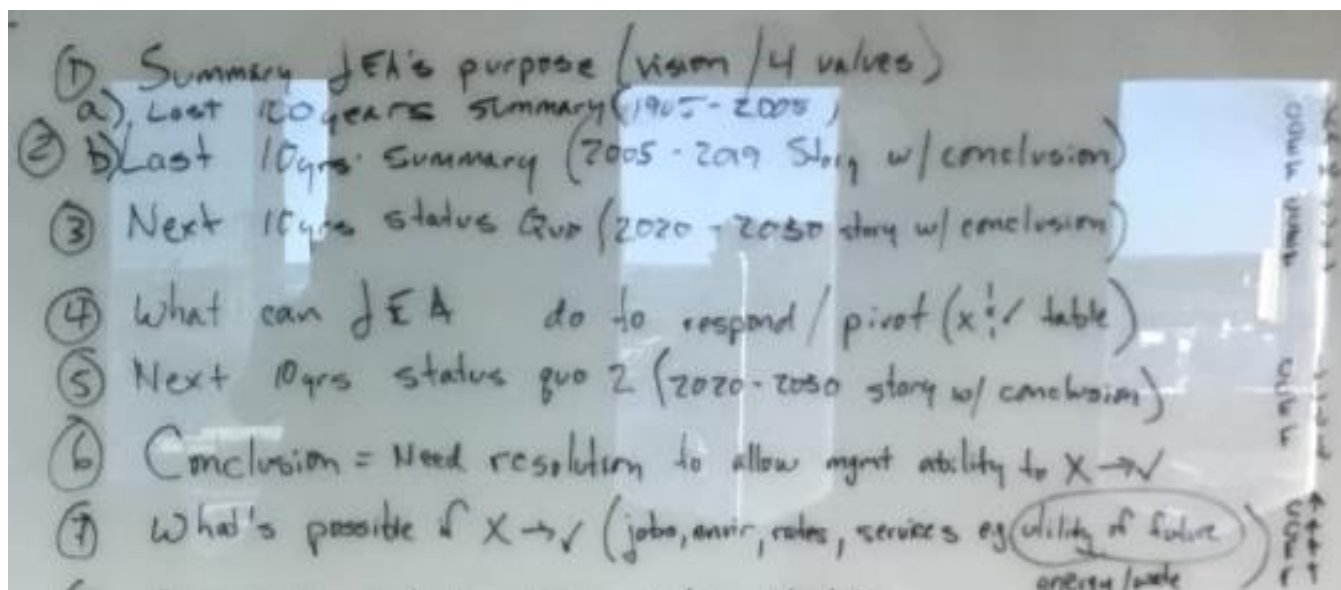
battleship, but stated JEA could control its future using the strategic planning framework (which continued to define JEA’s problem as its municipal ownership). Mr. Zahn also identified goals for 2019, including “align to a pervasive commitment to profitability and value.”

By April 2019, JEA senior leadership had developed three “strategic planning” options to present to the JEA Board:

- “Scenario 1” (which JEA referred to as the “status quo” response): what happens if JEA does nothing to address energy efficiency and other market trends;
- “Scenario 2” (which JEA referred to as the “traditional” response): what happens if JEA pursues all revenue-generating opportunities available to JEA *with* its purported legislative constraints as a municipal utility; and
- “Scenario 3” (what JEA referred to as the “nontraditional” or “nongovernmental” response): what happens if JEA becomes a private entity freed from municipal constraints.

[Report continues on next page]

A photograph dated April 15, 2019 showed a whiteboard with Mr. Zahn's strategic planning conclusions: Scenario 1 (status quo response; item 3 below) and Scenario 2 (traditional utility response; item 5 below) would *decrease* JEA's four corporate measures of value ("CCEF") over the next ten years, but Scenario 3 ("privatization;" item 7 below)⁴⁶ would *increase* CCEF over the next ten years.



Kerri Stewart described the picture of Mr. Zahn's uncorroborated strategic planning conclusions in an April 22, 2019 email stating, "Many of the slides (or data) don't yet exist."

On April 17, 2019, Mr. Zahn gave the doom and gloom Scenario 1 presentation to the City Council. Mr. Zahn stated, "[I]n the last 10 years, our [JEA's electric] sales have declined about 10%. . . . We *will* continue to see sales declines as a result of that [energy efficiency]" (emphasis added). Mr. Zahn concluded, "I've told you I'm gonna come back to you for Charter changes. There are a lot of these things that, as we look at it, we cannot do because our Charter specifically prohibits it." However, the Committee found no evidence Mr. Zahn ever asked the City Council to enact legislation removing JEA's purported constraints, which would have undercut Mr. Zahn's predetermined conclusion that only Scenario 3 (privatization) would increase JEA's future value.⁴⁷

⁴⁶ Ms. Stewart testified that "X → ✓" (item 7 in the above photograph) referred to Scenario 3, which would privatize JEA to remove legislative constraints applicable to municipal utilities.

⁴⁷ At a December 9, 2019 Council meeting, Council Member Tommy Hazouri stated he "wanted to admonish" JEA because it did not give City Council the opportunity to address JEA's problems by changing the City Charter.

8. The JEA Board authorized privatization in July 2019.

A. *The Scenario 1 presentation at the May 2019 Board meeting.*

Aaron Zahn, Ryan Wannemacher and Melissa Dykes gave the Scenario 1 (status quo) presentation at the May 28, 2019 JEA Board meeting. Melissa Dykes concluded JEA had only two options if it continued as a municipal utility under Scenario 1 (status quo): (i) raise customers' base rates by 52% or (ii) raise base rates by 40% and make no contribution to the City after 2023. JEA Board Chair Alan Howard told the Board it was "incumbent" on the Board to "empower" JEA's management team to "do what needs to be done" to avoid the negative effects of Scenario 1.

Appendix A to this report contains a detailed analysis of the misleading nature of the Scenario 1 presentation.

B. *The Scenario 2 presentation at the June 2019 Board meeting.*

After the JEA Board's negative reception of Scenario 1, JEA's senior leadership developed their Scenario 2 (traditional response) presentation, including the argument that the City Charter prevented JEA from pursuing revenue-generating opportunities that JEA needed to succeed. As an example, on June 6, 2019, Julio Romero Aguiro, JEA's chief innovation officer, sent McKinsey consultants Aaron Bielenberg and Sarah Brody a presentation entitled "Management Response Under Existing Constraints." The presentation stated, consistent with the strategic planning framework developed by the senior leadership in 2018, "Charter sets forth a series of limitations that prevent JEA from diversifying and implementing creative revenue generation initiatives and severely cripples JEA's ability to evolve and remain relevant to address customer and community needs, as well as market and industry trends." The presentation concluded JEA must pursue Scenario 3 (privatization) to maximize JEA's four corporate measures of value: "An unconstrained plan [referring to non-municipal ownership] is *the only suitable option for JEA* to evolve into an energy and water utility of the future and to continue providing customer, community, environmental and financial value to Jacksonville in a sustainable and efficient fashion . . ." (emphasis added).

The JEA Board's negative reaction to Scenario 1 gave JEA's senior leadership confidence to meet with consultants to plan JEA's privatization. During the week of June 17, 2019, Aaron Zahn, Melissa Dykes, Ryan Wannemacher and Herschel Vinyard traveled

to New York City and met with representatives from the Pillsbury law firm and two successful respondents to the City's December 2017 RFP, J.P. Morgan and Morgan Stanley.⁴⁸ Documents show the two banks discussed with senior leadership the sale of JEA, including use of JEA's procurement procedure, the timeline for completing the sale, JEA's estimated purchase price and potential JEA buyers. JEA did not execute consulting agreements with the banks until after the JEA Board ultimately authorized privatization at its meeting on July 23, 2019.

Anton Derkach (McKinsey), Aaron Zahn, Melissa Dykes and Ryan Wannemacher gave Scenario 2 presentations (the "traditional utility" response) at the June 25, 2019 JEA Board meeting. The presentations included:

- Mr. Derkach stated JEA's strategic planning was intended to avoid "stability bias"—"assum[ing] that the future will look like the past." The materials for Mr. Derkach's presentation have a picture of an airplane flying through a thunderstorm.
- Mr. Wannemacher summarized the Scenario 1 presentation from the May 2019 JEA Board meeting and stated, "By 2030, we'll increase customers by 16%, and sales *will* fall another 8%" (emphasis added).⁴⁹
- Mr. Zahn acknowledged the doom and gloom in JEA forecasts, and stated municipal ownership constraints prevent JEA from pursuing "very positive opportunities."
- After identifying business opportunities available to JEA, Mrs. Dykes concluded JEA's "business does decline" under the "austere" Scenario 2. To address the anticipated decline under Scenario 2, Mrs. Dykes said JEA would need to terminate 29% of JEA's employees, including 69% of JEA's senior leadership; cancel JEA's new downtown headquarters and move "to rented space in the

⁴⁸ It is unclear which senior leadership members attended each meeting. However, billing entries from numerous attorneys in Pillsbury's New York office reference a meeting with JEA on June 20, 2019.

⁴⁹ Mr. Wannemacher's presentation materials stated, however, "Energy Sales *May Likely* Fall by 8%" (emphasis added).

suburbs;” and increase rates 26% or increase rates 13% and make no further contributions to the City after 2023.⁵⁰

- Mr. Zahn cited industry experts, including McKinsey and Sue Kelly, as advocates for Scenario 3: “All of the messages are exactly the same: Now is the time for change for JEA. . . . We can start figuring out how to grow and remain relevant”⁵¹
- Mr. Zahn asked the Board to “consider two alternatives”: (i) “finalize a traditional utility response (Scenario 2) in the event we do not have the opportunity to grow change” or (ii) “look at our constraints and consider Charter changes so that we can finalize a plan and bring it back to you” (Scenario 3).

Mr. Zahn’s comments mirrored talking points Banks Willis (The Dalton Agency) provided to Mr. Zahn on June 17, 2019. One talking point described Scenario 2 as “the idea that we are unable to achieve charter and regulatory change for us to create other lines of business to grow revenues sufficiently.” Another talking point described Scenario 3 as “the picture of major charter and regulatory changes which allow us to have the freedom required to create revenue streams, new lines of business and run our organization like a typical fortune 500 company”

The talking points reflect the false choice given to the Board at the May, June and July 2019 Board meetings: JEA’s future decline as a municipal utility (Scenarios 1 and 2) or JEA’s unconstrained success as a private utility (Scenario 3).

⁵⁰ Wholly inconsistent with Scenario 2, at the June 25, 2019 JEA Board meeting, Mr. Zahn recommended, and the JEA Board approved by Resolution 2019-05, JEA’s lease for a new downtown headquarters. JEA had a right to terminate the lease by October 1, 2019, but Morgan Stanley’s presentation materials from the June 2019 meeting in New York estimated it would take six months to obtain a signed JEA purchase agreement. Moreover, even if JEA timely terminated the lease, JEA would have to pay “100% of all costs incurred from April 2, 2019 to the date of [lease] termination, with a not to exceed amount of \$2,903,403” Therefore, according to the Scenario 2 presentation, the lease would penalize JEA for pursuing Scenario 2 because JEA could not afford a downtown headquarters unless it pursued Scenario 3 (privatization). Senior leadership did not adequately inform the JEA Board about those issues.

⁵¹ Mr. Zahn quoted Sue Kelly, the CEO of American Public Power Association, in his presentation as follows: “If public power utilities do not face these challenges head on, ‘we could lose our customers’ business and risk being disrupted—indeed, we could be left behind.” However, Ms. Kelly published an August 11, 2019 guest column in the Times-Union disagreeing with Mr. Zahn’s premise and stating Mr. Zahn misrepresented her views by omitting the following part of her quote: “Or, we can figure out the opportunities these issues present, and work with our customers to take advantage of them. If we can pull this off, we can be nimble, customer-focused and respected twenty-first century utilities.”

Appendix B to this report provides a detailed analysis of additional misrepresentations in the Scenario 2 presentation.

In response to the presentations at the June 2019 Board meeting, the Board unanimously approved a motion requiring “the staff be directed to present to this Board a plan for implementation of status quo 2 [Scenario 2], and a plan for—or proposal—for exploring removal of constraints on opportunities to innovate the business [Scenario 3].”

Board Member Andy Allen characterized Scenario 2 as “doom and gloom.” Alan Howard characterized Scenario 1 as “horrible” and Scenario 2 as “a little less horrible.” April Green remarked, “We’ve all expressed our sentiment of the traditional response is not where we want to go.”

C. The Scenario 3 presentation at the July 2019 Board meeting.

On June 27, 2019, two days after the June 2019 JEA Board meeting, JEA executed an “Addendum Engagement Letter” with the Pillsbury law firm for “corporate, transactional, litigation and other matters as you and we may agree.” The engagement letter was “retroactive to January 1, 2019.” Stephen Amdur, the leader of Pillsbury’s mergers and acquisitions private equity team, signed the engagement letter on behalf of Pillsbury.

Having retained privatization counsel and having convinced JEA Board members of the doom and gloom Scenarios 1 and 2, JEA senior leadership met on July 10 and 11, 2019 at Club Continental in Orange Park, Florida, with representatives of Foley & Lardner, Pillsbury, J.P. Morgan and Morgan Stanley to plan the sale of JEA, including the procurement process (the invitation to negotiate), potential JEA buyers and a timeline for presenting a “purchase agreement” to the JEA Board in March 2020.

By July 11, 2019, Morgan Stanley began preparing the solicitation of bids for Invitation to Negotiate #127-19 for Strategic Alternatives (the “ITN”), which sought “strategic alternatives” to “maximize value for its stakeholders” by “eliminate[ing] certain of JEA’s existing business constraints.”

On July 22, 2019, the day before the July 23 Board meeting, three material events occurred:

- Aaron Zahn sent Tim Baker, whose company (BCSP, LLC) served as a consultant with FPL until July 31, 2019, an email stating, “See attached requested records.” The attached records included JEA’s financial information and JEA’s confidential February 2019 rating agency presentation.
- JEA engaged Foley & Lardner to provide legal services regarding labor, collective bargaining, procurement, regulatory matters, securities and transactional matters. The letter stated a retroactive effective date of July 1, 2019. (Foley & Lardner attorneys attended the Club Continental meeting on July 10 and 11, 2019, and began working on the PUP on July 3, 2019.)
- Jason Gabriel, Lynne Rhode and Lawsikia Hodges prepared an internal memorandum concluding the JEA Board was authorized, “subject to applicable laws,” to implement the resolutions prepared for the JEA Board meeting on July 23, 2019, including Resolution 2019-07 authorizing the ITN.⁵²

At the July 23, 2019 JEA Board meeting, senior leadership made the following presentations:

- Melissa Dykes gave an overview of Scenario 2 (traditional response) in which she concluded, “Unfortunately, the traditional utility response doesn’t fix the problem with the declining business. . . . Because we haven’t changed the constraints we operate under today, we haven’t created the opportunities that are needed to change the trajectory of the business.”
- Herschel Vinyard stated a “minefield” of “legal hurdles exist to pursuing several general business opportunities” for JEA as a municipal utility, including the City Charter and the Florida Constitution.

⁵² OGC described the memorandum in a December 3, 2020 memorandum as follows:

The first draft sent to OGC was oriented towards each resolution. OGC objected to this draft because the resolutions and their underlying documents were not prepared by or approved for legality by OGC Accordingly, OGC limited the scope of the memorandum to the JEA Board’s general authority to take action

This report does not address Mr. Vinyard’s legal constraints analysis because his analysis did not meaningfully address revenue-generating opportunities available to JEA as a municipal utility (the fine print of Mr. Vinyard’s presentation states, “Any specific initiative will require extensive and detailed analysis and counsel”), and because *Appendices A and B* show the misleading Scenarios 1 and 2 presentations make Mr. Vinyard’s analysis unnecessary.

- Ryan Wannemacher framed the Board’s choice between Scenarios 2 and 3 in this manner: “The question is whether JEA should be designed to shrink or to grow.” Mr. Wannemacher identified the “root” of JEA’s problem as “being government with government constraints in a competitive market.” Mr. Wannemacher described the initiatives JEA could explore under Scenario 3, including community ownership (co-op) and initial public offering. Mr. Wannemacher stated that although the senior leadership team “had not evaluated any” Scenario 3 options, they “would address the constraints and allow us to grow.”⁵³

In response to these presentations, Board Member Alan Howard described Scenario 3 as “exploring options to grow and protect JEA from what would otherwise be a slow but certain death spiral.” Chairperson April Green remarked about “the detriment of a traditional response” (Scenario 2). Board Member Frederick Newbill stated, “Not that my dear friend Tom Petway need defending, but his last meeting [the November 27, 2018 JEA Board meeting], I think this is what he had in mind.” Board Member Newbill then described Scenarios 1 and 2 as “like writing your own obituary.”

The Board then unanimously adopted Resolution 2019-07, which authorized (i) Mr. Zahn “or his designee to take any and all action to maximize the four core values of JEA [CCEF] . . . through a competitive solicitation process regarding JEA assets” and (ii) the issuance of an invitation to negotiate that achieved specified requirements, including “[g]reater than \$3 billion of value” to the City of Jacksonville.

The JEA Board also unanimously adopted Resolution 2019-09, which approved the Employee Protection and Incentive Program and associated form employment agreements for JEA executives. The program gave eligible JEA employees incentives upon termination in connection with a JEA privatization occurring by December 31, 2021. The

⁵³ Contrary to Mr. Wannemacher’s assertion, senior leadership discussed selling JEA at the Club Continental meeting on July 10 and 11, 2019.

program's incentives included a retention payment worth 100% of the employee's annual base salary, 20 weeks' prorated base salary and a consulting fee for a specified number of months. Council Auditor Kyle Billy estimated in a December 3, 2019 memorandum that the program would have caused the senior leadership to receive, if terminated, more than \$18 million, excluding PUP payments.

9. Senior leadership withheld Board materials before the July 2019 meeting.

JEA senior leadership withheld the complete Board package, including the Scenario 3 (privatization) presentation, prior to the JEA Board meeting on July 23, 2019, thereby denying the JEA Board and the public the opportunity to consider in advance the senior leadership's representations at the meeting. For example,

- On July 17, 2019, La'Trece Bartley, Melissa Dykes's executive assistant, sent an email stating JEA would deliver hard copies of the Board package to the Board members, which deviated from JEA's established procedure of emailing meeting packages to Board members.
- On July 19, 2019, Banks Willis (The Dalton Agency) sent a "communication calendar" to Gina Kyle, a JEA manager of media relations, and Sherry Hall, JEA's vice president of governmental affairs. The calendar shows the "board agenda& package (no powerpoints)" as "due" by July 21, 2019, while "Board decks" (presentation slides and related materials) would be provided at 9:00 a.m. on July 23, 2019 (the starting time of the Board meeting). The calendar also states JEA would distribute the "board materials" to City Council and the Council Auditor's Office after the Board meeting (at 1:00 p.m. on July 23, 2019).
- Consistent with the communications calendar, Kerri Stewart sent an email on July 20, 2019 authorizing a 126-page Board package be posted on JEA's website. The package did *not* include the presentations or resolutions regarding Scenario 2 (traditional response) or Scenario 3 (nontraditional response).
- On July 21, 2019, Jeff Rodda, a public accounts auditor with the Council Auditor, sent Madricka Jones, executive assistant to Aaron Zahn, an email asking, "Could you please send me the complete board package . . . ? *The scenarios and the resolutions are not posted online*" (emphasis added).

- On July 22, 2019, Madricka Jones sent Mrs. Dykes and Lynne Rhode an email with a 284-page Board package attached. The package included the presentations and resolutions for Scenarios 2 and 3. However, the email states, “See attached PDF of all docs. Once approved, *I will add Resolutions and Presentations to Diligent*” (emphasis added).
- That same day, on July 22, 2019, Jeff Rodda again emailed Nancy Kilgo asking for the complete Board package. Jordan Pope responded, “I have not seen a complete board package yet. . . .”
- Ryan Wannemacher subsequently provided Mr. Rodda with a physical copy of the complete Board package at Chamblin’s Uptown Café at 7:30 a.m. on July 23, 2019, just an hour and a half before the Board meeting. The final Board package had 352 pages.
- At 2:15 p.m. on July 23, 2019, after the conclusion of the Board meeting, Madricka Jones sent an email requesting JEA’s digital communications team post the entire Board package on www.jea.com.

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IV. JEA's Performance Unit Plan ("PUP").

Even before Aaron Zahn became JEA's permanent CEO, JEA staff began developing, at Mr. Zahn's direction, the long-term incentive plan that would evolve into the PUP. The plan, which was always intended to enrich JEA's senior leadership, was unprecedented for JEA and contradicted the recommendations of JEA's compensation consultant, Willis Towers Watson ("Willis Towers"). JEA's outside legal counsel, Nixon Peabody, also found the plan violated Florida law. JEA's senior leadership nevertheless proceeded with the plan, which they tried to justify with the misleading doom and gloom narrative, arguing the plan would help increase JEA's value and combat declining electric sales. This section of the report will explain how the PUP became intertwined with the push to privatize JEA, which ultimately contributed to the collapse of the ITN.

1. The long-term incentive plan was always intended to enrich JEA executives.

On November 26, 2018, the day before the JEA Board selected Aaron Zahn as JEA's new CEO, Patricia Maillis, a director of JEA employee services, sent two Willis Towers consultants, Kim Evatt and Andrea Deeb, an email seeking long-term incentive plan recommendations for JEA's "new CEO."⁵⁴ JEA never had a long-term incentive plan before.

On November 27, 2018, Ms. Deeb (Willis Towers) sent an email to Ms. Maillis stating the proposed long-term incentive plan "likely will be well above competitive practices for the public sector, and therefore create potential external and internal negative perceptions."

[Report continues on next page]

⁵⁴ The JEA Board did not select Mr. Zahn as JEA's permanent CEO until the following day, November 27, 2018.

On November 29, 2018, Angie Hiers, Ryan Wannemacher and Melissa Dykes exchanged emails regarding a compensation plan summary that stated, “LTI [long-term incentives] is not typically a component of compensation below senior leadership level and therefore it is not recommended that this form of compensation go below Director level.” The summary proposed long-term incentives as a percentage of base salary that benefitted only the 74 highest-ranked JEA employees:

| Level | Percent of Base Salary | Employee Count |
|---------------------------|-------------------------------|-----------------------|
| Director Grade "J" | 20% | 42 |
| Director Grade "K" | 22% | 20 |
| VP / Chief | 50% | 9 |
| Chief Financial Officer | 80% | 1 |
| Chief Operations Officer* | 150% | 1 |
| Chief Executive Officer* | 240% | 1 |

The plan also proposed Aaron Zahn would earn long-term incentives worth 240% of his base salary, which was 90% more than any other JEA employee.

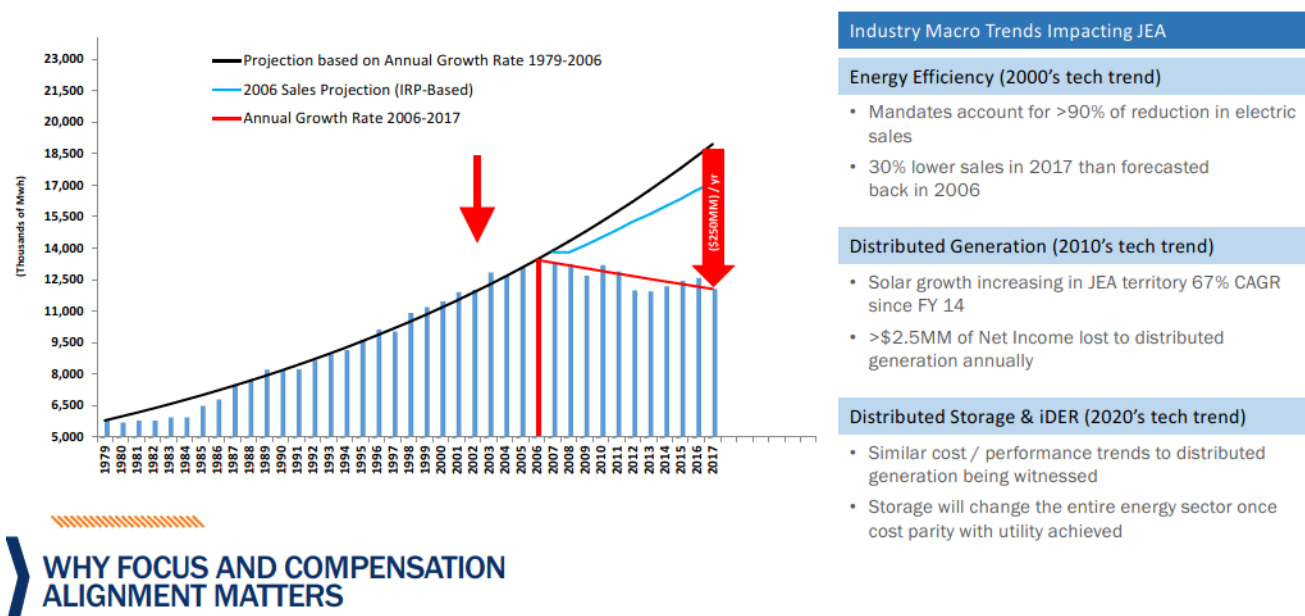
On December 27, 2018, Patricia Maillis described the rationale for the long-term incentive plan in an email stating, “JEA competes in the private sector for talent and from the study performed in 2017, it was identified that variable, total cash, and total compensation were lagging.”

2. The doom and gloom narrative was used to justify long-term incentives.

On December 27, 2018, David Goldberg, a director of JEA customer and community engagement, sent Kerri Stewart a draft “Total Market Compensation Strategy” presentation. The presentation identified JEA’s lack of long-term incentives as the primary reason JEA’s total market compensation lags behind “50% of Market.” The presentation also stated JEA’s current compensation “structure does not reward value creation.” The presentation defined “value” using JEA’s “four corporate measures of value”—i.e., customer, community impact, environmental and financial (“CCEF”). JEA’s senior leadership therefore used CCEF as a means to justify *both* JEA’s privatization and the implementation of a long-term incentive plan.

On January 10, 2019, Sarah Brody (McKinsey) sent Victor Blacksheer, a manager of JEA financial planning and rates, the revised “status quo” presentation, which identified energy efficiency as the primary reason for JEA’s projected electric sales decrease by 2030.

JEA’s Total Market Compensation Strategy presentation subsequently adopted the revised doom and gloom narrative to justify the proposed long-term incentives. As an example, Aaron Zahn made a presentation on January 15, 2019 to JEA’s Compensation Committee about the Total Market Compensation Strategy. The presentation included a slide entitled, “Why Focus and Compensation Alignment Matters,” which alleged energy efficiency laws “account for >90% of reduction” in JEA’s electric sales since 2007:



The presentation reasoned that increasing total compensation, including long-term incentives, would help JEA “compete with the market for talent & drive results aligned with ‘guiding principles’” and would increase JEA’s four corporate measures of value (CCEF). A January 25, 2019 document entitled “Total Market Compensation Talking Points” further explained, “If we align compensation to results, we will create unparalleled organizational value.” Thus, Mr. Zahn identified long-term incentives as a way to combat JEA’s purported declining electric sales and to increase JEA value.⁵⁵

⁵⁵ The Committee asked Angie Hiers, JEA’s chief human resources officers, whether she ever discussed with Aaron Zahn the philosophy of increasing total compensation at JEA when it projected electric sales to decline. Ms. Hiers answered, “Yes, I did.” When asked about that conversation, Ms. Hiers stated, “[I]f we’re saying JEA’s in the death spiral and we’re losing revenues hand over fist, . . . how could we even justify paying out large sums of money?” Mr. Zahn reportedly responded, “[E]verything will work out. I have the support . . .” Ms. Hiers said she assumed Mr. Zahn referred to support from City Hall.

David Wathen, Willis Towers’s utility industry compensation practice leader, subsequently sent a letter to Angie Hiers dated January 30, 2019 that identified the services Willis Towers would provide JEA. Those services included “develop[ing] a long-term incentive plan strawman design that aligns with the company’s compensation philosophy.”

By February 2019, JEA began promising lucrative long-term incentives, which the JEA Board did not authorize until its July 2019 meeting, to recruit additional senior leadership team members. For example, on February 6, 2019, Angie Hiers sent an email to Herschel Vinyard showing he likely would receive a long-term incentive worth \$421,158.00, more than 118% of his base salary (\$355,531.00), as JEA’s new “Chief Legal Officer.” Mr. Vinyard accepted a JEA job offer and began working as JEA’s Chief Administrative Officer in April 2019.

3. Willis Towers helped develop a long-term incentive plan for JEA.

On March 19, 2019, Willis Towers provided JEA a presentation entitled “Long-Term Incentive Plan Market Practices & Proposed Design.” The presentation characterized the “prevalence” of long-term incentive plans as “uncommon” for public power utilities.⁵⁶ JEA nonetheless continued to develop its long-term incentive plan.

On March 22, 2019, Joe Orfano called Elizabeth Columbo and Barry Rothchild, attorneys with JEA’s bond counsel, Nixon Peabody LLP, to discuss whether JEA could issue bonds to employees to create the municipal equivalent of a stock option.⁵⁷

That same day, March 22, 2019, Mr. Orfano sent Ms. Columbo and Mr. Rothchild an email stating, “Clause 3(d) of the Florida Statute below [referencing section 215.425(3)(d), Florida Statutes] would appear to be problematic from the outset. . . .” Section 215.425(3)(d) states, “Any policy . . . designed to implement a bonus scheme must . . . [c]onsider all employees for the bonus.” (At the time, JEA and Willis Towers were designing long-term incentives that would only be available to high-ranking JEA employees.)

⁵⁶ During a September 2020 interview with the Committee, David Wathen confirmed Willis Towers, at Mr. Zahn’s request, changed the “prevalence” description from “uncommon” (March 19, 2019 presentation) to “selectively used” (May 9, 2019 presentation). Mr. Wathen agreed the term “selectively” did not evidence the “prevalence” of long-term incentives.

⁵⁷ As a non-profit municipal corporation, JEA does not have stock.

On March 25, 2019, Ms. Maillis sent an email to David Wathen and Andrea Deeb (Willis Towers) stating Mr. Zahn wanted a draft long-term incentive plan, not the summary of options provided by Willis Towers on March 19, 2019. Mr. Wathen responded to Ms. Maillis in an email stating:

[W]e will provide a more detailed LTI design given Aaron's feedback It will include target incentive opportunities by level, where applicable, as well as . . . a proposed formula for determining a Performance Share Unit (PSU) value. [W]e would look to Ryan [Wannemacher] to provide guidance on what performance hurdles should be at Threshold, Target and Maximum

On March 26, 2019, Ms. Maillis sent David Wathen and Andrea Deeb an email stating, "Attached are the slides from today's JEA Board of Director meeting. Suggest taking a look at slides 22 – 24. Aaron is laying the groundwork on LTI." Ms. Maillis attached JEA's "The Year in Review 2018-2019" presentation to her email. Slides 22 through 24 recommend JEA "[a]lign to a pervasive commitment to profitability & value" by "maximizing each of the four corporate measures of value" The presentation reflected Mr. Zahn's effort to establish a causal connection between long-term incentives, which principally benefit executives, and improving JEA's overall "value."

On March 27, 2019, Mr. Wannemacher sent David Wathen a spreadsheet for a performance unit-based long-term incentive plan. The spreadsheet estimated the performance unit redemption value (based on JEA's contribution to the City) using JEA's financial data from 2016 through 2018. The spreadsheet projected the long-term incentives would have a \$30 million three-year target pool (approximately \$10 million per year).

On April 10, 2019, Mr. Wannemacher sent a revised version of the spreadsheet to Aaron Zahn. The revised spreadsheet showed the plan would have, for JEA's combined systems from FY2016 through FY2018, a \$30 million three-year target pool (approximately \$10 million per year).⁵⁸

⁵⁸ That same day, April 10, 2019, Mr. Zahn forwarded the spreadsheet to Herschel Vinyard who, in turn, forwarded the spreadsheet to Stephen Amdur, the leader of Pillsbury's mergers and acquisitions private equity team.

On April 22, 2019, Willis Towers sent Ms. Hiers and Ms. Maillis a revised long-term incentive plan presentation. The presentation proposed compensation adjustments as a percentage of employee salary, including bonuses and long-term incentives, based on employee job level that JEA would gradually implement over a two or three-year period:

| Level | Target Bonus % | | | LTI Opportunity % | | | Total At Risk Compensation | | |
|------------------------|----------------|--------|----------|-------------------|--------|----------|----------------------------|--------|----------|
| | Current | Market | Proposed | Current | Market | Proposed | Current | Market | Proposed |
| Executive | 10% | | 20% | -- | | 30% | 10% | | 50% |
| Director | 8% | | 10% | -- | | 15% | 8% | | 25% |
| Manager | 7% | | 7% | -- | | 3% | 7% | | 10% |
| Individual Contributor | 6% | | 7% | -- | | 3% | 6% | | 10% |
| Bargaining Units | 2% | | -- | -- | | 1% | 2% | | 3% |

Notably, Willis Towers recommended JEA executives receive bonuses and long-term incentives worth 20% and 30% of their base salaries, respectively, resulting in a total at risk compensation worth 50% of the executives' base salaries.⁵⁹ On the other hand, Willis Towers recommended JEA bargaining units (e.g., line employees) receive no bonus and a long-term incentive worth 1% of their base salaries, resulting in a total at risk compensation worth 1% of the bargaining units' base salaries.

Aaron Zahn did not agree with Willis Towers's recommended compensation adjustments. On May 7, 2019, Ms. Maillis sent David Wathen an email explaining edits Mr. Zahn requested to the April 22 Willis Towers presentation, including:

Aaron is questioning why WTW did not provide the proposed [compensation adjustments] at full market per page 30. Aaron is seeking to align with the Board's approve[d] compensation philosophy – total compensation at 50th percentile [of market]. . . . The assumption should be adopting full market 50th. Please update to reflect this methodology.

⁵⁹ "Total at risk compensation" refers to the sum of the proposed bonuses and long-term incentives.

Two days later, on May 9, 2019, Mr. Wathen sent Ms. Maillis a revised version of the presentation. Mr. Wathen wrote, “We incorporated all of the edits [requested by Mr. Zahn] and added some clarifying points around the pay adjustments on pages 31 and 32.” Mr. Zahn’s revised compensation adjustments state:

| Level | Target Bonus % | | | LTI Opportunity % | | | Total At Risk Compensation | | |
|------------------------|----------------|--------|----------|-------------------|--------|----------|----------------------------|--------|----------|
| | Current | Market | Proposed | Current | Market | Proposed | Current | Market | Proposed |
| Executive | 10% | | 45% | -- | | 40% | 10% | | 85% |
| Director | 8% | | 20% | -- | | 5% | 8% | | 25% |
| Manager | 7% | | 10% | -- | | 3% | 7% | | 13% |
| Individual Contributor | 6% | | 7% | -- | | 3% | 6% | | 10% |
| Bargaining Units | 2% | | 2% | -- | | 1% | 2% | | 3% |

Therefore, all JEA employees would now receive long-term incentives. However, the adjustments increased total at risk compensation only for executives and managers (by 35% and 3% of base salary, respectively). During a September 2020 interview, Mr. Wathen stated the revised adjustments were calculated by accelerating Willis Towers’s recommended two or three-year implementation period to the *one-year* period requested by Mr. Zahn.

4. Nixon Peabody found the proposed plan violated Florida law.

On May 20, 2019, Elizabeth Columbo (Nixon Peabody) sent an email to Messrs. Wannemacher and Vinyard with an attached memorandum entitled “Long-Term Employee Incentive Program.” The memorandum addressed “whether JEA may create or establish a long-term employee incentive program (the ‘Program’) to pay a bonus or additional amounts to the employees of JEA over a period of one-to-three years if JEA were to achieve specific and mechanical financial metrics (such as an increase in the net asset value of JEA” Nixon Peabody concluded, “We do *not* believe that the Program would be able to clear legal hurdles under Florida law” (emphasis added). Nixon Peabody questioned JEA’s ability to establish “the Program is in furtherance of a legitimate public purpose,” a requirement for municipal bond issuances under the Florida Constitution.⁶⁰

Mr. Vinyard testified during his July 2020 interview that he did not “rely” on the memorandum because it suggested JEA retain Florida counsel to perform additional legal

⁶⁰ JEA’s initial document production to the Committee did not include the Nixon Peabody memorandum. The Committee discovered the existence of the memorandum while reviewing Nixon Peabody’s billing statements.

analysis regarding the plan's legality.⁶¹ Mr. Vinyard further testified he gave the memorandum to Lynne Rhode and asked her "to get . . . her colleagues at OGC to do the memo that Nixon Peabody says we should have done with Florida lawyers"

Documents obtained by the Committee suggest Mrs. Rhode gave the Nixon Peabody memorandum to Tracey Kort Parde, a former assistant general counsel with OGC. On June 3, 2019, Ms. Parde sent Lynne Rhode an email stating, "I was wondering, would it be too late to ask for a copy of the NY memo?" (Nixon Peabody is a New York law firm.) That same day, on June 3, 2019, Mrs. Rhode responded, "I will drop it by your office shortly"⁶²

The next day, on June 4, 2019, Ms. Parde sent Mrs. Rhode a memorandum assessing "whether JEA may create or establish a long-term employee incentive program to pay a bonus or additional amounts to the employees of JEA over a period of years." Like Joe Orfano before her, Ms. Parde expressed concern about section 215.425(3), Florida Statutes: "The only concern for JEA would be the issue with respect to how to individually measure each employee's work performance, because the statutory language would not permit a bonus based upon JEA's overall financial improvement. . . ."

That same day, on June 4, 2019, Mrs. Rhode asked Ms. Parde to explain why she concluded section 215.425(3) "would not permit a bonus based on JEA's overall financial improvement." Ms. Parde responded, "I think there is some confusion because I literally have no information regarding how or what type of program JEA intends to implement. I have only spoken with you *and just received the memo from the other firm*" (emphasis added). Mrs. Rhode replied to Ms. Parde, "I don't think there are many specifics yet. They are looking at a long-term (1-3 year) incentive (form of typically cash or stock) bonus program based on JEA's financial performance and available to all (management and non-management) employees. . . . Any specific program can be analyzed later."

⁶¹ The memorandum stated:

[T]he attorneys involved in the preparation of this memorandum are not licensed to practice law in the State of Florida (the "State") . . . and if JEA would like to move forward in developing such a program, we believe it would be prudent for JEA to retain Florida counsel to provide additional analysis

⁶² OGC no longer employs Mrs. Rhode or Ms. Parde. OGC prepared a December 3, 2020 disclosure stating the Nixon Peabody memorandum "was first seen by current OGC employees on March 9, 2020." Neither Mrs. Rhode nor Ms. Parde agreed to be interviewed by the Committee.

On June 17, 2019, Ms. Parde and Sean Granat, an OGC deputy general counsel, sent Mrs. Rhode a memorandum identifying laws JEA’s proposed long-term incentive plan needed to satisfy.⁶³ JEA had not provided Ms. Parde or Mr. Granat with the information needed to analyze whether the plan satisfied the specified laws.

5. The JEA Board authorized the plan, however incomplete.

On June 18, 2019, the day after the OGC memorandum, the JEA Board’s Compensation Committee considered an incomplete proposal for a long-term compensation plan.⁶⁴ The meeting minutes stated Messrs. Wannemacher and Vinyard and Lynne Rhode attended the meeting, all of whom had received Nixon Peabody’s May 20 memorandum. The Committee found no evidence Mr. Vinyard, Mrs. Rhode or anyone else told the Compensation Committee about the Nixon Peabody memorandum or the plan’s questionable legality.

Aaron Zahn and Herschel Vinyard gave a presentation to the Compensation Committee regarding some features of the proposed plan (a final, written plan did not yet exist). The meeting minutes stated, “With this program, employees are eligible to receive self-funded long term incentives based on clear measurable factors on a three year industry standard cycle.” The presentation adopted Mr. Zahn’s proposed compensation adjustments for JEA employees:

| Level | Target Bonus % | | | LTI Opportunity % | | | Total At Risk Compensation | | |
|------------------------|----------------|--------|----------|-------------------|--------|----------|----------------------------|--------|----------|
| | Current | Market | Proposed | Current | Market | Proposed | Current | Market | Proposed |
| Executive | 10% | | 45% | -- | | 40% | 10% | | 85% |
| Director | 8% | | 20% | -- | | 5% | 8% | | 25% |
| Manager | 7% | | 10% | -- | | 3% | 7% | | 13% |
| Individual Contributor | 6% | | 7% | -- | | 3% | 6% | | 10% |
| Bargaining Units | 2% | | 2% | -- | | 1% | 2% | | 3% |

⁶³ The memorandum concluded:

JEA is authorized to adopt a bonus or incentive program so long as the program complies with the requirements of § 215.425, Florida Statutes. The program must (1) be based on work performance; (2) have pre-determined performance standards and evaluation processes; (3) provide notice of the program to all JEA employees prior [to] its commencement; and (4) be available to all JEA employees. In addition to the requirements of §215.425, Florida Statutes, any bonus or incentive program JEA adopts should provide for objective metrics measured by impartial analysts and not potential program award recipients. Also, the program would have to comply with the specific constraints itemized in Part III of this memo, which includes ethics laws, Civil Service Rules, and collective bargaining.

⁶⁴ JEA’s Compensation Committee included Camille Lee-Johnson, April Green and Alan Howard.

The Committee found no evidence JEA’s senior leadership informed the Compensation Committee that the proposed plan deviated from Willis Towers’s recommendations, including its two or three-year compensation adjustment period. The Willis Towers materials in the meeting package given to the Board did, however, identify several features of the incomplete long-term incentive plan:

- All JEA employees “would be eligible” for performance units.
- The plan would have a “3-year performance cycle with overlapping cycles due to annual grant frequency.”
- Performance unit value would be “tied to JEA Net Book value.”⁶⁵
- The performance unit valuation was “to be determined;” however, the plan would cap payouts at 150% of employee base salary.
- The plan had an estimated annual cost of *\$3.4 million*.
- JEA’s contribution to the City would ensure the plan remained “self funded.”

The presentation materials did not make any reference to payouts upon a JEA recapitalization, privatization or sale.⁶⁶

The minutes stated that, after Messrs. Zahn and Vinyard completed their presentation, the Compensation Committee authorized senior leadership “to start the process of finalizing the long term compensation framework”

At the JEA Board meeting on June 25, 2019, senior leadership gave the doom and gloom Scenario 2 (traditional utility response) presentation, which caused the JEA Board to ask the senior leadership to come back to the Board at its July meeting with an alternative to Scenarios 1 and 2. (The JEA Board’s May 2018 prohibition against “any activities tied to a privatization effort” remained in place prior to June 25, 2019.) The Board unanimously

⁶⁵ Net book value is the value of a company, as measured by the difference between the company’s total assets and total liabilities. When asked to explain net book value, Michael Mace told the Committee, “I don’t think anybody would take that to be the most reliable metric” for valuing JEA.

⁶⁶ Because Scenario 3 authorized JEA to explore only *nongovernmental* restructuring options, this report uses the terms “privatization” and “recapitalization” interchangeably.

approved the framework “as recommended by the comp. committee” for developing a “market-based compensation program” that would “use the framework as developed by a third-party consultant, Willis Towers Watson.”

6. JEA hired Foley & Lardner after Nixon Peabody said the plan was unlawful.

On June 30, 2019, five days after the JEA Board authorized the senior leadership to explore privatization, Melissa Dykes, Aaron Zahn and Ryan Wannemacher called Elizabeth Columbo, one of the Nixon Peabody lawyers who prepared the May 20, 2019 memorandum concluding JEA’s proposed plan violated Florida law. Ms. Columbo told the Committee that Mr. Wannemacher asked her to prepare a JEA Board resolution to authorize the issuance of performance-based bonds.

The next day, on July 1, 2019, Mr. Wannemacher sent Ms. Columbo an email with an attachment discussing a “JEA Employee Benefit Bond” proposal.⁶⁷ The proposal stated:

- “JEA Employee Benefit Bonds will be an employee benefit similar to JEA provided life insurance available to every currently employed JEA employee *and full-time OGC attorneys* directly supporting JEA (‘Eligible Participant’)” (emphasis added).
- JEA’s CEO, Aaron Zahn, would allocate the bonds among eligible participants. Each bond would cost \$0.00 and increase \$10.00 in value for each 1% that the value of JEA’s systems (electric or water) increased over a specified target value.
- The proposal authorizes “Extraordinary Mandatory Redemption . . . [i]n the event of repayment of substantially all of the debt outstanding under either subordinate bond resolution” Therefore, the proposal would allow JEA employees to cash in (redeem) bonds upon a sale of JEA that satisfied all of the underlying bond debt.⁶⁸

⁶⁷ Mr. Wannemacher copied Mr. Vinyard on the email.

⁶⁸ This is among the first clear evidence that senior leadership intended for the plan to make payments upon a JEA sale.

Ms. Columbo told Mr. Wannemacher that she would not draft the requested bond resolution because she continued to believe the proposed plan violated Florida law.

JEA subsequently stopped giving substantive work to Nixon Peabody.

JEA then turned to Foley & Lardner for support for the long-term incentive plan.⁶⁹

On July 3, 2019, the day after Nixon Peabody declined to draft the requested bond resolution, Kevin Hyde, the chair of Foley & Lardner's labor and employment practice, sent several Foley & Lardner attorneys an email asking, "Does anyone have time to help with drafting a performance bonus agreement for employees? They want it tied to specific performance measurements of the entities."⁷⁰

7. JEA changed the plan to provide for payments upon a sale of JEA.

On July 7, 2019, Richard Guyer, an attorney at Foley & Lardner, sent the first draft of a "performance unit agreement" to Kevin Hyde and Belinda Morgan, a business attorney at Foley & Lardner. Mr. Guyer's email stated, "[M]y understanding of the performance grant is as follows: employee is granted a pre-determined amount of performance units (either electric or water or both). The performance units are then redeemed for cash at the end of 2020 based on a formula which increases \$10 for each 1% of the applicable enterprise value change percentage in excess of the target." The draft agreement incorporated many of the terms from the "JEA Employee Benefit Bond" proposal Ryan Wannemacher sent Elizabeth Columbo on July 1, 2019.

Evidence suggests Kevin Hyde understood in early July 2019 that performance unit plan ("PUP") payments were tied to the effort to sell JEA. For example, on July 7, 2019, Mr. Hyde sent to Dabney Ware, a Foley & Lardner labor and employment attorney, an email stating, "Is there anything in Florida ethic's law – particularly ruling by the Florida Ethics Commission – that prohibits employees from essentially being given stock option to realize a benefit from an appreciation in value of JEA between now and a *sale*?" (emphasis added).

⁶⁹ Foley & Lardner signed an engagement letter with JEA on July 22, 2019, the day before the JEA Board authorized privatization. The letter had a retroactive effective date of July 1, 2019.

⁷⁰ Mr. Hyde testified he drafted the email after he "got a call from Herschel talking about this concept of a . . . performance bonus agreement And as evidenced by this request, I solicited information."

The Committee recovered from Jonathan Kendrick’s computer a spreadsheet last modified on July 10, 2019, the first day of the Club Continental meeting. The spreadsheet proposed an allocation of performance units based on job class that principally benefitted the highest-ranking JEA employees:

| Group | Average Salary | # Units | Grant Value |
|-----------|----------------|---------|--------------|
| Executive | \$269,683 | 1079 | \$107,873.20 |
| PG K | \$158,488 | 80 | \$7,924.40 |
| PG J | \$139,378 | 70 | \$6,968.90 |
| PG I | \$111,129 | 34 | \$3,333.87 |
| PG H | \$95,378 | 29 | \$2,861.34 |
| PG G | \$81,951 | 25 | \$2,458.53 |
| PG F | \$68,728 | 21 | \$2,061.84 |
| PG E | \$54,971 | 17 | \$1,649.13 |
| CBUs | \$73,716 | 8 | \$737.16 |

The spreadsheet obtained from Mr. Kendrick’s computer does not explicitly discuss privatization. However, the spreadsheet states each 1% increase in JEA’s book value would add \$5.00 to the value of each performance unit.⁷¹ The February 14, 2018 PFM evaluation report estimated that, even if the City resolved its Plant Vogtle obligations, “the *net* proceeds to the City could range from \$2.9 billion to \$6.4 billion” (emphasis added). Assuming JEA had a \$3.125 billion net book value and 125,086 outstanding performance units worth \$109.43 each, as shown in the spreadsheet for the year 2022, a JEA transaction resulting in a net book value of \$6.4 billion would trigger a performance unit payout of approximately *\$79.23 million*. This would far exceed the payments proposed in the Willis Towers materials given to the JEA Compensation Committee on June 18, 2019 and the JEA Board on June 25, 2019.

On July 10 and 11, 2019, representatives of JEA, Pillsbury, Foley & Lardner, J.P. Morgan and Morgan Stanley met at Club Continental in Orange Park, Florida, to design the process for selling JEA. On those days (July 10 and 11), Foley & Lardner attorneys exchanged among themselves the following emails regarding threshold legal issues with the bond-based precursor of the PUP:

- Chauncey Lever, Jr. sent Mr. Hyde a case, *State v. City of Orlando*, 576 So. 2d 1315 (Fla. 1991), holding that a municipality’s resolutions, which authorized the issuance of revenue bonds to finance local agencies’ projects that could benefit

⁷¹ The spreadsheet states, “1% increase in book value = \$5 added.”

the municipality, violated article VIII, section 2(b) of the Florida Constitution. The court reasoned the bonds had a primary purpose of obtaining profit, an activity more appropriate for a business than a municipal entity.⁷²

- Tim Bramwell sent Mr. Hyde an email regarding the public purpose requirement in *State v. City of Orlando*. Mr. Bramwell said, consistent with the conclusions of Elizabeth Columbo (Nixon Peabody), JEA’s proposed plan was “invalid.” Mr. Bramwell explained, “The primary purpose of this ‘bond’ seems to be to serve as a vehicle for paying deferred/alternative compensation to employees, and a court would view the primary purpose of the instrument as such.”
- Richard Guyer sent Mr. Hyde an email stating, “Under the terms of the instrument, *the employees’ \$1 investment per bond would result in a \$120 payment per bond, or a 12,000% return on investment. . . .* The return appears to have no practical relationship to the \$1 purportedly being loaned” (emphasis added).
- The next day, on July 11, 2019, Mr. Hyde sent Dabney Ware an email stating, “We have been debating the 215.425 statute all day.” (Section 215.425, Florida Statutes, limits public employee compensation, including bonuses and extra compensation for work already completed.)

In addition to the concerns identified by Foley & Lardner, several witnesses testified they warned Mr. Zahn at the Club Continental meeting not to pursue the PUP:

- Michael Munz testified he told Mr. Zahn the plan was a “stupid” idea. Mr. Zahn responded by threatening to terminate JEA’s consulting agreement with Mr. Munz’s employer, The Dalton Agency.⁷³

⁷² Article VIII, section (2)(b) of the Florida Constitution states:

Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

⁷³ Mr. Munz testified, “And what Aaron heard me having -- kind of reaction I was having [to the performance unit plan], he took me outside, basically, and said if I didn’t calm down, the JEA contract with The Dalton Agency could be ended.”

- Kerri Stewart testified she told Mr. Zahn, “From a PR perspective, it [the PUP] does not make sense.”
- Mr. Munz and Ms. Stewart testified that Herschel Vinyard advised Mr. Zahn at the Club Continental meeting not to pursue the PUP.

Mr. Zahn nonetheless presented the PUP at the JEA Board meeting on July 23, 2019, without disclosing any of the foregoing concerns.

8. The JEA Board approved the PUP in July 2019.

At its July 23 meeting, the JEA Board unanimously adopted Resolution 2019-07, authorizing JEA to pursue Scenario 3 (nongovernmental options for JEA) through an invitation to negotiate with specified requirements, including “[g]reater than \$3 billion of value” to the City of Jacksonville. (JEA subsequently clarified that ITN proposals had to generate more than \$3 billion *net* proceeds—i.e., more than \$3 billion after the satisfaction of JEA’s debt.⁷⁴)

After the approval of Resolution 2019-07, Jonathan Kendrick presented to the JEA Board the total market compensation strategy, which Mr. Zahn previously presented to the Compensation Committee in January 2019. The presentation began two hours and forty minutes into the meeting. Mr. Kendrick described total compensation, including the long-term incentives like the PUP, as a “key priority” in the effort to “elevate the entire team” at JEA. Mr. Kendrick also discussed a January 22, 2019 revision to policy 2.7 of the JEA Board Policy Manual, which authorized JEA to have long-term incentives that “will meet the market (50% percentile), which is where the majority of companies in the industry and geographical area reside.”⁷⁵

After Mr. Kendrick’s presentation, Ryan Wannemacher gave an overview of the PUP. Mr. Wannemacher’s presentation had only two slides and lasted 3 minutes and 18 seconds. Mr. Wannemacher said eligible JEA employees could purchase performance

⁷⁴ See attachment 14 to addendum 4 to the ITN.

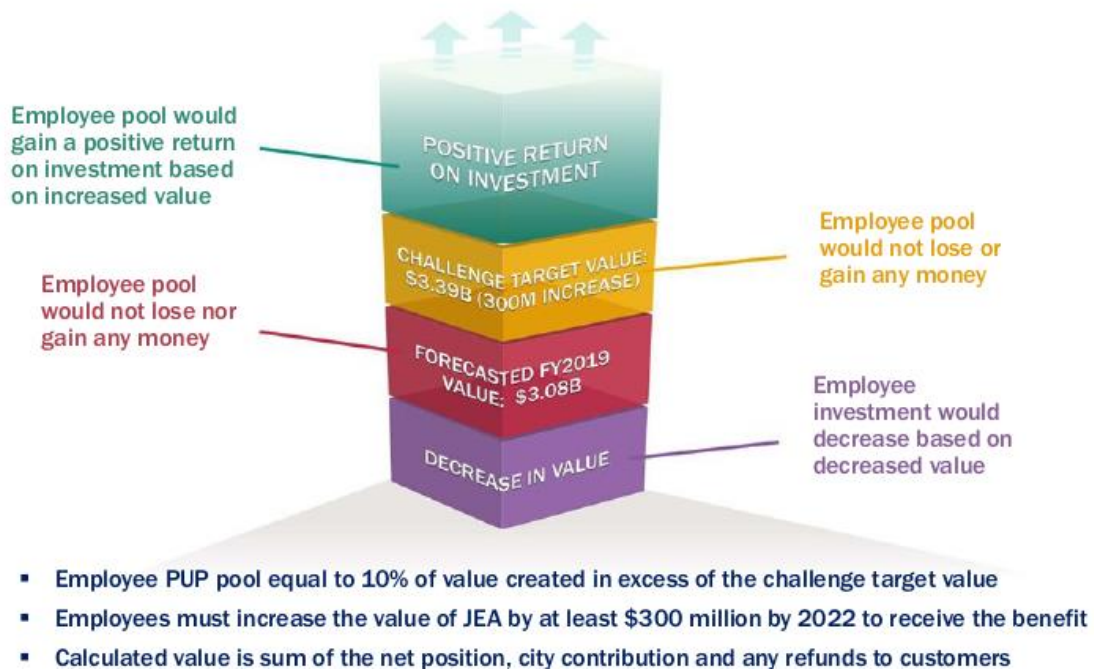
⁷⁵ The compensation adjustments proposed by Willis Towers violated revised Board policy 2.7. Willis Towers generated the adjustments using data from 13 investor-owned (private) utilities outside of JEA’s geographic area, including Alliant Energy (Wisconsin), Black Hills (South Dakota) and Portland General Electric.

units for \$10 each. Mr. Wannemacher also “recommended that 30,000 performance units be made available for purchase.”

Mr. Wannemacher then addressed the relationship between JEA’s net book value and the value of performance units. Mr. Wannemacher’s second slide stated the redemption value of the performance units would increase only if JEA’s value increased by more than 10% at the end of the performance period (the “Challenge Target Value”). The aggregate value of the performance units would, in turn, increase by 10% of any amount JEA’s value exceeded the Challenge Target Value.

Mr. Wannemacher’s second slide illustrated the redemption value formula:

EXAMPLE REDEMPTION VALUE OF THE PUPS



Mr. Wannemacher also gave the JEA Board examples showing how JEA value would impact the aggregate redemption value of the performance units. None of the examples addressed the effect of a JEA sale on PUP payments. Instead, Mr. Wannemacher gave an example that appeared to de-emphasize the potential magnitude of PUP payouts:

So, for the first performance period, [indiscernible] three year period, employees would need to increase the value of JEA by

at least \$300 million before they would receive any benefit. So, between now and 2022, they'd have to exceed \$300 million of increased value. If they increased value by more than that \$300 million, they would be eligible to receive 10 percent of the value that's generated above \$300 million. So, for example, if employees increase the value of JEA by \$600 million, which would represent a substantial increase of over 20 percent in the value of JEA over that three-year period, these performance units would be eligible for 5% of the \$600 million in value that was created. This would equal \$30 million or an average of about \$10 million per year over that performance period. To put that in perspective, it represents a little more than 6 percent of our total annual payroll.

At the conclusion of Mr. Wannemacher's PUP presentation, Lynne Rhode read to the JEA Board Resolution 2019-10, which broadly authorized JEA's CEO, Aaron Zahn, "or his designee" to (i) "implement a long-term performance unit plan . . . on the terms and conditions set forth on the Long-Term Performance Plan Summary" attached as Exhibit 1 of Resolution 2019-10 and (ii) "take, or cause to be taken, any and all action . . . deem[ed] necessary or advisable to carry out the intent of this resolution."

Although Mr. Wannemacher did not address the effects of a JEA sale during his presentation, during the subsequent question-and-answer session, Alan Howard asked, "[T]here's accelerated vesting upon a recapitalization?" Mr. Wannemacher responded tersely, "Correct."

Mr. Howard then asked, "And I assume that this has been passed by OGC? I know we've got some legal constraints over statutory plans." Mrs. Rhode responded, "Yes, sir."⁷⁶

⁷⁶ Mrs. Rhode provided a literally correct, but materially misleading, answer to Mr. Howard's question. She should have disclosed the PUP's unconfirmed legality. On July 22, 2019, OGC attorneys Jason Gabriel, Lawsikia Hodges and Mrs. Rhode prepared a memorandum assessing the resolutions for the JEA Board meeting on July 23, 2019, including Resolution 2019-10 authorizing the PUP. The memorandum states, "Office of General Counsel engaged and relied on various outside specialized counsel to assist JEA in the preparation of the resolutions [T]his memorandum does not address the legality of the underlying documents drafted to implement such resolutions, *as such legality has been confirmed*, and will continue to be developed and approved by special counsel to JEA . . ." (emphasis added). However, Kevin Hyde testified, and documents obtained by the Committee show, that Foley & Lardner did not begin its "in-depth" legal analysis of the PUP until *after* the JEA Board meeting on July 23, 2019.

Board Member Kelly Flanagan then asked Mr. Wannemacher, “[A]re there any implications of Scenario 3 as passed today and how that interacts with this plan?” Mr. Wannemacher responded, “So, the only implication—and Mr. Howard referenced it—would be that if there is a transaction, recapitalization event, the performance period would end at the closing of that recapitalization event, and so you would perform that calculation at that time.”

Mr. Wannemacher should have disclosed the likely effect of a JEA sale on the PUP payouts. JEA’s senior leadership and consultants anticipated the JEA Board would authorize a sale transaction and spent weeks preparing for the ITN process prior to the July 23, 2019 Board meeting. The information available to Mr. Wannemacher prior to the meeting—including PFM’s February 14, 2018 privatization report, Morgan Stanley’s discussion materials from the February 15, 2018 SpringHill Suites meeting and the Council Auditor’s March 22, 2018 special report number 807—estimated a JEA sale could result in *net* proceeds of \$5 billion or more. Council Auditor Kyle Billy estimated in his November 18, 2019 memorandum that a \$5 billion net proceeds sale would result in a total PUP payout of *\$636.6 million*.

The senior leadership’s presentations regarding the PUP at the July 2019 JEA Board meeting were therefore materially misleading, both by misrepresentation and omission. Kevin Hyde also attended the July Board meeting, disclosing nothing about Foley & Lardner’s internal concerns about the wisdom or legality of the PUP, or the potential magnitude of payouts in the event of a JEA sale.

The Board package for the July 23, 2019 JEA Board meeting did not include the PUP itself or the PUP agreement JEA employees had to sign to purchase performance units. However, Exhibit 1 to Resolution 2019-10 provided a framework of the PUP’s terms that the senior leadership could not alter without Board approval, including:

- “Pool”: “A total of 100,000 performance units are available for purchase under the plan.”
- “Performance Period”: “Each performance period will be a three-year period that is used to calculate the redemption price (if a Recapitalization Event occurs, the performance period will be truncated and will end on the closing date of such Recapitalization Event).”

- “Redemption Price”: “The redemption price will increase by \$100.00 per performance unit for each Value Change Percentage increase of 1% in excess of the ‘Challenge Value Target’. . . .” Exhibit 1 defined “Challenge Value Target” as the sum of three material factors, one of which was the change in JEA’s net book value.

The Board materials also included the following representation regarding the cost of the plan:

“Estimated Cost”: “Estimated cost of annual performance unit awards to all employees . . . is \$3.4M.”

This representation, as applied to the PUP, was materially misleading.

Appendix C to this report provides a more detailed analysis of Resolution 2019-10 and its implications.

Mr. Wannemacher and Mr. Kendrick should have explained the differences between (i) the PUP and (ii) the Willis Towers plan included in the materials for the JEA Compensation Committee on June 18, 2019. At its June 25, 2019 meeting, the JEA Board approved the plan “as recommended by the comp. committee” and using “the framework as developed by third-party consultant, Willis Towers Watson.” Accordingly, Alan Howard testified he believed the PUP “was consistent with” the Willis Towers plan.⁷⁷ However, the PUP deviated materially from Willis Towers’s plan in several respects:

- The Willis Towers plan did not authorize payments upon JEA’s privatization.
- The Willis Towers plan *capped* maximum payments at 150% of each JEA employee’s annual base salary, while the PUP did not cap payments.⁷⁸

⁷⁷ Mr. Howard testified, “My understanding at the time of the July board meeting was that . . . the plan we were asked to approve at the July Board meeting was consistent with what had been presented to the compensation committee.”

⁷⁸ JEA’s senior leadership deliberately resisted imposing a cap. As an example, the Jacksonville Daily Record published an article on November 29, 2019 with statements provided by Kerri Stewart. When asked why the performance units did not have a value cap, Ms. Stewart reportedly stated, “Why would any stock have a cap? Why would any performance unit have a cap? The better you are performing, the better the company is doing, the better the financial health.”

- The Willis Towers plan “tied” performance unit value to JEA’s net book value, but as proposed by senior leadership, the PUP used additional factors to enhance PUP payouts.⁷⁹
- The Willis Towers plan would be “self funded” by JEA’s annual contribution to the City and have a \$3.4 million cost. (A JEA sale would result in PUP payouts that exceeded JEA’s annual contribution to the City many times over.)

In reliance on the representations and omissions of JEA’s senior leadership team, the JEA Board unanimously approved the PUP on July 23, 2019, and proceeded with the sale of JEA pursuant to the ITN.

[Report continues on next page]

⁷⁹ As an example, Exhibit 1 of Resolution 2019-10 defined the second factor as “the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville” A prospective JEA purchaser could give consideration to the City, which would boost performance unit value under the PUP formula without necessarily impacting JEA’s net book value.

V. JEA privatization phase three: the ITN and its collapse.

1. The proposed sale would leave JEA with MEAG liabilities.

On July 29, 2019, six days after the JEA Board authorized a sale of JEA through the ITN process, Andrew Weissman, a lawyer at Pillsbury, sent Herschel Vinyard proposed “talking points” describing a hypothetical transaction in which a company (referred to as “Newco”) would acquire “all or substantially all” of JEA’s assets, but leave JEA with its obligations under the Power Purchase Agreement with the Municipal Electric Authority of Georgia (the “MEAG PPA”). Newco would then “provide electric service to all customers in the service territory currently served by JEA,” with one exception: JEA would “sell all of the power it receives under the MEAG PPA directly to retail customers. . . .” The hypothetical transaction was intended to avoid privatization restrictions in the MEAG PPA.⁸⁰ The hypothetical transaction remained a component of JEA’s ITN strategy.

In any event, JEA’s senior leadership did not tell the JEA Board at its May, June or July 2019 Board meetings that Scenario 3 would leave JEA with its significant MEAG PPA obligations. Instead, Ryan Wannemacher framed the Board’s choice between Scenario 2 (traditional response) and Scenario 3 (nongovernmental response) as follows: “The question is whether JEA should be designed to shrink or to grow.” Mr. Wannemacher also stated that Scenario 3 would “address the constraints and allow us to grow.” Senior leadership should have provided the JEA Board with all material facts regarding Scenario 3, including JEA’s retention of MEAG PPA liabilities.⁸¹

⁸⁰ As an example, section 1001 of the MEAG PPA states, “[N]either Party may assign or transfer all or any part of any right, obligation, or interest under this Agreement without the prior written consent from the other Party Any such attempted assignment or transfer shall be null, void and without effect”

⁸¹ JEA’s senior leadership was aware of the MEAG PPA’s material terms since 2018. Allen Maines, an attorney at Holland & Knight who served as JEA’s lead counsel in the MEAG PPA litigation, sent Jody Brooks an email on March 8, 2018 assessing “the ability of JEA to sell its assets and whether or not the PPA contained restriction[s] on the sale of assets” The email identified a number of MEAG PPA restrictions on a JEA sale, including section 307 in which JEA “agreed to establish and collect rates and charges for electric service at levels sufficient . . . to make all required payments to MEAG under the PPA” JEA also filed an action to challenge the legality and enforceability of the MEAG PPA in September 2018. Moreover, during the weekend prior to the July 23, 2019 JEA Board meeting, Holland & Knight prepared for JEA a summary of “Potential Roadblocks to Privatization” in the MEAG PPA.

2. JEA issued the ITN to sell JEA.

On July 31, 2019, representatives from JEA, McKinsey, Pillsbury, Foley & Lardner, Morgan Stanley and J.P. Morgan met at Foley & Lardner’s Jacksonville office for an ITN strategy session. The prepared meeting agenda identified several “key considerations/questions” for the ITN, including “Is the clear *buyer* for JEA *NextEra*?” (emphasis added).

The agenda also stated JEA’s senior leadership would present the resulting ITN transaction to the JEA Board for approval in March 2020.

An August 1, 2019 Jacksonville Daily Record article published Mayor Curry’s comments regarding the ITN:

Mayor Lenny Curry said Thursday he would propose paying off Jacksonville’s \$2.2 billion debt if city-owned utility JEA is sold. . . .

“Imagine being a debt-free city. We would be the lowest-risk city to invest . . . in the country,” Curry said. . . .

Curry said the last debate to privatize JEA in November [2017] became politicized.

He said opponents should consider JEA’s financial obligations, like its estimated \$1.2 billion liability in the Plant Vogtle nuclear power plant deal with Municipal Electric Authority of Georgia.

On August 2, 2019, JEA issued its Invitation to Negotiate #127-19 for Strategic Alternatives (the “ITN”), which sought privatization proposals from third parties.⁸²

The ITN contemplated four phases: (i) ITN respondents submit proposals for privatizing JEA by September 30, 2019 (the “solicitation” phase); (ii) JEA evaluates the

⁸² On September 23, 2020, Jacksonville’s Inspector General issued a report (entitled “Contract Oversight Review 2020-10-0004”) identifying several violations of JEA’s operational procedures and procurement code. The Committee’s investigatory report will focus on separate ITN issues.

respondents’ replies (the “evaluation” phase); (iii) JEA negotiates a potential contract with one or more respondents (the “negotiation” phase); and (iv) JEA awards a contract to the successful respondent for approval by the JEA Board (the “award” phase).

The ITN purportedly required respondents’ proposals to increase JEA’s four corporate measures of value—customer, community impact, environmental and financial (“CCEF”)—by satisfying the “minimum requirements” identified in the ITN Resolution 2019-07:

| Minimum Requirements | |
|-------------------------|---|
| Financial | 1. <u>>\$3 billion</u> of value to the City of Jacksonville |
| Customers | 1. <u>>\$400 million of value distributed to customers</u> (\$350+ paid to each JEA account; \$1,400+ for customers with electric, water, sewer and irrigation accounts) 2. At least three years of contractually guaranteed base rate stability for customers |
| Environmental | 1. Commitment to develop and provide the City of Jacksonville and the Duval County Public School system with <u>100% renewable</u> electricity by the year 2030 ³ 2. Commitment to develop and provide <u>40 million gallons per day</u> (“MGD”) of alternative water capacity for Northeast Florida by the year 2035 ² |
| Community Impact | 1. Protection of certain employee retirement benefits ^{3,4} 2. Maintenance of substantially comparable employee compensation and benefits for <u>three years</u> 3. Retention payments to all full-time employees of <u>100% current base compensation</u> ³ 4. Commitment to new headquarters and employees in downtown Jacksonville ⁵ contributing to the economic development of the community |

By its terms, the ITN’s solicitation document provided for payments directly to JEA customers who otherwise might oppose the ITN.⁸³ The ITN’s minimum requirements also would benefit PUP participants by increasing performance unit value.⁸⁴

⁸³ A December 12, 2019 internal Foley & Lardner email stated, “Mayor [Curry] is pretty smart and looks like they thought they could ram this [referring to the ITN] thru city council and then campaign with a promise of \$1000 to each account holder and it would pass.”

⁸⁴ Exhibit 1 of JEA Board Resolution 2019-10 defined performance unit “Redemption Price” as the sum of three factors, including “consideration . . . credited or otherwise provided to JEA’s customers during the 12-month period prior to the end of the performance period.” Therefore, the minimum ITN requirement of “>\$400 million of value distributed to customers” would increase performance unit value if “credited or otherwise provided to” JEA customers within the 12 months prior to the closing and funding of the privatization. (The “performance period” would end upon a “Recapitalization Event,” which occurred upon the “closing and funding” of an authorized privatization transaction.

The ITN did not, however, require respondents to satisfy JEA's MEAG PPA obligations.⁸⁵

Section 2.11 of the ITN, which became known as the "Cone of Silence," prohibited unauthorized ("ex parte") communications between any ITN respondent and any "JEA representative" from August 2, 2019 through the ITN's conclusion. As initially drafted in the ITN, the Cone of Silence did not explicitly apply to the City Council.⁸⁶

On August 2, 2019, the day JEA issued the ITN, Florida Politics published an article containing comments by Mayor Curry supporting the ITN and JEA's senior leadership:

Curry is confident in the direction of JEA. When asked if Zahn's hire at \$520,000 was an example of cronyism, Curry said no.

"He spent a year laying out a strategic plan. Has a very good President working with him in Melissa Dykes, so yeah, I'm supportive," Curry said of Zahn, who is a political supporter of the Mayor.

"I'm not going to let the noise and agenda of a specific organization dictate the way that I lead on policy or who I support on policy," Curry added.

Curry described Zahn as a CEO type.

Further, JEA's December 12, 2019 draft Asset Purchase and Sale Agreement stated closing would not occur until, among other things, FERC and FPSC approved the transaction.)

⁸⁵ The "talking points" Andrew Weissman emailed Herschel Vinyard on July 29, 2019 acknowledge "it is not likely" JEA's MEAG PPA obligations "would be transferred to Newco [referring to a JEA purchaser] in *any* potential strategic alternative" (emphasis added).

⁸⁶ Section 2.11 of the ITN originally stated:

Ex Parte Communication is strictly prohibited. Ex Parte Communication is defined as any inappropriate communication concerning this ITN between a firm submitting a Reply and a JEA representative during the time in which this ITN is being advertised through the time of an award resulting from this solicitation process. Examples of inappropriate communications include: private communications concerning the details of this ITN in which a Respondent becomes privy to information not available to the other Respondents.

“CEOs are visionary. CEOs motivate. CEOs lead change,” Curry said, drumming his glass desk with his fingers to drive the points home.

“Maybe it’s a new way of thinking for an organization like JEA,” he added. “But it’s pretty common in business.”

The price tag is worth it, Curry believes.

“He’s the CEO of an incredibly large utility who’s got an incredibly important job. He’s led through an incredibly challenging year and has been attacked viciously, unfairly by some.”

In a detailed “Structuring Memorandum” dated August 3, 2019, the Pillsbury law firm explained the “benefits” and “issues” with three hypothetical “options” for a company (referred to as “Newco”) to acquire JEA’s assets. Each option required JEA to retain its MEAG PPA obligations to avoid privatization restrictions in the MEAG PPA.

On August 8, 2019, representatives of JEA and Nassau County met to discuss Nassau County’s right of first refusal to purchase JEA’s water and wastewater assets in Nassau County as a result of the ITN.⁸⁷ Email invites show Matt Brockelman and Deno Hicks, consultants with The Southern Group, helped JEA prepare for the meeting.⁸⁸

Michael Mullin, the County Manager of Nassau County, told Lawsikia Hodges in a January 31, 2020 letter that a JEA representative said “that Florida Power and Light would be the successful bidder of the main assets. . . .” Mr. Mullin subsequently told the Committee he recalled the statement, but he does not recall which JEA representative made the statement.

⁸⁷ Email invites show Miriam Hill, Sherry Hall, Jordan Pope and Herschel Vinyard attended the meeting.

⁸⁸ The Southern Group did not have a contract with JEA regarding those services in August 2019. On October 3, 2019, Foley & Lardner entered into a subcontract with The Southern Group with a retroactive effective date of July 23, 2019, the day the JEA Board authorized the ITN. OGC did not approve the subcontract, which Mr. Hicks terminated on October 11, 2019.

3. Herschel Vinyard discouraged written communications about the PUP.

On August 9, 2019, Jeff Rodda, an auditor with the Office of the Council Auditor, sent Juli Crawford, then a JEA director of financial planning, and Joe Orfano, then JEA's treasurer, 22 questions about the PUP, including "Is there a limit on how many PUPs an employee can purchase?" and "Is there a ceiling on the redemption value of a PUP?" JEA sent Mr. Rodda drafts of the PUP and PUP agreement, but did not answer any of Mr. Rodda's questions in writing.

On August 15, 2019, Michael Kirwan, a Foley & Lardner lawyer, sent Kevin Hyde an email asking, "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." Later that same day, Mr. Kirwan sent Mr. Hyde a second email: "My earlier comment about a cap on unit payouts is hopefully in the plan document that is an exhibit."

On August 22, 2019, Mr. Kirwan sent an email to Mr. Hyde estimating the PUP payouts "could be \$5 *billion*" with 100,000 performance units issued (emphasis added).

Nevertheless, the JEA Board was never informed of these concerns of Foley & Lardner, and JEA never capped PUP payouts.⁸⁹

The next day, on August 23, 2019, Jessica Lutrin (Pillsbury) sent Ryan Wannemacher, Herschel Vinyard and Lynne Rhode an email stating, "I just spoke with Michael Kirwan at Foley & Lardner and, based on his calculations, the PUP formula is spitting out much larger numbers than we anticipated. Do you have any PUP formula calculations that you could please share with us?" Mr. Wannemacher responded obliquely, "I agree that it makes sense to clarify that the contributions to the city should not include the debt pay off. It should be any amounts after the payment of the debt."

Later that same day, on August 23, 2019, Mr. Hyde sent Mr. Kirwan an email regarding Mr. Vinyard's sunshine law concerns: "Herschel suggested that we not have any more emails about the PUPs since it is a potential public record. Just call Jessica or others as needed."

⁸⁹ On November 22, 2019, ten days after Aaron Zahn "postpone[d] indefinitely" the PUP, Shawn Eads, JEA's chief information officer, sent Mr. Zahn an email suggesting JEA add a "cap" to the PUP. Mr. Zahn replied, "Thanks for the thought. We were already working on modifying the plan to incorporate a cap."

4. JEA expanded the ITN's cone of silence to the City Council.

On August 27, 2019, OGC sent a memorandum with “Cone of Silence Guidelines” describing prohibited communications by City Council members regarding the ITN, including (i) public communications by the Council “regarding possible Vendors/Respondents and the merits of the JEA ITN Solicitation terms are strictly prohibited” and (ii) “legislation filed by Council regarding the JEA ITN Solicitation is strictly prohibited” (emphasis in original).⁹⁰ OGC reasoned the ITN's Cone of Silence applied to the Council because “the Council is a clear *potential* decision-maker in the ITN solicitation procurement process”⁹¹ and a “representative” of JEA (emphasis in original).⁹²

On August 30, 2019, after growing public concern about JEA's decision to explore privatization,⁹³ JEA issued ITN addendum 2, which revised the ITN to explicitly state the Cone of Silence applied to the Council because Council was a “representative” of JEA.⁹⁴

On September 16, 2019, City Council held a public meeting regarding the ITN at which the City's General Counsel, Jason Gabriel, clarified OGC's August 27, 2019 memorandum. Mr. Gabriel stated the Cone of Silence only prevented the Council from

⁹⁰ In an October 7, 2019 memorandum, Jason Gabriel defined “merits of the ITN terms” to mean “any discussions during the Cone of Silence Period regarding the worthiness, or pros and cons, of essential ITN terms”

⁹¹ The Committee asked Michael Weinstein, who served four Jacksonville mayors, “In your experience, have you ever heard of a cone of silence in a procurement process being applied to Council members?” Mr. Weinstein answered:

Absolutely not. It was so bizarre because the JEA put out that they didn't want . . . any responders talking to anyone that would have possibly had a final decision being made, you know. And that really goes to the people because it was going to be referendum. So you could literally take their explanation of who you couldn't talk to -- to your next-door neighbor because if they were going to vote on whether to sell or not, they were a decision maker.

⁹² Footnote 7 of the August 27, 2019 OGC memorandum states, in pertinent part, “The JEA Board's Ex Parte Communications Policy prohibits communications between a bidder and JEA, its members, employees, agents, and *representatives*. Given the Council's authority in the JEA Charter to approve or reject the JEA Board's contract award, the Council in this limited instance is acting as its representative and principal decision-maker of the JEA.” (Italics in original; underlining added for emphasis).

⁹³ As an example, the Times-Union published an article on August 23, 2019 entitled “The many falsehoods of JEA,” which challenged the doom and gloom narrative used to justify JEA's privatization.

⁹⁴ ITN addendum 2 stated:

Ex Parte Communication is strictly prohibited. Ex Parte Communication is any communication concerning this ITN . . . between a firm or any agent or representative of a firm submitting or potentially submitting a Reply and any JEA board member, employee, agent or representative (other than the two Designated Procurement Representatives). A JEA “representative” includes the City of Jacksonville Mayor, City Council members and their immediate staff.

discussing “the merits of the ITN” and having “discussions with vendors [referring to ITN respondents].”

OGC then prepared a memorandum dated on September 24, 2019 that concluded, “[T]here are essentially two (2) main ITN-related communication restrictions during the Cone of Silence Period: (1) communications with vendors or respondents to the ITN, and (2) communications regarding the merits of the ITN terms. All other policy-related discussion points with respect to the JEA are permissible.” A footnote in the memorandum reasoned, “JEA’s prohibition on ex parte communications extends not only to JEA itself but to representatives of agents of JEA, including the Council” However, the memorandum did not explicitly address the August 27, 2019 OGC memorandum’s statement that “legislation filed by Council regarding the JEA ITN Solicitation is strictly prohibited” (emphasis in original). Moreover, JEA did not revise its Cone of Silence, which continued to prohibit “any communication concerning this ITN” between City Council and ITN respondents.

For clarity, JEA cannot, through its procurement process or otherwise, make the Council an involuntary JEA “representative” or prohibit the Council from publicly exercising its deliberative or legislative authority.⁹⁵

On September 24, 2019, the day OGC prepared its second Cone of Silence memorandum, two other material events occurred:

- At the request of Mayor Lenny Curry, the City Council introduced Ordinance 2019-566-E transferring approximately \$338 million in liability for JEA’s unfunded employee pension plan to the City upon the occurrence of a JEA “Recapitalization Event” (a JEA sale). Council Member Brenda Priestly Jackson told the Committee she asked OGC if the Council could amend the ITN to require the successful respondent to assume the pension liability. OGC responded that Council could not amend the ITN.
- City Council approved, on motion by Council Member Garrett Dennis, Ordinance 2019-0694-E to appropriate funds for Council to retain independent counsel to investigate JEA’s ITN and PUP.

⁹⁵ Robert Hosay and Benjamin Grossman, JEA’s procurement counsel at Foley & Lardner, prepared an August 21, 2019 memorandum stating, “While the cone of silence *does not prevent or preclude the Council from conducting the City of Jacksonville’s business in the ordinary course*, it does prohibit communications between members of the Council and potential bidders or their employees, agents, and representatives” (emphasis added).

5. Lynne Rhode asked the Attorney General for a limited advisory opinion.

On September 12, 2019, Patricia Maillis sent Lynne Rhode an email identifying several concerns with the PUP and PUP employee agreement, including the PUP's apparent violation of IRS rules for government deferred compensation plans. That same day, Mrs. Rhode responded, "It is important to note that this plan has been *fully vetted*, including through four subject matter expert attorneys, *prior* to being presented to the JEA Board approval in July" (emphasis added). Kevin Hyde nevertheless acknowledged, and documents obtained by the Committee show, that Foley & Lardner did not *begin* its "in-depth analysis" of the PUP until after the JEA Board meeting on July 23, 2019.⁹⁶

On October 1, 2019, Lynne Rhode wrote a letter asking Attorney General Ashley Moody to "confirm that the PUP is not subject to section 215.425, Florida Statutes; and, if it is, that the PUP is not prohibited by section 215.425." An earlier draft of the letter, however, also asked Attorney General Moody to assess "[w]hether JEA's PUP comports with *other* Florida laws, if any, applicable to employee participation in enterprise creation" (emphasis added). The narrowed request avoided statutes the PUP violated, including section 112.215, Florida Statutes.⁹⁷ The request also omitted material facts, including the magnitude of a PUP payout upon a JEA sale. OGC also told the Committee the letter did not incorporate "fundamental" questions OGC asked be addressed.

6. Coordination between the City and FPL/NextEra.

On October 4, 2019, ten days before JEA would select ITN respondents for contract negotiations, Aaron Zahn, Mayor Lenny Curry, Mayor Curry's chief of staff, Brian

⁹⁶ Mr. Hyde prepared his memorandum assessing the PUP's compliance with securities and deferred compensation laws on September 25, 2019, nearly two weeks after Mrs. Rhode's September 12, 2019 email. Mr. Hyde submitted a supplemental memorandum assessing the legality of the PUP on October 21, 2019. Foley & Lardner issued these memoranda to address concerns OGC raised about the PUP.

⁹⁷ Section 112.215(6)(a), Florida Statutes, governs deferred compensation plans under Florida law. Section 112.215 required JEA to obtain an opinion regarding the PUP from "such federal agency or agencies [e.g., the IRS] as may be deemed necessary that the compensation deferred thereunder and/or the investment products purchased pursuant to the plan will not be included in the employee's taxable income under federal or state law" JEA and its attorneys knew by August 2019 the PUP might violate section 112.215. For example, on August 8, 2019, Kevin Hyde sent Michael Kirwan an email stating, "To discuss some language from 112.215, FS. She [Jessica Lutrin of Pillsbury] is reviewing to see whether the plan needs to be rewritten to fit within this statute." Moreover, in his October 21, 2019 memorandum, Kevin Hyde wrote "JEA will seek a determination" in accordance with section 112.215(6)(a). JEA never did.

Hughes, City Council President Scott Wilson, FPL consultant Sam Mousa⁹⁸ and former FPL consultant Tim Baker⁹⁹ traveled to Atlanta in a private aircraft to attend an Atlanta Braves baseball game. At that time, FPL’s parent company, NextEra, was a respondent in the ITN process and subject to the Cone of Silence. Brian Hughes and Sam Mousa told the Committee they did not violate the Cone of Silence during the trip.

Conventus, LLC, a company owned by Messrs. Baker and Mousa, paid a portion of the trip expenses for Messrs. Hughes and Wilson. The Jacksonville Ethics Commission considered a complaint against Messrs. Baker and Mousa for violating section 112.3148, Florida Statutes, which prohibits City officials from receiving gifts from registered lobbyists worth more than \$100. Messrs. Baker and Mousa ultimately entered into an agreement with the Ethics Commission that resolved the matter.¹⁰⁰

The Committee found evidence of coordination among affiliates of the Curry administration and NextEra/FPL that suggests NextEra was the City’s expected purchaser of JEA through the ITN process. This evidence is summarized in ***Appendix D***.

7. JEA evaded a rating agency’s criticisms about the doom and gloom narrative.

On October 11, 2019, Jeffrey Panger, with the credit rating agency S&P Global – Ratings (“S&P”), sent an email to Ryan Wannemacher and Joe Orfano with nine criticisms of JEA’s doom and gloom projections contained in the August 2019 rating agency presentation, including:

- 1) It’s our understanding that the McKinsey study was the impetus for conducting the “Baseline- Scenario 1” and “traditional-Scenario 2” response, and that the results prompted the decision to explore a “non-traditional-Scenario 3” responses. Insofar as I can find *no other* utility suggesting this level of decline in sales related to energy

⁹⁸ FPL executed its consulting agreement with Mr. Mousa’s company, Mousa Consulting Group, LLC, on July 23, 2019, the day the JEA Board authorized Scenario 3 (privatization). The contract expired on August 1, 2020.

⁹⁹ Tim Baker’s company, BCSP, LLC, had a consulting agreement with FPL from December 21, 2017, the date after the City issued its privatization RFP, to July 31, 2019.

¹⁰⁰ Conventus, LLC agreed to pay \$1,400 to First Coast Relief Fund. Messrs. Baker and Mousa also agreed to “work with the Commission to develop ordinance code revisions that will clarify responsibilities of lobbyists and officials for gifts of travel and events.”

efficiency, and *no other utility* (except perhaps outside of the southwest, *and certainly not in Florida*) with this level of DG [distributed generation] penetration, this seems *extraordinarily high*. . . . [W]hy is this more acceptable than what *the rest of the utility industry* is viewing. . . .

- 6) . . . Why is debt acceleration being addressed in scenario 2, (but not in the baseline or the current forecast). Again, it is our understanding that these scenarios are intended to address a projected decline in sales, but by including debt acceleration [in Scenario 2, but not Scenario 1], it creates an apples to oranges comparative. The inclusion of debt acceleration in scenario 2 (while perhaps laudable) inflates the cash gap and suggests that higher than necessary rate increases are needed -- which ultimately is laying the basis for your exploring scenario 3. . . .
- 9) It seems that the McKinsey study, and Scenarios 1&2, *are being held up as the motivation for pursuing Scenario 3 -- privatization*. But as the above questions suggest, *we are unclear whether they form a sound basis*. . . .

(Emphasis added).

Paul McElroy told the Committee during his December 2020 interview that he agreed with Mr. Panger's criticisms, and that JEA's former senior leadership never addressed Mr. Panger's questions. Evidence suggests the senior leadership's conduct caused or contributed to S&P's February 2020 downgrade of JEA's water and sewer bonds.¹⁰¹

¹⁰¹ S&P wrote in its February 21, 2020 report announcing the downgrade that "recent events suggesting governance instability and evidence of weak controls" and "the board will need to rebuild public trust, which has eroded as a result of the failed privatization attempt and the disclosure of the initiative's high cost for consultants and severance payments."

8. JEA outsourced senior payroll to ADP to conceal PUP payouts.

On October 11, 2019, three days before JEA’s evaluation team met to select ITN respondents for contract negotiation, Jonathan Kendrick, on behalf of JEA, signed an agreement with ADP, LLC (“ADP”) to outsource to ADP payroll management for JEA’s appointed employees—JEA’s highest paid employees, including its senior leadership.¹⁰²

Mr. Kendrick testified JEA pursued the ADP project for two reasons: (i) cost savings and (ii) “it would add another layer or privacy so that the PUP elections wouldn’t be as visible”

Confirming the latter, Angie Hiers stated Mr. Kendrick told her that JEA wanted to outsource senior employee payroll to conceal PUP payouts from the public.¹⁰³

Appendix E provides additional information about the ADP outsourcing project.

9. JEA chose nine ITN respondents for contract negotiations.

On October 14, 2019, JEA selected 9 of the 16 ITN respondents to proceed to the contract negotiation phase: American Public Infrastructure LLC (“API”); American Water Works Company, Inc. (“American Water Works”); Duke Energy Corporation (“Duke Energy”); Emera Incorporated (“Emera”), JEA Public Power Partners: A Consortium of Bernhard Capital Partners, Emera Inc., and Suez (“JEA PPP”); IFM Investors PTY LTD (“IFM”); Macquarie Infrastructure and Real Assets Inc. (“MIRA”); NextEra Energy, Inc.; and E&W Development Corp. (also known as “Respondent A”).¹⁰⁴

On October 17, 2019, Council Member Matt Carlucci posted a message on Twitter stating, “The CEO of JEA said at last week’s board meeting, ‘JEA’s financial and operating

¹⁰² JEA’s appointed employees would receive the most performance units, and thus, the largest PUP payouts.

¹⁰³ Ms. Hiers stated:

Jon Kendrick specifically told me that they were doing that [referencing JEA outsourcing payroll to ADP] so that the money -- that any funds or payout from any type of incentive plan or from the long-term incentive plan would go through payroll. And because it [payroll] was outside of JEA, it wouldn’t be subject to public records.

¹⁰⁴ JEA declined to negotiate with 7 respondents: 3Degrees Group, Inc., Algonquin Power & Utilities Corp., Hargray Communications Group Corporation, New Solutions for Business, LLC, Olympus Power, LLC, Uniti Group, Inc. and Veolia Water North America South, LLC.

performance is better than it ever has been.’ Why sell?” CM Carlucci told the Committee Mr. Zahn called him that evening “infuriated about the tweet.” CM Carlucci summarized the discussion as follows: “He [Mr. Zahn] went on and on about how the time was right to *sell* and the awful consequences to Jacksonville if we did not. He said utilities around the country were privatizing, and JEA would not be viable in the coming years” (emphasis added).

On October 23, 2019, Carla Miller, Jacksonville’s ethics director, received revised conflicts of interest disclosures from JEA’s designated ITN negotiation team—i.e., Melissa Dykes, Herschel Vinyard and Jordan Pope. Each disclosure stated that “there does not appear to be any basis to conclude that a conflict would exist with respect to [Mrs. Dykes’, Mr. Vinyard’s or Mr. Pope’s] potential service as a member of the Negotiation Team with respect to the ITN.” The disclosures did not mention the PUP or the team’s potential PUP payouts upon a sale of JEA. Each disclosure states, “In the event the ITN 127-19 process results in a sale, [name of senior leadership team member] will realize no pecuniary gain other than compensation to which [he or she] may be entitled under employment contracts and benefits authorized by the JEA Board of Directors and available to [him or her] and other JEA employees incident to [his or her] current employment with JEA. . . .”

On October 28, 2019, Carla Miller sent an email to Jason Gabriel concluding (i) the disclosures were “grossly inadequate” and (ii) the disclosures had “conclusory language and omitted facts.” Ms. Miller recommended JEA submit the disclosures to the State Ethics Commission for an opinion. Mr. Gabriel agreed with Ms. Miller’s recommendation.

On October 29, 2019, JEA requested ITN respondents submit revised replies on or before November 26, 2019. The request asked each respondent to (i) state the gross proceeds it would offer to purchase JEA’s assets and (ii) explain how the gross proceeds offered by the respondent would differ (if at all) in four scenarios addressing JEA’s MEAG PPA obligations. Each scenario allocated JEA’s assets and liabilities between JEA’s purchaser (referred to as “NewCo”) and JEA (referred to as “the selling entity” and “Legacy JEA” in the request). Three of the four scenarios required Legacy JEA to retain JEA’s MEAG PPA obligations.

10. JEA postponed the PUP in response to public scrutiny.

On October 30, 2019, Jeff Rodda with the Council Auditor sent Ryan Wannemacher and Sherry Hall an email with the 22 PUP questions previously submitted to JEA on August

9, 2019, nearly two months prior. The questions included “Is there a ceiling on the redemption value of a PUP?”

The next day, on October 31, 2019, representatives of JEA and the Council Auditor met to discuss the PUP. Later that day, Heather Reber with the Council Auditor sent Mr. Wannemacher an email expressing concerns with the PUP, including the absence of a cap on performance unit value and the impact of privatization on performance unit value. JEA never provided written responses to the Council Auditor’s October 30 questions or October 31 concerns.

On November 5, 2019, Jason Gabriel and Lawsikia Hodges of OGC met with Aaron Zahn, Herschel Vinyard, Lynne Rhode and Kevin Hyde at Foley & Lardner’s Jacksonville office to discuss the PUP. Stephen Amdur and Jessica Lutrin of Pillsbury participated in the meeting telephonically. OGC told the Committee that, at the meeting:

- Mr. Gabriel stated the PUP, in its existing form, did not satisfy applicable legal requirements, including section 112.215, Florida Statutes.
- Messrs. Zahn and Vinyard asked “if any of OGC’s legal concerns changed if JEA were to modify the plan to nix the 3 year long-term aspect of it and relegate the plan to being solely contingent *upon the potential sale of JEA*” (emphasis added).
- Mr. Zahn told OGC the PUP “payouts would not be substantial, but rather nominal.”
- Mr. Zahn asked Mr. Gabriel to step outside the room to speak in private. There, Mr. Zahn stated (paraphrased), “If you guys are going to kill this thing [the PUP], let’s just kill it now.”¹⁰⁵

Mr. Gabriel informed Mr. Zahn that he would circulate a letter regarding OGC’s opinion that the PUP, in its existing form, was not legal. However, on November 12, 2019, in an apparent attempt to preempt Mr. Gabriel’s letter, Mr. Zahn sent a letter to Mr. Gabriel stating JEA’s senior leadership “has decided to *postpone* indefinitely the implementation

¹⁰⁵ During his January 2020 statement, Mr. Zahn gave a similar account of his comments at the November 5 meeting: “And so I pulled Jason out of the meeting and said, Jason, if this – if there’s this many issues with this unit [referring to the PUP], then let’s kill this plan.”

of the” PUP (emphasis added).¹⁰⁶ Mr. Gabriel nonetheless sent Mr. Zahn a letter stating that the PUP “as currently structured contains outstanding issues under the City Charter and other law.” Mr. Gabriel also wrote an internal memorandum stating that OGC’s review of the PUP “resulted in a final determination by OGC and a recommendation to JEA that the proposed PUP, in its current form, would not be authorized under the City Charter, and had outstanding issues and unanswered questions related to state, local, and federal law.”

On November 13, 2019, Kim Taylor asked Mr. Wannemacher (for a second time) to confirm the Council Auditor’s Office’s calculation that, using JEA data from 2015 through 2018, each \$10 performance unit would have a value of \$1,023.50.¹⁰⁷ That same day, Mr. Wannemacher responded, “We have decided not to move forward with the implementation of the performance units at this time. . . .” Ms. Taylor persisted and asked Mr. Wannemacher to confirm the calculation. Mr. Wannemacher responded, “Your methodology is correct,” but Mr. Wannemacher attached a revised spreadsheet showing each performance unit would have a value of \$167.78 in 2022.¹⁰⁸

Heather Reber with the Council Auditor’s Office sent Mr. Wannemacher a follow-up email asking whether the \$400 million in customer rebates required by the ITN would increase PUP payouts. Mr. Wannemacher retorted, “As noted in my previous e-mail, you have been notified that this was a DRAFT plan that is not being finalized or implemented. . . . No other questions or answers are necessary at this time.”

¹⁰⁶ Mr. Zahn’s November 12, 2019 letter explained his decision to postpone the PUP as follows:

The decision not to implement the Plan is based in the incongruity of the Plan’s long-term nature and the very real potential short-term implications of the JEA’s strategic planning process. As such, the Chair, Plan Administrator and JEA leadership believe the Plan would be best implemented, if ever, post decision on the strategic planning direction of JEA as determined by the Board.

Mr. Zahn’s rationale deviated from his comments at the JEA Board meeting on June 25, 2019, where he described a long-term incentive as “worthless in the face of traditional utility response” because the proposed plan “is incentivizing growth trajectory.” At the City’s December 16, 2019 meeting, Mr. Zahn explained his rationale for the November 12, 2019 letter as follows: “[T]he term ‘postponed indefinitely’ came from me because that’s the only authority I had. The authority to actually cancel the plan lies in the Board.” JEA Board Member Kelly Flanagan disputed Mr. Zahn’s assessment at the December 17, 2019 JEA Board meeting, where she stated, “It’s apparent that the plan [referring to the PUP] was pulled because there was greater understanding and realization that it was a poor plan.”

¹⁰⁷ With 100,000 performance units available for purchase, as required by Resolution 2019-10, the PUP would have a payout of \$102.35 million.

¹⁰⁸ With 100,000 performance units available for purchase, as required by Resolution 2019-10, the PUP, even with Mr. Wannemacher’s unit value, would have a \$16.78 million payout, which greatly exceeded Willis Towers’s estimated \$3.4 million cost of the PUP. Additionally, Mr. Wannemacher’s calculation did not include JEA’s likely net book value upon a sale, which numerous estimates showed could exceed \$5 billion net proceeds.

11. Senior leadership considered reviving the PUP.

Evidence suggests that JEA senior leadership considered reviving the PUP even after Mr. Zahn announced on November 12, 2019 that the PUP had been indefinitely postponed:

- On November 14, 2019, Kerri Stewart sent David Goldberg an email stating, “Aaron is putting the PUPs on hold until after we are done with strategic planning.”
- On November 18, 2019, Patricia Maillis sent Jonathan Kendrick an email asking, “If there is an intent to roll this plan out in the future, e.g., 2021, we would prefer 6 mos get contract signed and set-up automated enrollment and administration.” Mr. Kendrick responded, “We should have a longer lead time *when it’s decided to proceed*” (emphasis added).
- Billing statements show JEA’s outside counsel continued analyzing the PUP. As an example, a November 19, 2019 entry by attorney Richard Guyer stated, “[R]esearch issues regarding performance units and registration.”
- On November 22, 2019, Shawn Eads, JEA’s chief information officer, sent Mr. Zahn an email suggesting JEA add a “cap” to the PUP. Mr. Eads also stated, “*We still may want to delay implementation [of the PUP] until 2021* but it shows a progressive, pro employee stance” (emphasis added).
- JEA senior leadership continued to pursue outsourcing to ADP senior employee payroll until November 22, 2019. (JEA senior leadership confirmed the ADP project was intended to conceal PUP payouts.)

12. The Curry administration intervened to preserve and accelerate the ITN.

On November 18, 2019, Kyle Billy issued his memorandum concluding the PUP “should be formally rescinded or amended by the JEA Board” because, among other things, (i) the performance units had no value cap; (ii) a PUP payout was too easy to achieve (JEA achieved that target in 9 of the past 10 years); and (iii) accounting policies not tied to JEA’s

performance would affect performance unit value. Mr. Billy also determined a JEA sale with net proceeds of \$5 billion would cause a PUP payout of \$636.6 million.

OGC told the Committee that, on November 21 or 22, 2019, “Herschel Vinyard and Steve Amdur came to the GC’s Office to revisit the GC’s previous refusal to permit a ‘success fee’ to Pillsbury in the event of a successful recapitalization of JEA.” OGC told the Committee “that the answer was no.”

On November 22, 2019, JEA designated new ITN negotiation team members to avoid concerns with senior leadership’s apparent conflicts of interest: “[T]he City of Jacksonville’s Deputy Chief Administrative Officer Stephanie Burch, City Treasurer Randall Barnes, and City Engineer Robin Smith.” Lawsikia Hodges (OGC) subsequently withdrew JEA’s request to the Ethic Commission for an advisory opinion because “JEA is no longer proceeding with the [original negotiation] team members”

Nevertheless, the senior leadership still controlled the outcome of the ITN by (i) designating themselves as “subject matter experts” who advised ITN’s negotiation team and JEA’s consultants; (ii) participating in the training of the negotiation team on November 25, 2019, only 11 days before evaluating respondents for the next stage of negotiations; (iii) answering substantive questions from ITN respondents; (iv) controlling JEA’s ITN consultants; and (v) providing a “management presentation” (sales pitch) to the highest ranked respondents at a December 2019 negotiation session in Atlanta.

On November 23, 2019, Gardner Davis, a Foley & Lardner attorney with mergers and acquisitions expertise, sent Robert Hosay, another attorney at Foley & Lardner, a November 23, 2019 email stating, “I was on a call with two rational men Friday afternoon They were talking about the need for a grand jury in light of the [PUP]. . . . [G]iven the values discussed on my two calls by investment bankers, *I suspect the plan payout would approach a billion dollars. . .*” (emphasis added). Kevin Hyde responded, “I advised them [referring to Mr. Vinyard and Mrs. Dykes] *months* ago that the PUP was an incredibly bad idea and would kill the whole deal” (emphasis added).¹⁰⁹ Mr. Davis replied, “Pigs v hogs.”

¹⁰⁹ Mr. Hyde made a similar statement in a December 27, 2019 email exchange with David Cook, a fellow Foley & Lardner attorney: “I told them the PUP would kill the whole deal. Sorry I was correct.”

On November 25, 2019, the City Council held its second workshop on the future of JEA. There, Mayor Curry gave an impassioned speech which reiterated the doom and gloom narrative, and promised to “oppose any effort to stop the planning process”:

Make no mistake, we are at a crossroads in the lifecycle of JEA. We are in the midst of fundamental change and disruption in the utility industry. We face enormous legacy costs and a limited business model that once served us well, but now holds us back. This creates an uncertain future as it relates to growing and investing in new technologies of today and innovations for the marketplace of tomorrow. . . .

The process of exploring alternatives to the status quo of JEA, a government-run monopoly, is not only good business, it’s vital to protecting the future of this community *because a future of increasing rates and then shrinking employee base does not serve our employees well. Declining revenues with increasing customers is not a sustainable business model.* . . .

I philosophically believe that less government is better for the people and the limitations of a government-run utility-monopoly does not serve the best interests of our community over the long-term. . . .

I will oppose any effort to stop the planning process because of baseless conspiracy theories and unprecedented negative onslaught from a small segment of the media












(Emphasis added).¹¹⁰

On November 26, 2019, Council Member Randy DeFoor introduced, and Council Members Matt Carlucci and Joyce Morgan co-sponsored, Resolution 2019-863 “encouraging [the] JEA Board to take formal action to rescind the JEA performance unit plan at the next JEA Board meeting” The City Council adopted the resolution.

¹¹⁰ By this time, the phrase “strategic planning” had become synonymous with the ITN intended to privatize JEA. The ITN was an auction process, not strategic planning.

On December 3, 2019, JEA’s senior leadership, negotiation team and consultants held a strategy session to select ITN respondents to meet for negotiations in Atlanta, Georgia. Section 3.3.3 of the ITN required the JEA representatives to assess whether the revised replies satisfied “the Evaluation Criteria, the Selection Criteria, and any other additional items which may be enumerated in the Request for Revised Replies.”¹¹¹

JEA’s representatives focused principally on two considerations at the December 3 strategy session: the proceeds each respondent offered for JEA’s assets and each respondent’s treatment of JEA’s MEAG PPA obligations (which affected net proceeds). For example, the summary used by JEA representatives to evaluate revised replies ranked respondents by gross proceeds:

| | | | Total deductions from Gross Proceeds | Net Proceeds | Minimum ITN requirement | | | | Proposed transaction type |
|----------------------------|--|-----------------------|--------------------------------------|--------------|-------------------------|----------------|----------------|----------------|---------------------------|
| | | | | | Financial | Customers | Environment | Community | |
| Whole company |  NEXTERA ENERGY | \$11,050 ¹ | (\$4,598) | \$6,452 | ✓ | ✓ | ✓ | ✓ | Acq |
| |  MACQUARIE | \$9,000 | (\$4,050) ⁴ | \$4,950 | ✓ | ✓ | ✓ | ✓ | Acq |
| |  DUKE ENERGY | \$8,600 | (\$4,447) ⁵ | \$4,153 | ✓ | ✓ | ✓ | ? ⁹ | Acq |
| |  ARGO | \$8,401 | (\$4,401) | \$4,000 | ? ⁷ | ? ⁷ | ? ⁷ | ? ⁷ | Muni IPO |
| | JEA PPP | \$8,007 | (\$3,607) | \$4,400 | ✓ | ✓ | ✓ | ✓ | Concession agreement |
| Electric only ² |  ifm | \$7,547 | (\$4,447) | \$3,100 | ✓ | ✓ | ✓ | ✓ | Acq |
| |  Emera /  Blackstone | \$5,500 | (\$2,750) | \$2,750 | ? ⁸ | ✓ | ✓ | ✓ | Acq |
| |  DUKE ENERGY | \$5,250 | (\$2,715) ^{5, 6} | \$2,535 | ? ⁸ | ✓ | ✓ | ? ⁹ | Acq |
| |  MACQUARIE | \$5,100 | (\$2,295) ⁶ | \$2,805 | ? ⁸ | ✓ | ✓ | ✓ | Acq |
| Water only ³ |  AMERICAN WATER | \$4,350 | (\$1,790) | \$2,560 | ? ⁸ | ✓ | ✓ | ✓ | Acq |
| |  MACQUARIE | \$3,900 | (\$1,755) ⁶ | \$2,145 | ? ⁸ | ✓ | ✓ | ✓ | Acq |

NextEra offered \$11.05 billion gross proceeds for JEA assets, which was approximately \$2.050 billion more than the second-highest respondent (MIRA). According to the revised bid summary, NextEra’s proposal expressly “assume[d] up to an

¹¹¹ The Evaluation Criteria refers to the minimum ITN requirements specified in ITN section 3.2.3, including “[g]reater than \$3 billion of value to the City of Jacksonville.” ITN section 3.3.8.B provides a non-exhaustive list of Solicitation Criteria, including “[o]verall value to the City of Jacksonville and JEA’s customers.” JEA’s request for revised replies asked each ITN respondent to (i) state the gross proceeds it would offer for JEA’s assets and (ii) explain how the gross proceeds offered would differ (if at all) under four scenarios addressing JEA’s MEAG PPA obligations.

immediate 50% workforce reduction for current JEA electric system employees” Stephanie Burch, JEA’s lead negotiator and an employee in the Mayor’s office, nevertheless testified that NextEra “had the highest bid, so if everything else panned out then they would have been considered the best value at some point.” The amount of the proceeds became the principal consideration of JEA’s ITN representatives.

As another example of how JEA’s representatives did not apply the ITN’s assessment criteria, JEA representatives invited Duke Energy to the Atlanta negotiation session despite finding Duke Energy did not explicitly commit to JEA’s new downtown headquarters, which the ITN solicitation document identified as a “minimum requirement.”

During the December 3, 2019 strategy session, Ms. Burch also accelerated the timeframe to complete the ITN and present a contract to the JEA Board from March 2020 to January 2020. Ms. Burch testified she made the decision because “things were falling apart with the ITN process” due to the growing public opposition to the ITN.

The decision to accelerate was made, notably, on the eve of Council Member Brenda Priestly Jackson’s December 4, 2019 filing of Resolution 2019-894, which encouraged the JEA Board to cancel the ITN.¹¹²

Ms. Burch stated J.P. Morgan and Morgan Stanley “didn’t like” the accelerated timeframe and thought JEA “needed to give the proposers more time.” Eddie Manheimer, a managing director in Morgan Stanley’s utility mergers and acquisitions group, expressed concerns about whether non-NextEra bidders would drop out due to the “very aggressive” timeframe.¹¹³

¹¹² Ms. Burch testified:

[W]e all knew that it was an aggressive timeline, but I think those of us who were more -- who lived in Jacksonville and, you know, worked for either JEA or the City were very well aware of what was going on with the news media at the time, and the public conversation that was happening.

Randall Barnes, the City’s treasurer and a member of JEA’s negotiation team, similarly testified, “[W]e didn’t live in a bubble. There was particular strife within the community through the media and through the JEA employees . . . and the City Council that was particularly concerning with us being able to fulfill our role of coming to an agreement[and] presenting that agreement to the JEA board”

¹¹³ Mr. Manheimer stated:

I think the bidders . . . will view that as a very aggressive timeline, given the holiday season as well. We think that NextEra will undoubtedly move forward and try to plow through with the timeline. We do see, call it, meaningful risk that some of the other parties think the timeline is too aggressive. And so even if you start with five, you may be down to two or three at that -- at that pace.

Stephen Amdur (Pillsbury) also warned, “[T]here may be participants who, while they can do it, choose not to do it because of a perception that it will be a lot of work over a short period of time for a deal that they do not feel like they are in sufficient position to be competitive for.” In spite of the advice of JEA’s consultants, JEA nevertheless proceeded with the accelerated timeframe.

At the conclusion of the December 3 strategy session, the JEA representatives selected American Water Works, Duke Energy, Emera, MIRA, NextEra and JEA PPP to a negotiation session in Atlanta, Georgia, at which JEA senior leadership would provide a “management presentation” regarding JEA’s current and future financial status. The next day, on December 4, 2019, Stephanie Burch and Todd Giardinelli, Morgan Stanley’s global head of mergers and acquisitions, made telephone calls to “weed out” non-NextEra respondents.¹¹⁴ Ms. Burch reasoned that “the ones [referring to ITN respondents] who are really far apart from the top [referring to NextEra’s proceeds], I think it’s important to let them know that they have a lot of ground to make up. . . .” Ms. Burch believed some of those respondents would “self-select out at some point.”

During the December 4, 2019 phone calls, Mr. Giardinelli told NextEra, “[O]ur belief is that you could be successful in the transaction.”¹¹⁵ Mr. Giardinelli gave the other respondents feedback with varying degrees of caution, coupled with limited input on how to improve their chances of success:

- Mr. Giardinelli told American Water Works, which only wanted to purchase JEA’s water system, “[W]e do believe that you, partnered with a strong electric bid, will make you competitive in this process and have the potential to be successful.” Mr. Giardinelli gave similar comments to Emera. However, Ms. Burch acknowledged the accelerated ITN timeframe would “make it difficult” for respondents to partner.
- Mr. Giardinelli also told JEA PPP, “[F]rom a value perspective, your bid from both the upfront proceeds as well as the ongoing proceeds to the City when we take them in totality is *substantially* below the top bid, and if you move forward

¹¹⁴ Ms. Burch told the Committee, “We were trying to figure out a way where we could weed out some of the bidders who, you know, maybe were kind of questioning whether they really needed to travel for the [Atlanta] meetings”

¹¹⁵ If the December 4, 2019 phone calls were intended to maximize the “value” of respondents’ proposals, then Mr. Giardinelli should have encouraged NextEra to improve the value of its proposal by, for example, not terminating 50% of JEA’s electric system workforce.

you need to keep that in mind in order to be successful in the transaction” (emphasis added). When a JEA PPP representative asked if Mr. Giardinelli could provide more information regarding “the gap between us and the top bids,” Mr. Giardinelli responded, “No. We’re not able to provide any more guidance other than that.”¹¹⁶

13. The December 9, 2019 City Council meeting.

On December 9, 2019, the City Council held a fact-finding session regarding “Factors Leading to a New Strategic Plan.” Melissa Dykes and Ryan Wannemacher gave presentations to the Council about JEA’s strategic planning and ITN processes.

Council Auditor Kyle Billy later issued a memorandum dated January 23, 2020 that comprehensively analyzed representations made by Mrs. Dykes and Mr. Wannemacher at the December 9 workshop.

Other representations by Mrs. Dykes and Mr. Wannemacher that Mr. Billy did not address warrant mention in this report:

- Melissa Dykes stated McKinsey “led and facilitated” the strategic planning process.

Comment: JEA did not retain McKinsey to perform objective strategic planning. JEA retained McKinsey to bolster the doom and gloom narrative.

- Ryan Wannemacher claimed that, since 2006, JEA’s electric sales per customer have fallen “every single year on a weather-adjusted basis” due to energy efficiency. Mrs. Dykes added that “when you put those things together, our customer growth just isn’t enough to offset” JEA’s declining electric sales.

Comment: Mrs. Dykes and Mr. Wannemacher misrepresented and omitted material information regarding JEA’s past and projected electric sales. (Report pages 32-37 above; **Appendix A** and **Appendix B**).

¹¹⁶ Non-blind auctions disclose the highest bid to all bidders, which gives low bidders the opportunity to exceed the highest bid. That process maximizes competition and helps the seller obtain the best purchase price. By withholding the amount of the highest bid from ITN bidders, JEA’s representatives decreased the competitiveness of the ITN to the detriment of JEA and the City, but to the benefit of NextEra.

- Mrs. Dykes stated that four non-ITN scenarios—Scenario 1 (status quo), Scenario 2 (traditional response), community ownership (a cooperative) and an initial public offering (“IPO”)—were developed “in parallel with the ITN work.”

Comment: The JEA Board had already rejected Scenario 1 and Scenario 2 after the senior leadership’s doom and gloom presentations at the Board meetings in May, June and July 2019. Moreover, July’s JEA Board Resolution 2019-07 authorized Mr. Zahn to explore Scenario 3 only through “a competitive solicitation process” like the ITN. JEA’s senior leadership and consultants were focused on selling JEA when developing and conducting the ITN. Senior leadership never provided substantial evidence that JEA could (or should) pursue the cooperative or IPO options. Jacksonville Civic Council’s utility expert, Gerry Hartman, gave a presentation to the City Council at its February 24, 2020 JEA workshop in which he described JEA conversion to a cooperative or IPO as “Not Really An Option.”¹¹⁷ Similarly, Paul McElroy described the cooperative and IPO options as “place holders to make the [strategic planning] list look longer [T]hey were not serious option scenarios, in my opinion.”

14. The Curry administration intervened again to preserve the accelerated ITN.

On December 4, 2019, one day after JEA’s negotiation team accelerated the ITN deadline from March 2020 to January 2020, Council Member Brenda Priestly Jackson filed Resolution 2019-894 “encouraging JEA Board to take formal action to rescind” the ITN.

City Council then held an emergency meeting on December 6, 2019 to discuss Resolution 2019-894, including whether the Council Auditor’s Office received notice of the ITN required by section 21.04(p), Jacksonville City Charter, before the JEA Board authorized the ITN on July 23, 2019.¹¹⁸ In that meeting, Jason Gabriel and Lawsikia Hodges (OGC) opined that the notice provision of section 21.04(p) did not apply to the ITN and only JEA could terminate the ITN.

¹¹⁷ Mr. Hartman also stated he believed an IPO “should be less competitive than JEA” in its municipal structure.

¹¹⁸ Kyle Billy and Jeff Rodda confirmed that the Council Auditor’s Office did not receive a complete Board package until the morning of the July 23, 2019 JEA Board meeting.

On December 10, 2019, the same day representatives of JEA and NextEra met for an ITN negotiation session in Atlanta, Georgia, City Council had a meeting at which it approved addressing Resolution 2019-894 in January 2020 on a one-cycle emergency basis. Numerous Council members discussed their concern with the ITN's lack of transparency.

On December 12, 2019, two days after JEA's Atlanta negotiation session with NextEra, Pillsbury completed a draft Asset Purchase and Sale Agreement (the "Purchase Agreement") between JEA (referred to as the "Seller") and the successful ITN respondent (referred to as the "Purchaser"). Randall Barnes, the City's treasurer and a member of JEA's negotiation team, testified the Purchase Agreement "came out of the NextEra bid" Other ITN respondents (like JEA PPP, which proposed a concession agreement that would allow the City to retain ownership of JEA) had to draft agreements from scratch, a task further complicated by the accelerated ITN process.

Also on December 12, 2019, the Times-Union published an article stating Aaron Zahn did not disclose an ownership interest in real estate he shared with Deno Hicks through Legacy Industries of Jax, LLC.

That same day, Mayor Curry wrote a letter to JEA Board members reiterating the doom and gloom narrative and proposing a process to privatize JEA. Mayor Curry wrote, "Turning a blind eye" to "marketplace disruption and technological innovation . . . *would* leave JEA on a course toward rapidly increasing rates, unconstrained debt, and more uncertainty for employees, customers, and taxpayers" (emphasis added). Mayor Curry asked JEA's Board to, among other things, (i) "tell JEA senior leaders to prepare specific legislative requests for Council related to each of the five scenarios that have been laid out;" (ii) "tell the senior leaders and their advisors to conclude the ITN by the end of January [2020]" (the same accelerated date chosen by the negotiation team during the purportedly confidential December 3 strategy session); and (iii) provide the "top tier of proposals" to City Council for review.¹¹⁹

Mayor Curry's proposal, if implemented, could have caused the JEA Board to consider—at the same January 28, 2020 Board meeting—*both* the proposals from successful ITN respondents and Resolution 2019-894 encouraging JEA's cancellation of the ITN.

¹¹⁹ Mayor Curry's letter was, at best, an extraordinary request to a supposedly "independent authority" under the City Charter.

In response to Mayor Curry’s letter, Lynne Rhode sent Lawsikia Hodges a December 16, 2019 email with a proposed JEA Board resolution¹²⁰ authorizing JEA’s “[m]anagement” to “execute . . . any and all documents necessary to implement” the ITN and to “utilize legal and other resources necessary to pursue” the ITN. The proposed resolution would have broadly authorized senior leadership to pursue the ITN *even if the JEA Board terminated Mr. Zahn’s employment*.

15. The December 16, 2019 inquiry of JEA by the City Council.

On December 5, 2019, Council Member Rory Diamond sent a letter to Mr. Zahn requesting JEA’s production of PUP documents by December 11, 2019 and requesting “persons with the most knowledge of the PUP” answer City Council questions at a meeting on December 16, 2019. The requested documents included “[a]ll documents related to the PUP Plan” and “[a]ll documents related to the development of the PUP Plan.”¹²¹

On December 16, Council Members Rory Diamond and Ronald Salem led the public meeting about the PUP. JEA’s senior leadership appeared at the meeting to answer the City Council’s questions about the PUP. At the conclusion of principal question-and-answer session, CM Rory Diamond said “recapitalization” was “baked into the cake” of the PUP “every step of the way.” He characterized the PUP as “legal theft,” and noted senior leadership’s failure to limit PUP payouts and failure to answer the Council Auditor’s Office’s questions. CM Diamond then asked Council President Scott Wilson to appoint a committee to investigate the PUP. CM Salem attributed the “overwhelming blame” to JEA executives for not adequately briefing the JEA Board, but stated the JEA Board shared “some blame” for “not stopping” the PUP at the July 23 Board meeting.

Appendix F contains a detailed description of JEA’s senior leadership’s misleading answers to the City Council’s questions at the December 16 meeting. As an example, at 01:15:35 in the meeting video, Mr. Zahn stated, “I wanted a majority of it [the PUP payout] to go to the front line. So, the ten dollars [the purchase price of each performance unit] actually was intended to allow for affordability for employees.” Council Member Ron Salem responded, “There will be documents that we’ll show you later that will indicate that this plan was set up for the higher paid people, and I’ll show that to you in a later

¹²⁰ The resolution title says, “A RESOLUTION ACKNOWLEDGING LETTER FROM OFFICE OF THE MAYOR.”

¹²¹ The Committee has determined JEA omitted material documents in what it provided to the Committee, including the May 20, 2019 Nixon Peabody memorandum concluding the long-term incentive plan violated Florida law.

presentation.” Mr. Zahn replied, “That’s absolutely incorrect. Well, there may be a document that says that, I can tell you right now, from the very beginning, this was a plan that was always intended for all 2,000 [JEA employees].”

Mr. Zahn conflated two separate issues: whether all JEA employees could participate in the PUP and the amount of performance units allocated to different JEA job classes. With regard to the latter issue, the evidence obtained by the Committee shows the long-term incentive plan was *always* intended to enrich senior leadership.

For example, metadata shows Ryan Wannemacher modified a spreadsheet with PUP calculations on July 10, 2019, the first day of the senior leadership’s Club Continental meeting to develop a plan to sell JEA through the ITN. The spreadsheet proposed JEA executives each receive 1,079 performance units worth a total of \$107,873.20 (without a JEA sale), while JEA’s collective bargaining units would each receive 8 performance units worth a total of \$737.16 (without a JEA sale):

| Group | Average Salary | # Units | Grant Value |
|-----------|----------------|---------|--------------|
| Executive | \$269,683 | 1079 | \$107,873.20 |
| PG K | \$158,488 | 80 | \$7,924.40 |
| PG J | \$139,378 | 70 | \$6,968.90 |
| PG I | \$111,129 | 34 | \$3,333.87 |
| PG H | \$95,378 | 29 | \$2,861.34 |
| PG G | \$81,951 | 25 | \$2,458.53 |
| PG F | \$68,728 | 21 | \$2,061.84 |
| PG E | \$54,971 | 17 | \$1,649.13 |
| CBUs | \$73,716 | 8 | \$737.16 |

Therefore, JEA’s 15 executives would receive a total of 16,185 performance units, while JEA’s 1,562 collective bargaining units would receive a total of 12,496 performance units (3,689 performance units less than JEA’s 15 executives).

16. JEA rescinded the PUP and fired Aaron Zahn.

The JEA Board rescinded the PUP at its December 17, 2019 meeting. Board Members April Green and Kelly Flanagan stated they had believed, based on the Willis Towers materials included in the July Board package, the PUP would have only cost \$3.4 million annually. Ms. Flanagan also stated, “I suspect the Board at that time did not have

a full understanding of how the [performance unit redemption price] calculation would work with recapitalization” Mrs. Green also said she had believed “outside counsel, outside auditors, as well as OGC” had approved the PUP prior to the July 23, 2019 Board meeting. They had not.

The JEA Board then discussed terminating Aaron Zahn as JEA’s CEO. Mrs. Green identified reasons to terminate Mr. Zahn, including misrepresenting that OGC performed a complete review of the PUP and failing to disclose secondary employment.¹²² The Board voted to place Mr. Zahn on administrative leave, permitting OGC to investigate whether the Board should terminate Mr. Zahn with cause. The JEA Board named Melissa Dykes JEA’s interim CEO.

Lynne Rhode told the JEA Board the ITN would proceed through the negotiation phase at the negotiation team’s discretion. Board Members Dane Grey and April Green expressed concern about the lack of transparency in the ITN process, including the purported Cone of Silence.

17. The JEA Board cancelled the ITN and fired senior leadership.

On December 17, 2019, only one day after the contentious City Council grilling regarding the PUP, the JEA Board discussed terminating Mr. Zahn at a meeting. That same day, JEA sent ITN respondents a request for an updated revised reply. The request required respondents to provide their proposed revisions to JEA’s draft Purchase Agreement by January 8, 2020. The request also authorized respondents to submit an “Alternative Structure Term Sheet” by January 6, 2020. JEA would then provide “feedback” regarding the non-sale alternatives “on or about January 10, 2020.” If approved by JEA, the respondent could then submit “definitive documentation” for its non-sale transaction by January 17, 2020, just seven days after JEA’s targeted date for providing feedback.

As a practical matter, it could have been prohibitively difficult for respondents proposing non-sale transactions to prepare definitive transactional documents within seven

¹²² Mr. Zahn and JEA consultant Deno Hicks (The Southern Group) co-owned Legacy Industries of Jax, LLC (“Legacy”). Legacy purchased real estate on April 24, 2018, approximately one week after Mr. Zahn became JEA’s interim CEO. Legacy subsequently advertised the real estate for sale. Section 21.07(j), Jacksonville City Charter, prohibited Mr. Zahn from having “outside employment or business.” Walette Stanford, JEA’s ethics officer, stated at the JEA Board’s December 17, 2019 meeting that Mr. Zahn should have filed a secondary employment disclosure in connection with Legacy’s real estate investment. Ms. Stanford also stated her boss, Ted Hobson, told her to wait before investigating Mr. Zahn’s secondary employment.

days.¹²³ In any event, the request also required each respondent to disclose, by January 15, 2020, its gross proceeds “to be paid in cash at closing.”

On Christmas Eve, December 24, 2019, the JEA Board held an emergency meeting to discuss the ITN. Melissa Dykes described the ITN as “a very divisive issue for the community.” JEA Board Member Dane Grey also described the ITN as “government waste.” After public comments from City Council Members discussing the lack of public trust in JEA, the JEA Board voted unanimously in favor of Resolution 2019-18 to “cancel” the ITN and “reject” all of the respondents’ replies.

JEA retained, directly or indirectly, at least 24 consultants in connection with the ITN process who have charged JEA to date over \$12 million for their services.¹²⁴

On December 27, 2019, Melissa Dykes sent Ryan Wannemacher by email a notice of the termination of his employment. Mr. Wannemacher waived his claim to benefits under his employment, retention and separation agreements with JEA.

On January 8, 2020, David Wathen (Willis Towers) sent Melissa Dykes a letter stating (i) the long-term incentive presentation to JEA’s Compensation Committee on June 18, 2019 “was not a fully developed long-term incentive plan design but a strawman design that required further discussion and refinement, a discussion that Willis Towers Watson never had with the Compensation Committee and/or full Board as was initially planned;” and (ii) “the final plan design [the PUP] is one Willis Towers Watson *never would have proposed nor endorsed . . .*” (emphasis added).

¹²³ For reference, JEA’s attorneys had a “working draft” of the template JEA Purchase Agreement by November 14, 2019, and a final draft by December 12, 2019. JEA’s attorneys did not finish drafting agreements supporting the Purchase Agreement, including a System Coordination Agreement and Distribution Agreement, until December 22, 2019. Therefore, it took JEA’s own attorneys, with access to all of JEA’s information, more than a month to prepare final drafts of the “definitive documentation” for a JEA sale.

¹²⁴ JEA’s attorneys, Foley & Lardner and Pillsbury, entered into subcontracts with several indirect JEA consultants, including McKinsey.

On January 20, 2020, Council President Wilson appointed the Special Investigatory Committee on JEA Matters (the “Committee”). President Wilson charged the Committee to:

Investigate JEA matters related to the recent pursuit of the strategic option to potentially privatize JEA. Determine matters that, through the powers invested in this legislative body, could be prevented in the future through legislative action.

This review should include JEA’s review of the five scenarios for the future of JEA, including the Invitations to Negotiate; JEA’s decision-making in pursuit of privatization; and the proposed employee incentive plan known as the Performance Unit Plan.

At its January 28, 2020 meeting, the JEA Board voted unanimously to terminate Mr. Zahn’s employment for cause. JEA subsequently terminated the employment of the remaining senior leadership members involved in the ITN and PUP.¹²⁵ JEA has declined paying senior leadership the consulting fees and retention payments authorized at the JEA Board meeting on July 23, 2019.

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¹²⁵ Sherry Hall resigned from JEA on December 23, 2019. Ted Hobson retired from JEA in February 2020. JEA subsequently terminated the employment of Melissa Dykes, Herschel Vinyard, Caren Anders, Deryle Calhoun, Shawn Eads, Jon Kendrick, John McCarthy, Steve McInall, Paul Steinbrecher and Kerri Stewart.

VI. Conclusion.

The Committee's investigation shows the need to enhance and better enforce the Jacksonville Ethics Code, Florida's Public Records Act and Florida's Sunshine Law, which help ensure employees of the City and its independent authorities honor their fiduciary duties of trust, honesty and commercial reasonableness.

The remaining sections of this report identify investigation limitations encountered by the Committee and the Committee's legislative recommendations.

[Report continues on next page]

VII. Investigative limitations.

The principal sources of information for the Committee's investigation were witness interviews and documents provided by those witnesses and by JEA.¹²⁶

The Committee's ability to conduct an even more thorough investigation was limited in part by the following:

1. Criminal investigations.

The events described in this report were initially considered by Florida's State Attorney for the Fourth Judicial Circuit, and later by the United States Department of Justice. In April 2020, JEA received a United States Grand Jury Subpoena requiring JEA to produce to the FBI many of the same documents and information the Committee previously requested from JEA.

The Committee's investigation has proceeded concurrently with the Department of Justice's investigation, but the Committee's investigation is of legislative matters, not criminal matters. Several material witnesses, including Melissa Dykes and Lynne Rhode, declined the Committee's request for an interview due to the concurrent criminal investigation. For the same reasons, the Committee did not interview several other material witnesses, including Aaron Zahn and Ryan Wannemacher.

2. JEA's delayed and incomplete provision of information.

The Committee's ability to timely, fully and more efficiently investigate its charge was further encumbered by the following:

A. JEA did not fully disclose all of the places and locations documents and information were stored.¹²⁷

¹²⁶ The documents, interview transcripts and a chronology describing the material events related to the investigation are available at www.JEAInvestigation.com.

¹²⁷ For example, JEA did not disclose some of its ITN representatives used JEA-provided tablets during negotiations. The Committee never recovered information from those devices. Moreover, JEA did not initially disclose transcripts from the December 3 and 4, 2019 strategy sessions at which JEA representatives accelerated the ITN. JEA also did not provide complete answers to the Committee's second set of interrogatories, which sought information about JEA senior leadership's off-site meetings and other material issues.

B. JEA treated the Committee's document requests as public records requests, which delayed the Committee's receipt of information. When JEA's outside counsel, Hill Ward and Henderson, initially suggested there may be approximately 1.3 million documents responsive to search terms derived from the Committee's document requests, OGC estimated its review of those documents for public record exemptions could take weeks, if not months, to complete. In order to prevent delay in the Committee's receipt of requested information, the Committee designed and implemented a protocol that balanced the Committee's desire to expedite document review with JEA's desire to protect documents exempt from public records requests.

C. In May 2020, JEA provided the Committee approximately 366,000 documents using search terms derived from the Committee's document requests. In July 2020, after JEA responded to the grand jury subpoena, JEA provided another approximately 144,000 documents that JEA had not previously given to the Committee. Some of those additional documents contained previously unknown or previously unsubstantiated details regarding the Committee's investigation.

D. Former JEA senior leadership members fostered a culture of non-compliance—or feigned compliance—with the Committee's document requests. Rather than allowing the Committee and its Special Counsel to speak directly with JEA custodians to coordinate the preservation and production of documents and information responsive to the Committee's requests, JEA's former senior leadership hired outside counsel, which delayed the Committee's receipt of documents and information from JEA. JEA senior leadership members also (i) initially excluded JEA's Records Manager from JEA's efforts to respond to the Committee's requests and (ii) later included JEA's Records Manager in JEA's document production process but ignored the Records Manager's concerns about the lack of completeness of the information provided the Committee.

E. JEA did not request or obtain documents from its consultants and other third parties with relevant information. The Committee's concern is exacerbated by evidence suggesting that JEA intentionally delegated or outsourced responsibilities to consultants and third parties to avoid discovery and public scrutiny.

F. JEA does not have a formal policy for preservation and collection of information from employees' mobile phones, tablets and other electronic devices. JEA also did not preserve and collect information from some electronic devices,¹²⁸ as required by the January 2020 preservation letter the Council sent to JEA.¹²⁹ Contrary to the Committee's request, JEA also relied upon custodians to self-collect and self-select information to produce to the Committee. Some custodians were incentivized to destroy or conceal information related to this investigation or criminal charges.

Many of these issues resolved or improved materially when Paul McElroy became JEA's interim CEO and terminated the employment of JEA's former senior leadership. However, the Committee could not remedy some issues, including the interim loss or destruction of evidence.

3. Other limitations.

A. Some individuals with knowledge material to this investigation, including JEA Board Member Camille Lee-Johnson,¹³⁰ former The Southern Group consultant Deno Hicks,¹³¹ Holland & Knight lawyer Allen Maines¹³²

¹²⁸ For example, Shawn Eads, JEA's chief technology officer, testified he accidentally deleted all information on Melissa Dykes's tablet by repeatedly entering the incorrect password. Similarly, Aaron Zahn testified he did not preserve text messages on his cell phone, which were automatically deleted after 30 days.

¹²⁹ On January 24, 2020, Council Member Rory Diamond, Jason Gabriel and Sean Granat issued a memorandum instructing JEA's senior leadership to "immediately cease the destruction, purging or removal of any and all records, whatsoever, in the possession, custody or control of JEA, JEA employees, and any third-party agents, such as vendors and consultants. . . . Please contact all third-party agents and inform them or remind them of their obligations to preserve data and records."

¹³⁰ Former JEA Board Member Camille Lee-Johnson did not respond to the Committee's requests for a voluntary statement.

¹³¹ On October 13, 2020, Deno Hicks, through his attorney, Matthew Kachergus, declined the Committee's request for an interview.

¹³² Mr. Maines declined an interview on terms agreeable to the Committee.

and former FPL and JEA advisor Tim Baker,¹³³ did not fully cooperate with the Committee's requests for information.¹³⁴

B. Council Members Aaron Bowman and LeAnna Cumber did not provide the Committee with disclosures of their interactions with individuals involved in the ITN process, as requested by the Committee chair. Seventeen other Council Members did provide those disclosures, facilitating the investigation.

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¹³³ Mr. Baker declined to provide to the Committee documents and information regarding his relationships with FPL.

¹³⁴ Section 602.1205(a), Jacksonville Code of Ordinances, states, "All officers, employees, and independent contractors of the City or an independent agency, as a condition of employment, retention, and receipt of City funds, shall agree to cooperate truthfully, honestly, and completely with official government investigations"

VIII. Legislative recommendations.

Beginning in November 2019 and continuing into 2020, Council Member Michael Boylan led a series of fact-finding workshops related to the future of JEA. Following those workshops, CM Boylan introduced ordinance 2020-419 co-sponsored by members of the Committee and other Council Members, to amend portions of Article 21 of the Charter of the City of Jacksonville to address issues regarding the structure, management and any proposed sale or reorganization of JEA.

Most significantly, the Committee endorses Council Member Boylan's Ordinance 2020-419.¹³⁵

The following are additional legislative recommendations resulting from the Committee's investigation:

1. Procurement.

The City Council should consider legislation to address these procurement issues:

- A. requiring all or material City procurement documents, including solicitations, notices of intent to award and procurement contracts, be posted on a publicly accessible website;
- B. prohibiting or limiting the outsourcing of procurement responsibilities to third parties;¹³⁶
- C. clarifying or limiting section 126.313(a), Jacksonville Code of Ordinances;¹³⁷

¹³⁵ The Committee understands that Council Members Ferraro and Salem are preparing additional legislation regarding the procurement process and executive compensation issues, respectively, but the Committee has not considered and therefore makes no recommendation regarding those additional legislative initiatives.

¹³⁶ When asked in his interview by the Committee why PFM and not the City received bidders' responses to the City's December 2017 privatization RFP, Alan Howard testified, "I would speculate there was an effort to shield the responses from . . . Florida sunshine laws and open reference laws."

¹³⁷ In his February 21, 2018 email, Council Auditor Kyle Billy said Greg Pease, the chief of the City's Procurement Division, told Mr. Billy that section 126.313, Jacksonville Code of Ordinances, allowed the City Finance Department to issue the RFP without going through the City's Procurement Division. That process contributed to the concealment of the RFP from the City Council and the Office of the Council Auditor. In any event, Section 126.313(a) states, "Any procurement under this Section *shall* include as much competition *as practically possible* under the

D. prohibiting or limiting any part of the Consolidated Government from using (“piggybacking” off) another contract or procurement process to avoid initiation of a separate procurement procedure (JEA Procurement Code Article 3-115 and 3-116);¹³⁸

E. clarifying prohibited *ex parte* communications to avoid future arguments that the City Council cannot have discussions about or legislate regarding procurement matters; and

F. prohibiting *ex parte* communications among (i) parts of the Consolidated Government participating in a procurement and (ii) procurement respondents and their affiliates, including their subsidiaries and parents.¹³⁹

2. Investigative authority.

The City Council should consider legislation to address these issues regarding the Council’s authority to investigate legislative issues:

A. Future Council investigatory committees and their independent counsel should have, as does the Office of Inspector General, unrestricted access to the records of the consolidated government, including records regarding monies paid to and services rendered by contractors and subcontractors to any part of the consolidated government.¹⁴⁰

circumstances, and *shall* include procedures necessary to ensure compliance with the requirement to procure the *highest* quality in financial services at the *greatest* economic value to the City” (emphasis added). The RFP—which was not published for all potential respondents to see and did not receive input from the City Council, the Council Auditor or the public—violated those requirements.

¹³⁸ Evidence obtained by the Committee shows JEA attempted to piggyback on existing procurement processes to avoid transparency on at least two material occasions: (i) the City’s December 2017 privatization RFP, which leadership from the City and JEA used to explore privatizing JEA, and (ii) JEA’s contract with ADP, through which JEA’s senior leadership intended to outsource senior employee payroll to conceal PUP payout information. Michael Weinstein testified that “in government, you can always piggyback on any government contract anywhere. . . .”

¹³⁹ The Committee found evidence representatives of FPL, an affiliate of the ITN respondent NextEra, communicated with JEA representatives during the purported Cone of Silence.

¹⁴⁰ Section 602.303(d), Jacksonville Code of Ordinances, states the Office of Inspector General shall “[r]eceive full and unrestricted access to the records of any and all officials and employees, contractors, including their subcontractors and lower tier subcontractors, of any office, agency, department, or part of the entire consolidated government and other parties doing business with any office, agency, department, or part of the entire consolidated

B. Future Council investigatory committees and their independent counsel should function wholly independent of the Office of General Counsel.

C. The Council should clarify the process by which a committee may subpoena documents and testimony from witnesses regarding the subject matter of any legislative investigation, including the penalties for noncompliance.

D. In January 2020, following a report by the Office of Inspector General, City Council President Scott Wilson directed the City to create a policy for retaining text messages sent to City Council members. The Council should expand the scope of President Wilson's directive and implement a City-wide public records policy that addresses preservation, collection and production of public records on personal mobile devices for all City employees, including JEA. The Council should also consider imposing fines or other penalties in excess of the \$500 fine provided by Florida's Public Records Act, to discourage the non-compliance the Committee discovered in its investigation.

3. Compensation programs.

The City Council should consider legislation to address these compensation issues:

A. Council approval should be required for any retention program or similar compensation initiative.¹⁴¹

B. Unless approved by the Council, compensation adjustments for any part of the Consolidated Government should be approved by a reputable

government or receiving funds from any office, agency, department, or part of the entire consolidated government[.]”

¹⁴¹ Such programs may affect net proceeds obtained by the City from any JEA privatization. Consequently, the Council should have the opportunity to consider whether the agreements appropriately balance competing public interests (e.g., maximizing net sale proceeds and protecting employees of Jacksonville's consolidated government). As an example, Kyle Billy estimated in a December 3, 2019 memorandum that the retention program authorized at the July 2019 JEA Board meeting would have caused the senior leadership to receive, if terminated, more than \$18 million, excluding PUP payments.

compensation expert and should not exceed the compensation programs of similarly situated municipal authorities.¹⁴²

C. The Boards of independent authorities should be informed of the expected cost and value of proposed compensation adjustments or programs.

4. Ethics and transparency.

The City Council should consider legislation to enhance the Jacksonville Code of Ethics and improve transparency:

A. Presentations, resolutions and any other information offered to the Boards of the City's independent authorities for consideration should be posted on the authority's website and made available to the public no less than four days before the governing body takes action on that information.¹⁴³

B. Off-site meetings involving executives, Board members or other representatives of any part of the Consolidated Government regarding official business should be prohibited or restricted to avoid unnecessary expense, facilitate compliance with public records and sunshine laws, and avoid the appearance of impropriety.¹⁴⁴

¹⁴² Revised JEA Board Policy 2.7, which JEA implemented as part of Mr. Zahn's Total Market Compensation Strategy used to justify the PUP, now requires JEA's CEO to promote policies to achieve market (50th percentile) total compensation in JEA's "industry and geographic area." (The revised policy defines "total compensation" to include "Base Salary, Short term Incentives and Long Term Incentives.") JEA's senior leadership used revised JEA Board Policy 2.7 to implement total compensation adjustments based on data from *private* utilities, which typically have greater total compensation for executives than non-profit municipal utilities like JEA.

¹⁴³ JEA's senior leadership withheld the complete package for the July 23, 2019 Board meeting until *the day of* the meeting, which prevented the JEA Board and the public from adequately assessing JEA's privatization initiatives, the PUP and their implications.

¹⁴⁴ As an example, Tim Baker gave a presentation regarding polling and regulatory considerations at the Club Continental meeting on July 10, 2019. At that time, Mr. Baker's company, BCSP, LLC, served as a consultant to FPL, whose parent company, NextEra, was a bidder in JEA's ITN. Mr. Baker's participation in JEA's strategic planning process for the ITN created, at the very least, an appearance of impropriety that may have led to legal challenges to the ITN's outcome. Likewise, JEA Board Member Alan Howard met with Pillsbury attorneys at the Club Continental meeting on July 10, 2019. The next day, Mr. Howard sent Stephen Amdur, the leader of Pillsbury's mergers and acquisitions private equity team, an email offering to work on the ITN at a reduced hourly rate in exchange for a success fee (a fee paid upon the completion of a successful merger or acquisition). Mr. Howard subsequently voted in favor of Scenario 3 (privatization), and Mr. Howard's law firm thereafter served as a paid consultant for JEA in the ITN process.

C. The City Council should prohibit or substantially limit contracts with retroactive effective dates.¹⁴⁵

D. To protect OGC from the appearance of serving conflicting interests, OGC should have prescribed processes for the retention of independent counsel and the termination or limitation of OGC representation when conflicts exist.¹⁴⁶

E. To ensure that decisions are made in the best interests of the City, rather than individuals, City employees should, absent approval by the City Council and Mayor, be prohibited from receiving any financial benefit related to privatization, any procurement process or any other transaction in which employees have direct involvement or influence.¹⁴⁷

F. To ensure compliance with public records laws, including Florida Statute Section 119.0701, contracts and subcontracts for the benefit of the Consolidated Government should (i) require contractors and subcontractors to preserve public records and (ii) require contractors and subcontractors to waive or substantially limit their right to withhold documents and information as confidential or trade secret.¹⁴⁸

¹⁴⁵ JEA's June 28, 2019 engagement letter with Pillsbury had a retroactive effective day of January 1, 2019. Similarly, Aaron Zahn's employment agreement had a retroactive effective date of November 27, 2018. Such arrangements facilitate a lack of accountability and transparency, and a circumvention of existing laws. For example, section 215.425(1), Florida Statutes, states, "No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made."

¹⁴⁶ On December 20, 2017, the same day PFM issued the City's December 2017 privatization RFP, one of the RFP recipients, Mark Weinberg of Citibank, forwarded the RFP by email to Melissa Dykes, Joe Orfano and Michael Mace. Mr. Weinberg stated, "Apparently the primary reason for this is the potential privatization of JEA that a few members of the JEA board asked for last month." Mrs. Dykes forwarded Mr. Weinberg's email, including the RFP, to Jody Brooks who, in turn, forwarded the email and RFP to Jason Gabriel on December 21, 2017. Regardless, City Council and the Council Auditor's Office did not learn of the RFP until February 2018.

¹⁴⁷ Although Section 602.1204(b) of the Jacksonville Ethics Code already prohibits and penalizes any public officer or employee who breaches the public trust for private gain, JEA's senior leadership appear to have attempted to circumvent that ordinance by, among other things, offering to give all JEA employees similar (but lesser) PUP benefits.

¹⁴⁸ JEA's request for proposals typically state the successful bidder must maintain and produce public records. However, the contracts with JEA's strategic planning and ITN consultants lacked that requirement.

G. Contractors and subcontractors should provide reasonably detailed descriptions for the services rendered with each billing statement or invoice submitted for payment.¹⁴⁹

H. To enhance transparency, all consultants providing services in connection with any privatization or recapitalization of municipal assets should contract directly with the applicable agency unless the governing body authorizes otherwise at a public meeting.¹⁵⁰

I. Any break-up fee, success fee or other fee contingent upon the privatization of a municipal asset should be prohibited unless approved by the City Council and any applicable independent authority's Board.¹⁵¹

J. Funds should not be used for privatization activity if the funds were not explicitly budgeted for privatization activity.

[Appendix A begins on next page]

¹⁴⁹ For example, McKinsey submitted a September 30, 2019 invoice to JEA for \$100,000 with a terse explanation: "support to develop Strategic Plan for JEA."

¹⁵⁰ According to OGC, JEA's outside counsel, Foley & Lardner and Pillsbury, subcontracted with several consultants without OGC approval.

¹⁵¹ J.P. Morgan and Morgan Stanley would receive a success fee based on the net proceeds realized by JEA's privatization. Kyle Billy estimated in a December 10, 2019 memorandum that J.P. Morgan and Morgan Stanley would each received a success fee of \$13.25 million if JEA's privatization resulted in net proceeds of \$5.5 billion.

APPENDIX A

JEA's Scenario 1 (status quo) presentation.

JEA's Scenario 1 presentation deemphasized or omitted material information with respect to JEA's past and future electric sales. The Scenario 1 presentation claimed JEA lost \$1.4 billion in free cash flow from 2007 through 2017, with more than 90% of the losses attributable to the Energy Policy Act of 2005 increasing energy efficient technology:

2007-to-2017: Loss Of \$1.4 Billion in Free Cash Flow



This claim was misleading, as shown by the following information:¹⁵²

- The presentation omitted actual electric sales during FY2018, which JEA's February 2019 rating agency presentations stated were 2.6% higher than JEA's FY2017 electric sales.
- JEA's total electric sales increased in 4 of the 5 years prior to FY2019.

¹⁵² The law firm Nelson Mullins Riley & Scarborough LLP ("Nelson Mullins") prepared reports dated December 26, 2019, January 23, 2020 and March 11, 2020, which contain additional analyses of the representations made to the JEA Board at its meetings in May, June and July 2019. Additionally, the Council Auditor published a January 23, 2020 memorandum analyzing claims made by senior leadership members regarding JEA's financial status.

- JEA’s independent auditor, Ernst & Young, found decommissioning St. Johns River Power Park (“SJRP”) in January 2018 caused JEA to lose revenue totaling \$97 million in FY2017 and \$29 million in FY2018.¹⁵³ In an October 2020 interview, Michael Brost principally attributed the closure of SJRP to cost-savings, not energy efficiency or distributed generation. Paul McElroy echoed those sentiments in his statements to the Committee.
- JEA sold electricity to Florida Public Utilities (“FPU”) pursuant to a January 1996 contract. The contract terminated in December 2017, causing JEA to lose electric “sales for resale” by FPU. Council Auditor Kyle Billy wrote in a January 2020 memorandum that JEA’s electric sales for resale decreased from 522,134 MWh in 2006 to 0 MWh in 2019 “primarily” because of the expiration of the FPU contract.
- Paul McElroy told the Committee that he believes “somebody made up” the claim that “[e]nergy efficiency accounts for >90% of reduction” in JEA’s electric sales between 2007 and 2017.

The Scenario 1 presentation also contained a slide assessing the impact of technology disruption, including energy efficiency, on JEA’s business:

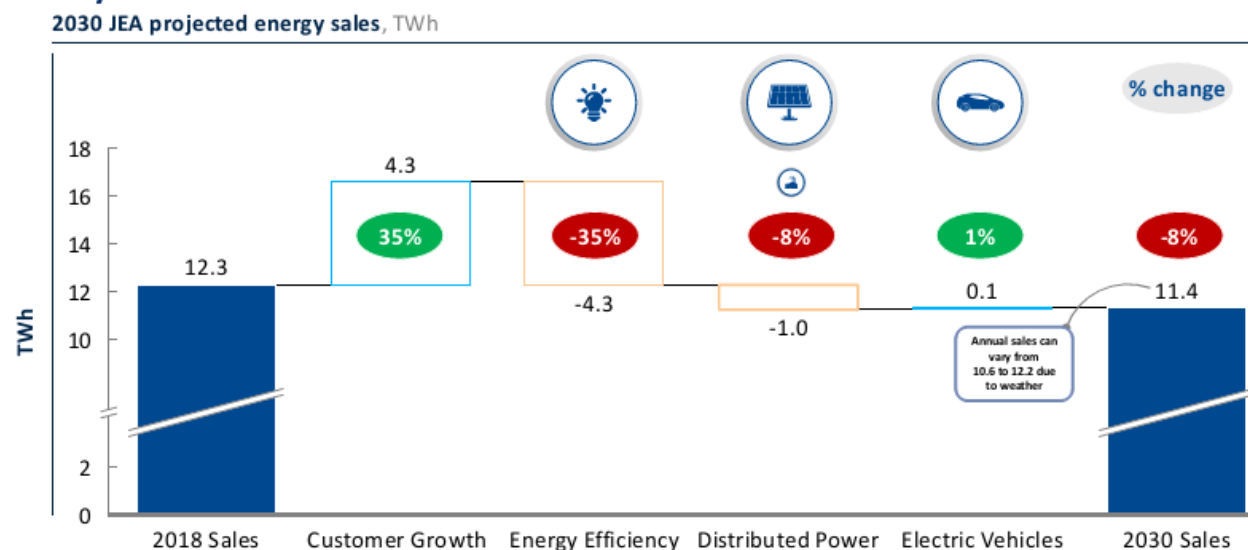
| | 2006 Actual | 2018 Actual | Change | Change % |
|--------------------------|-------------|-------------|-------------|----------|
| Rates (\$ yield per MWh) | 36 | 62 | 26 | 71% |
| Unit Sales (MWh) | 13,440,900 | 12,364,340 | (1,076,560) | (8)% |
| # of Energy Customers | 402,142 | 466,411 | 64,269 | 16% |

Paul McElroy told the Committee the “Rates (\$ yield per MWh)” statistic in the top row was “contrived” and “extraordinarily misleading” because, among other things, “it ignores the fact that 15 years prior to that there was no price adjustment” to account for the debt JEA accrued.

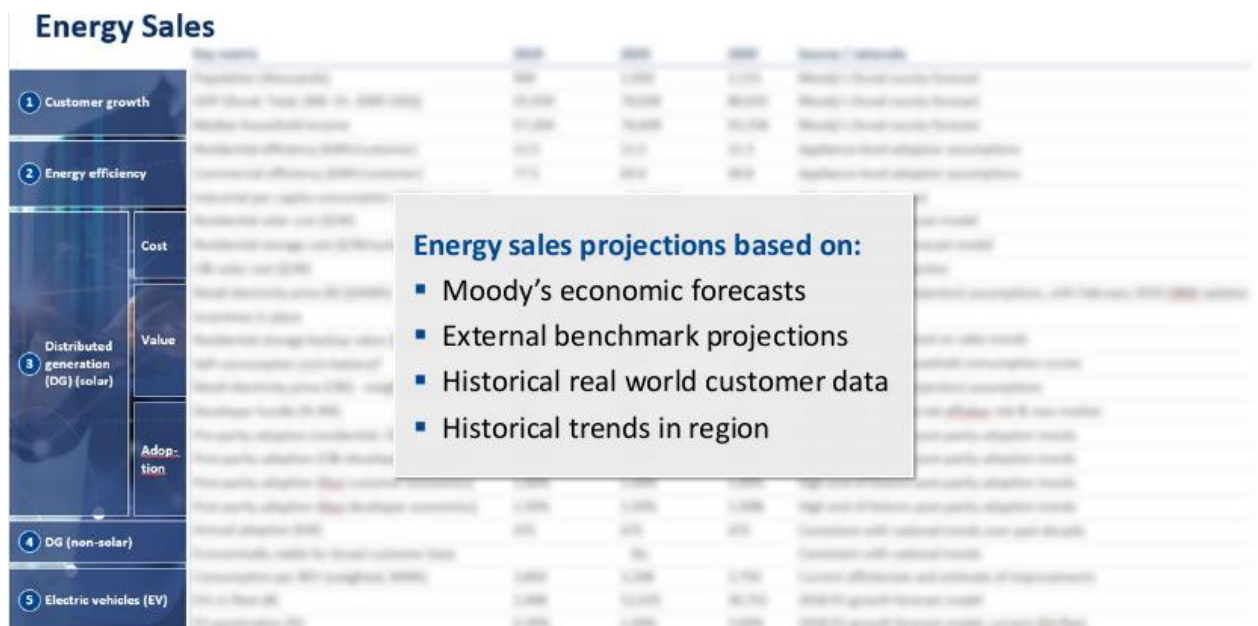
¹⁵³ Paul McElroy testified JEA shut down SJRP after determining JEA would achieve approximately \$450 million in savings. Mr. McElroy noted SJRP, which used coal as a fuel source, became more expensive than alternative energy sources, including electricity produced from natural gas.

The Scenario 1 presentation also projected energy efficiency and distributed generation “may likely”¹⁵⁴ cause JEA’s electric sales to decrease 8% by 2030, more than offsetting the effects of customer growth and electric vehicle use in JEA’s service territory:

By 2030 JEA’s Customers May Likely Increase 16% and Energy Sales May Likely Fall by 8%



However, the Scenario 1 presentation blurred out the projection’s assumptions:



¹⁵⁴ Early versions of the presentation slide, including a February 14, 2019 version, claimed JEA’s electric sales “will” decrease 8% by 2030.

A non-blurred precursor to that chart reveals the doom and gloom sales projection relied on “assumptions” and “high end” trends that may not reflect JEA’s service territory:

| | | Key metric | 2019 | 2025 | 2030 | Source / rationale |
|----------|---|--|---|--------------|--|---|
| 1 | Customer growth | Population (thousands) | 969 | 1,050 | 1,115 | Moody's Duval county forecast |
| | | GDP (Duval, Total, (Mil. Ch. 2009 USD)) | 55,930 | 70,030 | 80,635 | Moody's Duval county forecast |
| | | Median household income | 57,204 | 76,609 | 93,258 | Moody's Duval county forecast |
| 2 | Energy efficiency | Residential efficiency (kWh/customer) | 12.5 | 11.5 | 11.3 | Appliance-level adoption assumptions |
| | | Commercial efficiency (kWh/customer) | 77.5 | 69.6 | 68.8 | Appliance-level adoption assumptions |
| | | Industrial per-capita consumption (kWh/customer) | Constant | | | JEA customer forecast |
| | Cost | Residential solar cost (\$/W) | \$2.65 | \$1.41 | \$1.17 | 2018 solar cost forecast model |
| | | Residential storage cost (\$/W/system) | \$0.42 | \$0.23 | \$0.19 | 2018 storage cost forecast model |
| | | C&I solar cost (\$/W) | \$1.58 | \$1.12 | \$0.91 | GTM solar cost projection |
| 3 | Distributed generation (DG) (solar) | Retail electricity price (R) (\$/kWh) | 0.103 | 0.110 (.108) | 0.126 (.118) | Baseline (current projection) assumptions |
| | | Incentives in place | ITC through 2022, battery rebate through 2030 | | | Current regulation |
| | | Residential storage backup value (\$/year) | \$200 | \$200 | \$200 | Internal estimate based on sales trends |
| | Value | Self-consumption (w/o battery) ¹ | 65% | 65% | 65% | Solar output and household consumption curves |
| | | Retail electricity price (C&I) - weighted solar (\$/kWh) | \$0.07 (new) | \$0.08 (new) | \$0.09 (new) | Baseline (current projection) assumptions |
| | | Developer hurdle (% IRR) | 9% | 9% | 9% | Appetite for commercial offtaker risk & new market |
| | | Pre-parity adoption (residential, C&I) | 0.10% (new) | 0.10% (new) | 0.10% (new) | High end of historic post-parity adoption trends |
| | | Post-parity adoption (C&I developer economics) | 1.25% (new) | 1.25% (new) | 1.25% (new) | High end of historic post-parity adoption trends |
| | | Post-parity adoption (Resi customer economics) | 1.00% | 1.00% | 1.00% | High end of historic post-parity adoption trends |
| Adoption | Post-parity adoption (Resi developer economics) | 1.50% | 1.50% | 1.50% | High end of historic post-parity adoption trends | |
| | Annual adoption (kW) | 475 | 475 | 475 | Consistent with national trends over past decade | |
| | Economically viable for broad customer base | No | | | Consistent with national trends | |
| 5 | Electric vehicles (EV) | Consumption per BEV (weighted, MWh) | 3,850 | 3,208 | 2,750 | Current efficiencies and estimate of improvements |
| | | EVs in fleet (#) | 1,968 | 12,635 | 30,751 | 2018 EV growth forecast model |
| | | EV penetration (%) | 0.30% | 1.60% | 3.60% | 2018 EV growth forecast model, current JEA fleet |

(Yellow highlights added for clarity).

Moreover, the blurred slide in the May 2019 Board package omits a disclaimer made in its previous draft: “Actual results are likely to differ materially from this base case [projection].” The Committee found other evidence undermining the Scenario 1 projections:

- Paul McElroy told the Committee in December 2020 he believes the Scenario 1 presentation “substantially overestimated the negatives” of energy efficiency and distributed generation on JEA’s future electric sales. He also described the Scenario 1 projections as “crazy.” Mr. McElroy noted several “aggressive,” “overstated” or “worst case” assumptions driving the Scenario 1 conclusions. For example, Mr. McElroy stated grid parity¹⁵⁵ for solar power may never occur in JEA’s service territory because economies of scale and net metering could allow JEA to provide customers with cheaper solar energy than customers could

¹⁵⁵ “Grid parity” refers to a hypothetical scenario where alternative energy from solar panels and other sources becomes as cheap as electricity from JEA’s grid.

produce themselves. Mr. McElroy projected JEA's electric sales would increase approximately 1% per year for the first half of the next decade, and then sales would grow a couple of percentage points per year as a result of climate change and other factors.

- JEA's 2018, 2019 and 2020 ten-year site plans projected JEA's electric sales to increase over the next ten years by 5.2%, 5.1% and 6.2%, respectively.¹⁵⁶
- Michael Brost, the former vice president and general manager of JEA's electric system, described Scenario 1 as "start[ing] with a fairly radical, aggressive, pessimistic assumption of contraction for the [JEA's] business due to . . . energy efficiency and rooftop solar[.]" which "really pushed the envelope *above and beyond what anybody else in the industry has projected . . .*" (emphasis added).
- Steve McInall, JEA's former vice president of energy and water planning, testified the doom and gloom forecast adopted "extreme levels of solar" and "more aggressive" load defection than appropriate.
- The March 21, 2019 draft integrated resource plan ("IRP") presentation, consistent with JEA's final IRP report in April 2020, projected in its "baseline" (status quo) scenario that JEA's total net energy requirements would have a 0.87% average annual growth rate. Paul McElroy told the Committee the IRP results were "completely inconsistent with the doom-and-gloom projections" given to the JEA Board.
- The Florida Municipal Power Association ("FMPA") published an August 22, 2019 report, which concluded "JEA sales to its native territory have grown at 1.3% per year since 2013" and "certain pessimistic assumptions about utility demise can be overcome with sound management and critical policy adjustments[.]"
- On September 19, 2019, FMPA published an updated report finding (i) "JEA's Business As Usual (BAU) model presented to its Board uses more pessimistic

¹⁵⁶ Melissa Dykes argued in a February 26, 2020 letter to the JEA Board that a ten-year site plan "does not accurately forecast electric sales." Nelson Mullins and Michael Brost published detailed rebuttals to Mrs. Dykes's letter on March 11, 2020 and May 18, 2020, respectively. To the Committee's knowledge, Mrs. Dykes has not addressed either rebuttal.

assumptions than other IOUs and municipals in Florida;” and (ii) “[a]pplying assumptions consistent with other IOUs (TYSP) and FMPA’s Strategic Plan assumptions lead to rate increases of ~0.7% per year for 10 years with consistent City transfer [contributions].” The report concluded, “JEA is a well run and valuable utility with a growing load, competitive rates, great customer service and high reliability.”

- JEA’s August 2019 presentation to credit rating agencies stated, “The May 28th Board Meeting outlined what we are calling our Status Quo Baseline. . . . [It] is not a financial forecast or most likely scenario for JEA Our financial and operational metrics *have not deteriorated*.” (*Id.*). The presentations also contained five electric sales projections from 2019 through 2023, including an “IRP Sales” projection showing electric sales increasing from 12,200,000 MWh to 12,548,000 MWh (a 2.7% total increase) and a “Flat Sales” projection of 12,000,000 MWh per year (no change in electric sales). Joe Orfano, JEA’s treasurer and former interim CFO, stated he finds those projections more reliable than the doom and gloom status quo projection.
- On October 11, 2019, Jeffrey Panger, a director with the credit rating agency S&P Global – Ratings (“S&P”), sent an email to Ryan Wannemacher and Joe Orfano with nine criticisms of JEA’s doom and gloom projections in the August 2019 rating agency presentation,¹⁵⁷ including:
 - 1) It’s our understanding that the McKinsey study was the impetus for conducting the “Baseline- Scenario 1” and “traditional-Scenario 2” response, and that the results prompted the decision to explore a “non-traditional-Scenario 3” responses. Insofar as I can find *no other* utility suggesting this level of decline in sales related to energy efficiency, and *no other utility* (except perhaps outside of the southwest, *and certainly not in Florida*) with this level of DG [distributed generation] penetration, this seems *extraordinarily high*. . . . [W]hy is this more acceptable than what *the rest of the utility industry* is viewing. . . .

¹⁵⁷ S&P downgraded JEA’s water and sewer bonds in February 2020, citing “recent events suggesting governance instability and evidence of weak controls”

- 6) . . . Why is debt acceleration being addressed in scenario 2, (but not in the baseline or the current forecast). Again, it is our understanding that these scenarios are intended to address a projected decline in sales, but by including debt acceleration, it creates an apples to oranges comparative. The inclusion of debt acceleration in scenario 2 (while perhaps laudable) inflates the cash gap and suggests that higher than necessary rate increases are needed -- which ultimately is laying the basis for your exploring scenario 3. . . .
- 9) It seems that the McKinsey study, and Scenarios 1&2, *are being held up as the motivation for pursuing Scenario 3 -- privatization*. But as the above questions suggest, *we are unclear whether they form a sound basis*. . . .

(Emphasis added).

Paul McElroy told the Committee he believes that JEA did not answer Mr. Panger's questions because the desire to sell JEA drove the doom and gloom projections:

[W]e have to say that they didn't answer because they didn't have an answer in terms of death spiral or some of the other -- other trends that were put in their forecast that were clearly -- clearly inconsistent with the industry, you know. So the big question was why -- why were you, JEA, seeing this and expecting to experience this when no one else in the industry is? [T]here was not a good answer for that and, quite frankly, there wasn't an answer for that, other than -- other than, you know, maybe sale.

- A report by the Jacksonville Civic Council published on November 5, 2019 concluded "JEA is not in a 'death spiral'. It is a healthy utility facing headwinds

that can be overcome with innovative solutions and potential expansion of its role”

- ITN respondents also expressed skepticism about JEA’s assumptions about energy efficiency. As an example, Emera, which acquired Tampa-based TECO Energy in 2015, asked JEA to “please provide the data that supports the concept that Jacksonville has stronger EE penetration than the rest of the state and provide any associated analysis/evidence as to the reasons why Jacksonville is well ahead of EE programs elsewhere in the state.”

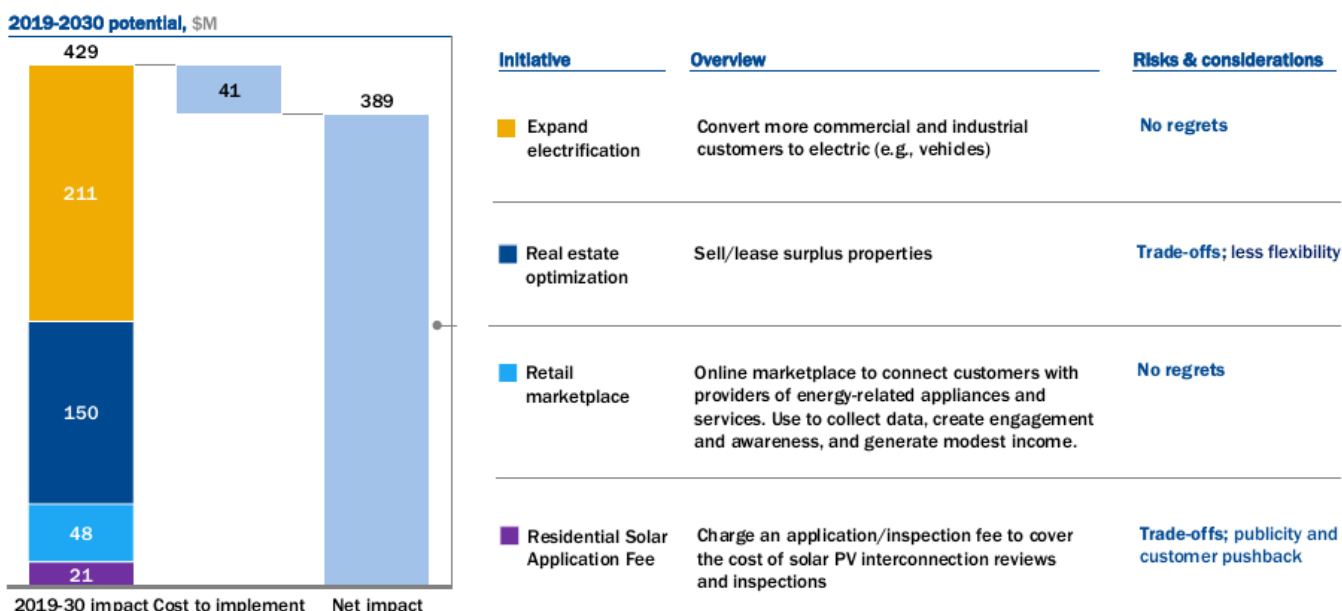
[Appendix B begins on next page]

APPENDIX B

JEA’s Scenario 2 (traditional utility) presentation.

During her Scenario 2 presentation, Melissa Dykes identified in the following chart only four business opportunities JEA could pursue to offset projected electric sales decline by 2030: expanded electrification, real estate optimization, an online retail marketplace and a residential solar application fee. Mrs. Dykes estimated those opportunities would earn JEA “about \$389 million in net revenue over the next ten years”:

INITIATIVES DEVELOPED TO DATE WILL PROVIDE \$389M REVENUE BY 2030



The Scenario 2 presentation adopted the same problematic sales forecasts for Scenario 1 addressed in *Appendix A*. Moreover, the Scenario 2 presentation omitted or underestimated revenue-generating opportunities available to JEA, including:

- In his December 2020 interview, Paul McElroy told the Committee the \$389 million revenue projection was at least 50% too low.
- ICF International, Inc. (“ICF”), JEA’s electrification consultant, planned to present a report on electrification opportunities at the JEA Board meeting in April 2019 which would have contradicted the doom and gloom narrative. ICF

found low, medium and high electrification initiatives by JEA would achieve \$168 million, \$198 million and \$211 million net present value margins, respectively, over the next *five* years. The Scenario 2 presentation, on the other hand, estimated JEA's electrification initiatives would earn \$170 million net revenue over the next *ten* years. Paul McElroy told the Committee he believes the Zahn administration did not implement any of ICF's proposed electrification initiatives.

- Tim Leigh, a JEA manager of customer solutions, prepared a July 1, 2019 presentation stating JEA could realize between \$500 million and \$1.2 billion in value (a combination of cost savings and revenue) from a digital electric grid. The Committee found no evidence JEA provided this information to McKinsey, or that the Scenario 2 projection adequately accounted for the value of a digital grid.
- McKinsey prepared a “2030 Strategy” for JEA after the May 2019 Board meeting. It identifies “core growth” opportunities for JEA, including utility-managed distributed generation programs, electrifying the Port of Jacksonville and installing residential storage technology. Michael Brost testified the 2030 Strategy identified “a lot of good stuff” JEA could do *without* privatizing.
- Michael Brost and Steve McInall both stated the City Council could grant JEA a franchise to provide natural gas to customers within JEA's service area. (TECO currently has the natural gas franchise. JEA purchases natural gas from TECO and then resells it to JEA customers.)
- Messrs. Brost, McInall and McElroy told the Committee that implementing a demand rate at JEA could help stop rooftop solar from eroding JEA's electric sales.¹⁵⁸ A demand rate could allow customers to pay less for using electricity when demand is low. Mr. McInall testified McKinsey did not factor the demand rate opportunity into its Scenario 2 analysis.
- Mike Hightower told the Committee that “nobody believed” the doom and gloom narrative, which was intended to scare JEA employees and unions into supporting Scenario 3 (privatization).

¹⁵⁸ Mr. Brost explained that demand rate “properly aligns revenues with costs; fixed and variable.”

APPENDIX C

The PUP and JEA Board Resolution 2019-10.

Section 1 of Resolution 2019-10 authorized JEA's implementation of the PUP "on the terms and conditions set forth on the Long-Term Performance Plan Summary" attached as Exhibit 1 to Resolution 2019-10. The PUP therefore had to satisfy the requirements in Exhibit 1, including:

- "Overview": "Each performance unit represents a potential right to receive a cash payment equal to the redemption price (as described below) for each unit."
- "Pool": "A total of 100,000 performance units *are available* for purchase under the plan" (emphasis added).

Comment: This requirement contradicted Mr. Wannemacher's recommendation that JEA only issue 30,000 performance units, which would leave 70,000 performance units *unavailable* for purchase. Senior leadership could not implement the PUP in a way that violated the PUP summary attached as Exhibit 1 of Resolution 2019-10.

- "Performance Period": "Each performance period will be a three-year period that is used to calculate the redemption price (if a Recapitalization Event occurs, the performance period will be truncated and will end on the closing date of such Recapitalization Event)."¹⁵⁹

Comment: Mr. Wannemacher should have disclosed to the JEA Board the likely effect of a JEA privatization on the PUP, including the aggregate redemption value of the performance units. JEA's senior leadership

¹⁵⁹ Exhibit 1 of Resolution 2019-10 defined "Recapitalization Event" as:

The closing and funding of a transaction or a series of related transactions in accordance with Article 21 of the Charter of the City of Jacksonville and any other applicable law that results in either (i) unencumbered cash proceeds to the City of Jacksonville of at least Three Billion Dollars (\$3,000,000,000) or (ii) at least 50% of the net depreciated property, plant and equipment value of either JEA's electric system or JEA's water and wastewater system being transferred, assigned, sold or otherwise disposed of.

anticipated the JEA Board would authorize the ITN sale process, and spent weeks preparing for the ITN auction process prior to the July 23, 2019 Board meeting. The information available to Mr. Wannemacher prior to the meeting—including PFM’s February 14, 2018 privatization report, Morgan Stanley’s discussion materials from the February 15, 2018 SpringHill Suites meeting and the Council Auditor’s March 22, 2018 special report #807—all estimated a JEA sale could result in *net* proceeds of \$5 billion or more. In his November 18, 2019 memorandum, Council Auditor Kyle Billy estimated a JEA sale netting \$5 billion would result in a PUP payout of \$636.6 million.

- “Redemption Price”: “The redemption price will increase by \$100.00 per performance unit for each Value Change Percentage increase of 1% in excess of the ‘Challenge Value Target’” Exhibit 1 to Resolution 2019-10 defines “Challenge Value Target” for the first performance period as 110% of the “Current Year Value,” which is “the sum of” three factors: (i) “JEA’s Net Position, as shown on JEA’s audited financial statements” (i.e., JEA’s net book value); (ii) “the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the 12-month period prior to the end of the performance period;” and (iii) “the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to JEA’s customers during the 12-month period prior to the end of the performance period.”

Comment: During his presentation, Mr. Wannemacher did not address the second and third factors of the Current Year Value formula, which were significant. As an example, the second factor could include JEA’s annual contribution to the City, which has been approximately \$120 million per year. Similarly, the third prong, “aggregate consideration . . . provided to JEA’s customers” could include some of the ITN requirements approved by the Board in Resolution 2019-07, including “[g]reater than \$400 million of value distributed to [JEA] customers.” The JEA Board should have been told ITN requirements could have materially increased PUP payouts in connection with a JEA privatization.

- “Conditions to Receipt”: “An eligible employee will receive the cash payment in respect of his performance units if: . . . (v) the conditions in Section 215.425(3), Florida Statutes *are satisfied*” (emphasis added).

Comment: Section 215.425(3), Florida Statutes, provides limits on public employee bonuses.¹⁶⁰ Kevin Hyde (Foley & Lardner) authored an October 21, 2019 memorandum concluding Section 215.425(3) did not apply to the PUP: “The PUP . . . does not serve as a bonus program . . . to incentivize employees. Indeed, to participate in the Plan, JEA employees must opt-in at their sole discretion and expend their personal funds to purchase the units.” However, Resolution 2019-10 *required* the PUP to satisfy the requirements of section 215.425(3). This requirement would not be necessary if the statute was indeed not applicable.¹⁶¹

The PUP, as defined by Exhibit 1 of Resolution 2019-10, did not satisfy Section 215.425. As an example, Section 215.425(3)(a) requires bonuses based “on work performance.” Resolution 2019-10 defined performance unit value (“Redemption Price;” *see* footnote 83 on page 62 above) as the sum of three factors, none of which are meaningfully tied to employee work performance.¹⁶²

¹⁶⁰ Section 215.425(3), Florida Statutes, states:

Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:

- (a) Base the award of a bonus on work performance;
- (b) Describe the performance standards and evaluation process by which a bonus will be awarded;
- (c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
- (d) Consider all employees for the bonus.

¹⁶¹ In response to a July 10, 2019 email from Foley & Lardner lawyer Belinda Morgan characterizing JEA’s long-term incentive plan as “a bonus arrangement.” Kevin Hyde wrote, “We are trying to avoid the word bonus but the concept is the same.”

¹⁶² Some documents obtained by the Committee suggest JEA tried to satisfy section 215.425(3) by tying the *number* of performance units allocated to JEA employees to the results of JEA employees’ performance reviews. However, the Committee never found an allocation policy that would satisfy section 215.425(3)(b), which requires a bonus scheme to “[d]escribe the performance standards and evaluation process by which a bonus will be awarded.”

In any event, the community’s outcry about the PUP shows that the executive PUP agreements would have been void for violating public policy.¹⁶³

- “Employee Covenants”: To receive a PUP payout, an “eligible employee must (i) devote his best efforts to faithfully discharge his duties on behalf of JEA and not take any action that would be contrary to the best interests of JEA, . . . and (iii) not make any unauthorized public statements about, among others, JEA and government officials of the City of Jacksonville.”

Comment: During a September 2020 interview, David Wathen, an executive compensation practice leader at Willis Towers, could not identify any other companies with a “best efforts” requirement for incentive payments. The standard lends itself to selective enforcement by the PUP administrator, who could arbitrarily deny employees PUP payments for failing to achieve perfection at work.

The Committee is also troubled by the requirement that JEA employees not make unauthorized statements as a condition to receiving PUP payments. That suggests an attempt to limit public information about the PUP.

- “Administrator”: “The Chair of the Compensation Committee will be the administrator.”

Comment: On August 16, 2019, less than a month after the JEA Board authorized the PUP at its July 23 meeting, Lynne Rhode sent a proposed PUP administrator letter to Jessica Lutrin, a partner in Pillsbury’s executive compensation and benefits practice. The proposed letter stated, “I [referring to the PUP administrator] may delegate any of my responsibilities to JEA’s senior executive management. . . . [I]n accordance with my duties as Administrator, I delegate my authority to you, as CEO, to assign to and notify each eligible employee of the maximum number of [performance units] he

¹⁶³ 11 Fla. Jur 2d Contracts § 123 (citations omitted) (“Contracts that are contrary to public policy are void, illegal, and unenforceable.”); *see also Harris v. Gonzalez*, 789 So. 2d 405, 409 (Fla. 4th DCA 2001) (emphasis added) (“The term ‘public policy’ is not easily defined. ‘In substance, it may be said to be the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like.’”).

or she may purchase” Jessica Lutrin then sent a letter to Kevin Hyde stating, “Lynne is also working on a letter from the comp committee chair to the CEO delegating certain authority under the PUP to the CEO.” The proposed delegation would have violated Exhibit 1 of Resolution 2019-10, which states, “The Chair of the Compensation Committee *will be* the administrator” (emphasis added).

- “Eligible Employees”: Exhibit 1 of Resolution 2019-10 described the employees eligible for the PUP as follows:

All (i) full-time employees who are actively employed with JEA for at least three months prior to the purchase date and (ii) *full-time attorneys from the Office of the General Counsel of the City of Jacksonville* who are dedicated exclusively to JEA for at least three months prior to the purchase date are eligible to purchase performance units.

Any exceptions to the above must be recommended by JEA’s CEO and approved by the administrator (as described below).

(Emphasis added).

Comment: Herschel Vinyard testified that Aaron Zahn was “very adamant” that the full-time attorneys assigned to JEA receive performance units. The PUP would have created an impermissible conflict of interest for PUP-eligible OGC attorneys who advised JEA in connection with the ITN.

As discussed in the “Administrator” section above, Lynne Rhode worked with Jessica Lutrin to delegate the PUP administrator’s authority to Mr. Zahn. Therefore, the “exception” to the “Eligible Employees” definition may have swallowed the rule by giving Mr. Zahn authority to allocate performance units to anyone, including non-JEA employees. That delegation would have violated Exhibit 1 of Resolution 2019-10, which states, “The Chair of the Compensation Committee *will be* the administrator” (emphasis added).

- “Miscellaneous”: “If any payments under the plan or an agreement to an eligible employee are subject to any excise tax, interest or penalties under the Code (the ‘Penalties’), JEA will pay to such employee an amount equal to the full amount of the Penalties.”

Comment: Jonathan Kendrick, JEA’s former chief human resources officer, told the Committee a PUP payout of hundreds of millions of dollars could have caused JEA to incur substantial tax liability. Mr. Kendrick agreed that information should have been disclosed to the JEA Board at its July 23, 2019 meeting.

[Appendix D begins on next page]

APPENDIX D

Coordination between the City and FPL/NextEra.

The Committee found evidence of coordination among affiliates of the Curry administration and NextEra/FPL that suggests NextEra was the City's expected purchaser of JEA through the ITN process. The evidence includes:

- On December 20, 2017, the Curry administration issued its RFP to solicit financial advisors to assist with the privatization of City assets, including JEA. On December 21, 2017, the day after the City issued the RFP, Tim Baker,¹⁶⁴ one of Mayor Curry's former political consultants,¹⁶⁵ entered into a consulting contract with FPL (through Mr. Baker's entity, BCSP, LLC).¹⁶⁶
- The Times Union reported that "two former City Council members, Bill Gulliford and Matt Schellenberg, said Baker arranged meetings in 2018 with a Florida Power and Light lobbyist. Baker denied arranging the meetings but said he attended them." Council Member Schellenberg told the Committee the meeting concerned CM Schellenberg's interest in selling JEA.
- Jeanne Miller, the president and chief executive officer of the Jacksonville Civic Council, Inc., told the Committee that the Civic Council's JEA subcommittee scheduled a June 10, 2019 meeting with Aaron Zahn to discuss the Civic Council's concerns about the doom and gloom projections from the May 28, 2019 JEA Board meeting. Against Ms. Miller's instructions, Mr. Zahn invited several Civic Council members not on the JEA subcommittee who had conflicts of interest, including Bill Adams, a lawyer at Gunster, a law firm representing

¹⁶⁴ According to filings with Florida's Secretary of State, Brian Hughes managed BCSP with Mr. Baker until December 6, 2017, after Tom Petway's November 28, 2017 recommendation that JEA explore privatization. A September 19, 2016 Jacksonville Daily Records article stated Messrs. Baker and Hughes "work together on about 95% of their races, they said."

¹⁶⁵ Michael Weinstein testified that "on the fourth floor it wouldn't have been that unusual for Brian [Hughes] to be around the floor or Tim [Baker] to be around. . . . I mean, they were very close to the mayor"

¹⁶⁶ Mr. Baker told the Times-Union that "he was paid [by FPL] to perform 'community relations' services but didn't perform any work related to privatizing JEA." However, Mr. Baker declined to provide the Committee with documents and information regarding his relationship with FPL. The Committee does not find Mr. Baker's statements credible because BCSP entered into its consulting agreement with FPL the day after the City issued its RFP, which the City and JEA used to explore privatizing JEA.

FPL; John Delaney, a lawyer at Rogers Towers, a law firm representing FPL; and Michael Munz, a public relations consultant for JEA in connection with its privatization efforts. (Ms. Miller stated Mr. Munz did not disclose his JEA consultancy and repeatedly tried to join the Civic Council’s JEA subcommittee.) Moreover, Ms. Miller told the Committee that when she asked questions at the June 10 meeting, Mr. Vinyard instructed Mr. Zahn not to answer. Mr. Zahn blind copied Brian Hughes in one contentious email to Ms. Miller regarding the meeting.

- At its June 25, 2019 meeting, the JEA Board authorized JEA’s senior leadership to provide a plan for privatizing JEA (Scenario 3) at its July 23, 2019 meeting.
- On July 1, 2019, BCSP gave notice of its termination of its consulting agreement with FPL effective July 31, 2019. Mr. Baker then “made an introduction . . .” to FPL for Sam Mousa, Mayor Curry’s former chief administrative officer.
- On July 10 and 11, 2019, JEA’s senior leadership and consultants met at Club Continental in Orange Park, Florida. Alan Howard testified the “meeting involved discussions around valuation, process and timeline *for possible sale of JEA*” through the ITN (emphasis added). Tim Baker gave a presentation at the meeting regarding regulatory and legislative issues with JEA’s strategic planning.¹⁶⁷ Mr. Baker also served FPL as a consultant since December 2017. Kerri Stewart testified that “Aaron relied a lot on Tim’s opinion.”
- On July 10, 2019, the same day of the Club Continental meeting, Tim Baker and Sam Mousa formed Conventus, LLC, which paid for the expenses associated with the October 4, 2019 Atlanta Braves game attended by Messrs. Baker and Mousa, Aaron Zahn, Mayor Lenny Curry, Brian Hughes and Scott Wilson during the ITN’s Cone of Silence (described below).
- Two days after the Club Continental meeting, on July 12, 2019, Mr. Mousa, Mayor Curry’s former Chief Administrative Officer, sent FPL an email stating,

¹⁶⁷ For example, Kerri Stewart testified Mr. Baker’s presentation provided “a view of the community through a pollster’s eyes: This is what the community thinks about utilities [H]e just gave an overview of the political landscape of Duval County.” The prepared agenda for the Club Continental meeting shows JEA and its consultants discussed selling JEA through an invitation to negotiate (“ITN”).

“I’m grateful and excited to assist FP&L with their endeavors.” Mr. Mousa also referenced a potential “success fee structure.”

- Three days after the Club Continental meeting, on July 13, 2019, FPL signed a consulting agreement with Mousa Consulting Group, Inc. to “advocate the interests of the Client [FPL] before the governments in northeast Florida” for \$90,000 annually.
- On July 22, 2019, the day before the July 23 JEA Board meeting, Aaron Zahn sent an email to Mr. Baker with a confidential JEA rating agency presentation attached. Mr. Baker testified he wanted the information to help “determine whether the Mayor was going to participate in, you know, their [JEA’s] communications plan.” The “communication plan” was about the rollout of Scenario 3 (the ITN). Additionally, there is evidence Mr. Baker received a copy of the JEA Board materials on July 22, which JEA’s senior leadership withheld from the public prior to the July 23 Board meeting. A July 22 Kerri Stewart text message states, “Can you print off one copy of each and deliver a package to Tim Baker on your way back over here?” When asked why Mr. Baker received the Board package, Kerri Stewart testified, “He asked for it.” (Mr. Baker denied asking for or receiving the package before the July 23 Board meeting.)
- On July 23, 2019, the JEA Board unanimously adopted its resolution authorizing JEA’s sale through the issuance of an invitation to negotiate.
- The same day the JEA Board authorized JEA’s sale, FPL sent an email to its public relations consultants for the ITN: Sam Mousa, Susan (“Susie”) Wiles,¹⁶⁸ Marty Fiorentino¹⁶⁹ and Paul Harden.¹⁷⁰ The email scheduled an August 8

¹⁶⁸ Ms. Wiles is a Republican political consultant who served as the policy director in Mayor Curry’s 2015 transition team. JEA retained Ms. Wiles in 2018, through her company Ballard Partners, to help JEA resolve its MEAG PPA liability (which would help maximize JEA’s purchase price). Ballard Partners’ consulting agreement remained in effect until after JEA issued the ITN on August 2, 2019. Additionally, NextEra’s May 15, 2020 response to the Committee’s subpoena identified Right Coast Strategies, which Ms. Wiles co-founded, as a NextEra consultant.

¹⁶⁹ Mr. Fiorentino is a Jacksonville-based, Republican lobbyist who served as Mayor Curry’s 2015 election finance chairman and served on Mayor Curry’s finance team to support the half-cent pension sales tax initiative.

¹⁷⁰ Mr. Harden is a Jacksonville-based lobbyist who served as chairman of the Jacksonville Planning Commission. Tim Baker reportedly told the Times-Union that Mr. Harden asked him to pay 50% of the City’s alcohol expenses for the City’s private suite at TIAA Bank Field.

meeting in Jacksonville. Sam Mousa testified the PR team would “help elevate their [FPL’s] profile in the City. . . .”

- On July 31, 2019, JEA’s senior leadership and consultants met at Foley & Lardner’s Jacksonville office for an ITN strategy session. The prepared meeting agenda identified several “key considerations/questions” for the ITN, including “Is the clear *buyer* for JEA *NextEra*?” (emphasis added).
- On August 2, 2019, JEA issued its Invitation to Negotiate. According to a January 17, 2020 Times-Union article, Herschel Vinyard made a public statement that “Aaron Zahn wanted to hire Tim Baker, one of Mayor Lenny Curry’s top political strategists, to help with the city-owned utility’s . . . efforts to sell itself to a private operator. . . .”
- On August 6, 2019, just eight days after the JEA Board authorized the sale process at its July 23 meeting, FPL prepared a “Briefing Book” identifying potential charitable contributions in Jacksonville, including (Briefing Book commentary in parentheses): (i) \$50,000 to Bay Street Innovation Corridor (“Mayor Lenny Curry, Daniel Davis, and Shad Khan are all primary drivers of this endeavor”); and (ii) \$25,000 to K9s for Warriors (“CEO is current Jacksonville City Council member. . . .”).
- Representatives of JEA and Nassau County met on August 9, 2019 to discuss Nassau County’s right of first refusal to purchase JEA assets in Nassau County. Michael Mullin, the Manager of Nassau County, wrote a January 31, 2019 letter to the Office of General Counsel stating, “At the early [August 9] meeting it was disclosed by JEA representatives that Florida Power and Light would be the successful bidder of the main assets. . . .”
- On August 23, 2019, FPL consultants, including Sam Mousa, Paul Harden, Susie Wiles and Marty Fiorentino, met again to discuss FPL’s ITN strategy. The meeting summary refers to the FPL consultants as “Team Free Bird”—the same code name JEA’s senior leadership used when referring to JEA’s privatization work prior to July 25, 2019.¹⁷¹

¹⁷¹ Sam Mousa testified, “Freebird Team is the team that was assembled here locally with me, Susie Wiles, Paul Harden, Marty Fiorentino, FP&L executives and other folks who were associated with Marty [Fiorentino].”

- The meeting summary stated that, in spite of the ITN’s Cone of Silence, Pamela Rauch, FPL’s vice president of external affairs and economic development, would “ask Munz to contact Dave Reuter,” NextEra’s chief communications and marketing officer, “to flush-out his [Mr. Reuter’s] involvement with JEA and to discuss his potential future involvement with Team Free Bird.” (Michael Munz’s company, The Dalton Agency, had served as the public relations consultant for JEA since March 2019.)
- On August 30, 2019, Sam Mousa (doing business as Mousa Consulting Group, Inc.) signed a sole source consulting agreement with the City of Jacksonville to provide “general consulting services to the Mayor and City” for \$10,000 per month.¹⁷² Mr. Mousa therefore served as a consultant to both the City and FPL during the ITN.¹⁷³
- Tim Baker and Sam Mousa’s company, Conventus, LLC, paid for the trip to the Atlanta Braves game by Mayor Curry, Mr. Baker, Mr. Mousa, Scott Wilson and Aaron Zahn on October 4, 2019, while the ITN’s purported Cone of Silence was in effect. At the time of the trip, Mr. Mousa’s company, Mousa Consulting Group, was a paid consultant for FPL.
- On October 25, 2019, Susie Wiles sent FPL representatives an email stating, “As per Paul [Harden].” The email’s attachment showed how Mr. Harden thought each City Council member would support (or not) JEA’s sale.
- FPL invited prominent members of Jacksonville’s business community to its private suite at Jaguars games on October 27, 2019 and December 8, 2019. The Times-Union reported in a January 9, 2020 article that FPL’s suite at TIAA Bank Field was located “right next door to the one leased by Jacksonville City Hall”

¹⁷² Section 126.206, Jacksonville Procurement Code, authorizes “purchases made without competition or advertisement” to a “sole source” if “there is only one justifiable source, such as patented and manufactured products and services offered for sale in a noncompetitive market or solely by a manufacturer’s authorized dealer.”

¹⁷³ Mr. Mousa told the Committee he did not work for the City on matters relating to the ITN.

- On November 12, 2019, Daniel Martell, FPL’s vice president of state legislative affairs, sent Pamela Rauch an email with “items I think we ought to be prepared to discuss,” including “UNF Polls.”¹⁷⁴
- Mr. Baker told the Committee his company, Data Targeting Research, “had polling questions related to JEA,” but Mr. Baker declined to provide the Committee information regarding that polling, even when subpoenaed to do so.
- On December 2, 2019, Mr. Mousa provided the City notice of his terminating Mousa Consulting Group’s agreement with the City, effective December 31, 2019.
- At an ITN strategy session on December 3, 2019, JEA’s negotiation team, which was comprised of City employees selected by the Curry administration, accelerated the ITN timeline from March 2020 to January 2020, despite concerns that non-NextEra respondents would drop out of the ITN process. Moreover, the transcript of the strategy session, together with the summary of revised ITN replies prepared by JEA’s banks, evidence JEA’s negotiation team did not use the ITN’s evaluation criteria when determining NextEra’s revised reply had the highest value.
- On December 4, 2019, JEA’s negotiation team leader, Stephanie Burch, and one of JEA’s consultants, Todd Giardinelli of Morgan Stanley, told several non-NextEra ITN respondents that their revised replies were not competitive. Ms. Burch reasoned that “the ones [referring to ITN respondents] who are really far apart from the top [referring to NextEra’s proceeds], I think it’s important to let them know that they have a lot of ground to make up. . . .”
- On December 12, 2019, Mayor Curry attempted to intervene in the ITN process by issuing a letter asking JEA’s Board to (i) “tell the senior leaders and their advisors to conclude the ITN by the end of January [2020];” and (ii) provide the “top tier of proposals” to City Council to review.

¹⁷⁴ On November 7, 2019, five days prior to Mr. Martell’s email, UNF made a press release entitled “New UNF Poll Reveals Bipartisan Opposition Over Sale of JEA.” UNF wrote, “Respondents were also asked about the sale of specific portions of JEA. Opposition is at 60% for the selling the electric portion of JEA, 61% for the water portion and 59% for the sewer portion. A large majority of 73% believe that a publicly owned JEA benefits the city. Just 16% did not believe there was a benefit for the city, while 12% didn’t know.”

- On December 24, 2019, after public outcry about the PUP and the ITN, JEA published a notice cancelling the ITN.
- On May 15, 2020, NextEra responded to the City’s subpoena, identifying NextEra’s consultants “employed by NextEra in connection with the JEA ITN” to include BCSP, LLC (Tim Baker), The Law Office of Paul Harden, The Fiorentino Group, Inc. (Marty Fiorentino), Mousa Consulting Group, Inc. (Sam Mousa) and Right Coast Strategies, LLC (Susie Wiles).
- The Times-Union reported in a May 22, 2020 article that “Mayor Lenny Curry’s administration allowed a company [BCSP] owned by his political strategist Tim Baker, who . . . was contracted by a company that tried to purchase JEA, to cover the bar tab at City Hall’s private suite at TIAA Bank Field during the last two football seasons.”

[Appendix E begins on next page]

APPENDIX E

JEA's outsourcing senior employee payroll to ADP.

On October 11, 2019, Jonathan Kendrick signed a letter of engagement on behalf of JEA to outsource to ADP payroll for JEA's appointed employees—i.e., JEA's highest paid employees, including senior leadership. Mr. Kendrick testified JEA pursued the project for two reasons: (i) cost savings and (ii) "it would add another layer or privacy so that the PUP elections wouldn't be as visible" However, the Committee could not confirm the senior leadership ever had evidence that outsourcing appointed employee payroll to ADP would save JEA money.¹⁷⁵ Moreover, Angie Hiers stated Mr. Kendrick told her that JEA wanted to outsource appointed employee payroll to conceal PUP payout information from the public.¹⁷⁶

That same day, on October 11, 2019, Robert Mack, a JEA director of organizational effectiveness and payroll, sent Mr. Kendrick an email stating, "One question I forgot to ask; who internally can provide the business requirements to ADP regarding the new LTI/PUP's?" Mr. Kendrick responded, "That will probably be me."

On October 14, 2019, Corrie Cordero, a client business executive at ADP, sent Mr. Kendrick, Shawn Eads and Miriam Hill an email with a proposed master services agreement for outsourcing JEA's appointed employee payroll to ADP.

On October 17, 2019, Ms. Hill sent Heather Beard, a JEA procurement contracts manager, an email with an "Annex" to the proposed Master Services Agreement with ADP that referenced JEA "piggybacking" off an unrelated ADP contract with Omnia Partners.

¹⁷⁵ Jonathan Kendrick testified that Melissa Dykes told him, "There's probably cost savings" with the payroll outsourcing project." Mr. Kendrick testified he then spoke with Angie Hiers and concluded the project "just didn't make sense." Ms. Hiers told the Committee she found the cost savings premise "totally false." In any event, it is implausible that, if cost savings were a material goal for the project, senior leadership would have signed a letter of intent with ADP without first verifying the cost savings.

¹⁷⁶ Ms. Hiers stated:

Jon Kendrick specifically told me that they were doing that [referencing JEA outsourcing payroll to ADP] so that the money -- that any funds or payout from any type of incentive plan or from the long-term incentive plan would go through payroll. And because it was outside of JEA, it wouldn't be subject to public records.

At 9:37 a.m. on November 15, 2019, senior leadership sent an email informing JEA employees that the PUP had been postponed. The email stated, “Aaron Zahn[] wrote a letter to the General Counsel for the City of Jacksonville, upon consultation with JEA’s Board Chair and JEA leadership, to *indefinitely postpone* the implementation of the Plan. . . . As the details of the Plan were developed, it was determined that now is not the right time to implement the Plan based on the long-term nature of it and the potential short-term implications it could have on JEA’s strategic planning process” (emphasis added).

At 10:17 a.m. on November 15, 2019, Laura Gutteridge Años, a JEA manager of financial accounting and reporting, sent Akiesha Johnson, a JEA manager of project accounting, an email asking, “So does this mean we aren’t going to ADP now?” Ms. Johnson responded, “I don’t know. I’m about to send my ADP concerns now.”

At 10:24 a.m. on November 15, 2019, Ms. Johnson sent an email to Ryan Wannemacher, among others, explaining her concerns with outsourcing payroll to ADP, including inadequate controls “in areas that has a high risk of unauthorized charges.”

At 10:41 a.m. on November 15, 2019, Ms. Gutteridge Años replied to Ms. Johnson’s email chain (including Mr. Wannemacher) and asked, “Has the timing of the [payroll outsourcing] project changed *now that the PUP is delayed indefinitely?*” (Emphasis added).

On November 20, 2019 at 9:40 a.m., Ms. Gutteridge Años sent a follow-up email to Mr. Wannemacher, among others, explaining her concerns about the payroll outsourcing project:

I am writing to express my deep concern about the undue pressure being placed on the Accounting Services team to transition the payroll process to ADP. We were told this implementation was happening *due to the Performance Unit Plan* and hence the tight deadline around it. Now it has been confirmed by JEA in the media that we are no longer moving forward with this plan. However, *we are still being pushed to transition to ADP* in spite of that fact. This transition is also not moving forward in a traditional way. Typically you would map out the current state, analyze it, and then assess what the best solution is to address any problems while preserving the

necessary controls from the current state. Executing an implementation like this without following that process makes it a very risky endeavor that would likely have serious consequences to the accuracy of the accounting data.

We have several concerns about the lack of project accounting controls at ADP, which were communicated in the attached [referring to Ms. Johnson's November 15, 2019 email]. We have received no response to these concerns and instead are continuing to be pushed into implementing this process without any communications regarding the reasons behind it. *This is to the point where I am feeling bullied into accepting something improper without being allowed to ask any questions.* This makes me very uneasy.

Do you have any insights into the hard push as to why this is happening *even though the PUP is going to be cancelled?* We are all team players and want to do what is best for JEA. *The process currently being followed of an accelerated transition without proper analysis is disconcerting and does not appear in the best interest of JEA.* Any information you could provide that would allay these concerns would be very appreciated.

(Emphasis added).

At 10:43 a.m. on November 20, 2019, Alan Goldman, a JEA manager of tax administration, replied to Ms. Gutteridge Años's email: "[A]gree with Laura's assessment."

In response, Mr. Wannemacher forwarded the email chain on November 20, 2019 to (i) senior leadership members Shawn Eads, Jonathan Kendrick and Melissa Dykes; and (ii) Miriam Hill, an assistant general counsel at the Office of General Counsel.

At 12:47 a.m. on November 20, 2019, Mr. Wannemacher sent Ms. Gutteridge Años an email stating, "Thank you for your email. My understanding is that many of Akiesha's concerns are being addressed. The timing is being driven by the tax year turnover. I will get up to speed on the details of the implementation and will refer back to you."

Mr. Wannemacher blind copied Jonathan Kendrick, Shawn Eads and Melissa Dykes to his response.

On November 22, 2019 at 2:35 p.m., Jonathan Kendrick sent ADP employees Brian Motsett and Cecilia Prater an email stating, “I’m informing you that JEA wishes to terminate the Letter of Engagement (LOE) we have with ADP.”

On November 26, 2019 at 11:21 a.m., Mr. Wannemacher forwarded Ms. Gutteridge Años’s email to Carol Higley, a human resources business partner. That same day, Ms. Gutteridge Años met with Ryan Wannemacher to discuss her concerns. A transcript from the meeting shows Mr. Wannemacher discouraged Ms. Gutteridge Años from sending similar emails again:

It is appropriate to express your opinion and any concerns. I like and appreciate your opinion; always usually agree with you; it is the method that is concerning. I am on the floor virtually every day – pull me aside, call me, get on my calendar; but to blast email without going through those steps is a concern. If you have conversations with Russell and need to escalate that is fine but it needs to be done in a constructive manner. The email had some alarming language (bullied, things not done here correctly) and I would like you to raise your concerns with me in person. I take your opinion seriously, it is the manner in which it is handled that is the issue.

Ms. Gutteridge Años responded:

My language reflected how I was feeling I had serious concerns and shared my concerns but we were moving forward anyway. I was alarmed. Akiesha also sent an email with a long list of issues and no one responded. I thought if I got involved and on record that I was concerned too it would show all three of us were concerned. Other groups raised concerns too. Don’t want to put any one in jeopardy but Payroll and Technology,

basically everyone in the room had concerns and all that was said was this is an SLT initiative. . . .

It may be a molehill now but it would have been a mountain had it not been stopped. Don't want to underestimate the impact, still dealing with EAM two years later. Also to not be given a business reason, makes me think things are not above board. Am I at that kind of company?

On this evidence, the Committee concludes that JEA's effort to outsource the senior employees payroll to ADP was for the purpose of shielding PUP payouts from public scrutiny.

[Appendix F begins on next page]

APPENDIX F

The December 16, 2019 City Council meeting.

On December 16, 2019, Council Members Rory Diamond and Ron Salem held a public meeting about the PUP. JEA senior leadership, including Aaron Zahn, Ryan Wannemacher, Herschel Vinyard, Lynne Rhode and Jonathan Kendrick, appeared at the meeting and answered CMs Diamond's and Salem's questions. This appendix addresses issues regarding the senior leadership's statements to the City Council at that meeting.

- At 00:08:20 in the meeting video, Mr. Zahn admitted he “made an error in judgment” with the PUP, which he believed would have been “better timed after a final decision was made for JEA’s future.”

Comment: Mr. Zahn’s answer deviated from his comments at the JEA Board meeting on June 25, 2019, where he described long-term incentives as “worthless in the face of traditional utility response” because long-term incentives are “incentivizing growth trajectory.”

- At 00:56:21 in the meeting video, CM Salem asked, “Who put the PUP on the July 23rd agenda?” Mr. Zahn responded, “Myself, the entire senior leadership team and OGC review all Board documents before they get submitted, as well as the other individual Board members will review the materials ahead of time so that they’re familiar with the materials prior to receiving them as a complete package.” CM Salem then asked, “Do you know when the Board packet for this particular meeting was completed?” Mr. Zahn answered, “I don’t know.”

Comment: Evidence obtained by the Committee shows senior leadership withheld the complete JEA Board package prior to July 23, 2019, the day of the JEA Board meeting. (Report pages 38-39 above). Moreover, the Committee found no evidence any JEA Board member received JEA Board Resolution 2019-10, which describes the PUP’s framework, prior to July 23, 2019. Further, senior leadership failed to explain material facts about the PUP to the JEA Board, including the PUP’s significant deviations from the Willis Towers plan design presented to JEA’s Compensation Committee on June 18, 2019 and included in the packages for the JEA Board meetings on

June 25, 2019 and July 23, 2019. (As an example, Willis Towers’ recommended \$3.4 million cost and payout cap of 150% employee salary.) (Report pages 49, 58-59 above).

- At 01:00:18 in the meeting video, CM Salem stated, “This same page [in a Willis Towers presentation] includes a cap on the PUP of 150% maximum [employee salary]. It’s my understanding, and all the documentation I’ve reviewed, and the PUP that was sent to Kyle Billy at some point after your Board meeting, there was no cap in that plan.” Mr. Wannemacher responded, “Correct. . . . [I]t was a draft at the time it was provided to the Council Auditor—did not have a cap in it.” CM Salem then asked, “Now why do you say it was a draft? They [referring to the JEA Board] passed a plan. . . . [T]he CEO had complete discretion after that to make any changes he wanted to without coming back to the Board. Is that correct, Mr. Zahn?” Mr. Zahn answered, “No, that’s not correct. . . . [T]o be clear, the performance plan is administered by the plan administrator. They have complete authority delegated to them by the Board. . . . In this case, because it was a long-term plan, it was determined that it needed to have a plan administrator that would have no direct financial benefit at all. . . .” CM Salem then asked, “And that plan administrator was who?” Mr. Zahn answered, “Camille Lee-Johnson.”

Comment: Paragraph 1 of JEA Board Resolution 2019-10 authorized Mr. Zahn “or his designee” to “implement a long-term performance unit plan . . . on the terms and conditions set forth” in Exhibit 1 of Resolution 2019-10. Neither the PUP administrator nor Mr. Zahn had the authority to alter the terms and conditions in Exhibit 1 of Resolution 2019-10. In any event, documents obtained by the Committee show the PUP administrator would have delegated to Mr. Zahn its authority to allocate performance units to JEA employees. (Report pages 113-114 above). Mr. Zahn would have a direct financial interest in the PUP and the authority to allocate performance units to JEA employees.

- At 01:15:35 in the meeting video, Mr. Zahn stated, “I wanted a majority of it [the PUP] to go to the front line. . . .” CM Salem responded, “There will be documents that we’ll show you later that will indicate that this plan was set up for the higher paid people” Mr. Zahn replied, “That’s absolutely incorrect. . . . We never got around to the [performance unit] allocation From an intent perspective, it was

always intended to be able to provide to all 2,000 [JEA employees] and to give the vast majority of the units to the front line.”

Similarly, at 01:22:30 in the meeting video, CM Salem said, “There were no documents that I saw that discussed the allocation of units.” Mr. Zahn responded, “Correct.” CM Salem then stated, “So we don’t know how many units were being set aside; the timeframe where employees could purchase them; if they were purchased, who else would get those—” at which time Mr. Zahn interjected, “Neither do we. . . .” CM Salem then asked, “So there’s nothing anywhere outlining who could buy em’ when or anything like that?” Mr. Zahn interjected “No. We never got there.”

Likewise, at 03:21:45 in the meeting video, CM Boylan asked Jonathan Kendrick, “Was there already a plan in place as to what that [performance unit] allocation would look like?” Mr. Kendrick answered, “No. There was never discussion of the allocation. We had not gotten to that point yet.”

Comment: To the contrary, the evidence obtained by the Committee shows the PUP was designed to principally benefit senior leadership:

- On November 29, 2018, two days after Mr. Zahn became JEA’s permanent CEO, Angie Hiers sent a summary of a proposed long-term incentive plan that, consistent with Patricia Maillis’s November 27, 2018 email to Willis Towers, gave long-term incentives to only JEA directors and executives (ranging from 20% to 240% of base salary):

| Level | Percent of Base Salary | Employee Count |
|---------------------------|------------------------|----------------|
| Director Grade "J" | 20% | 42 |
| Director Grade "K" | 22% | 20 |
| VP / Chief | 50% | 9 |
| Chief Financial Officer | 80% | 1 |
| Chief Operations Officer* | 150% | 1 |
| Chief Executive Officer* | 240% | 1 |

- Mr. Zahn directed Willis Towers’ PUP design, which he also presented to the JEA Compensation Committee on June 18, 2019. Mr. Zahn’s presentation proposed JEA executives and collective

bargaining units (e.g., linemen) receive long-term incentives worth 40% and 3%, respectively, of their base salaries:

| Level | LTI Opportunity % | | |
|------------------------|-------------------|--------|----------|
| | Current | Market | Proposed |
| Executive | -- | | 40% |
| Director | -- | | 5% |
| Manager | -- | | 3% |
| Individual Contributor | -- | | 3% |
| Bargaining Units | -- | | 1% |

- On July 10, 2019, the first day of the senior leadership's Club Continental meeting, metadata suggests Ryan Wannemacher modified a spreadsheet with PUP calculations. The spreadsheet proposed JEA executives each receive 1,079 performance units worth a total of \$107,873.20, while JEA's collective bargaining units would each receive 8 performance units worth a total of \$737.16:

| Group | Average Salary | # Units | Grant Value |
|-----------|----------------|---------|--------------|
| Executive | \$269,683 | 1079 | \$107,873.20 |
| PG K | \$158,488 | 80 | \$7,924.40 |
| PG J | \$139,378 | 70 | \$6,968.90 |
| PG I | \$111,129 | 34 | \$3,333.87 |
| PG H | \$95,378 | 29 | \$2,861.34 |
| PG G | \$81,951 | 25 | \$2,458.53 |
| PG F | \$68,728 | 21 | \$2,061.84 |
| PG E | \$54,971 | 17 | \$1,649.13 |
| CBUs | \$73,716 | 8 | \$737.16 |

Therefore, JEA's 15 executives would receive a total of 16,185 performance units, while JEA's 1,562 collective bargaining units would receive a total of 12,496 performance units (3,689 performance units less than JEA's 15 executives).

- On August 16, 2019, Lynne Rhode sent a proposed PUP policy to Jessica Lutrin stating, "No position level shall be allocated in excess of [20%] of the next highest position level allocation." In other words, JEA's collective bargaining units could not receive more than 20%

(one-fifth) of the performance units allocated to the next highest position level. This limitation would not apply to JEA executives as members of the highest position level.

- At 01:26:27 in the meeting video, JEA Board Member Kelly Flanagan shared her perspective on the PUP and the JEA Board meeting on July 23, 2019:
 - Ms. Flanagan had understood the PUP would cost \$3.4 million “per the Willis Watson report that was within the [June 18, 2019] Compensation Committee materials included in the Board package [for its July 23, 2019 meeting];”
 - Ms. Flanagan could not recall Mr. Zahn briefing her on the PUP prior to the JEA Board meeting on July 23, 2019; and
 - Ms. Flanagan identified Mrs. Rhode’s confirmation OGC had approved the PUP as “one of the primary rationales and reasons” she voted to authorize the PUP at the JEA Board meeting on July 23, 2019.
- At 01:43:30 in the meeting video, Mr. Zahn stated that Willis Towers changed the word “uncommon” to “selectively” in the “Market Practices Summary” of the “Long-Term Incentive Plan Design.” When asked to explain the change, Mr. Zahn stated, “This is a draft, and I know between this draft and the final, they did a lot more diligence.”

Comment: David Wathen, Willis Towers’s utility industry compensation practice leader, told the Committee during a September 2020 interview that Willis Towers changed the word “uncommon” to “selectively” at Mr. Zahn’s request.