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Sent: Friday, September 20, 2019 2:20 PM
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Cc: Vinyard, Herschel T. - Chief Administrative Officer; Susan Clark; Amdur, Stephen B.; Lima, Augusto C.; Powers, Ted
Subject: 9.20.19 JEA-Bankers Memo.docx

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Lynne –

As we discussed yesterday, attached please find completed drafts of our Regulatory Memo and Regulatory Timeline. The Timeline can be found in Appendix C of the memorandum (pp. 41-48 of the Word document).

Susan has reviewed both the Memo and the Timeline with a fine tune comb, and suggested numerous helpful revisions. We have incorporated all of her revisions into the current drafts.

Please let me know if you have questions.

Andy

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DRAFT
September 20, 2019

MEMORANDUM
Attorney Work Product
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To: Stephen Amdur
Andrew D. Weissman

From: Meghan Claire Hammond
Sidney L. Fowler
Ruthanne Neely

Date: September 19, 2019

C/M#: 047455-0000004

Re: Major Regulatory Approvals and Timelines Required for JEA Privatization

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I. Introduction

This memorandum provides a more detailed overview of the regulatory approvals required for the sale of JEA to a private buyer, and serves as a complement to the Key Regulatory Approvals Table, attached here as Appendix C. In executing this deal, it is critical to understand that laws and rules at both the federal and state levels affect municipal utilities (i.e., JEA) differently from investor-owned utilities (i.e., private buyers). In general, the Florida Public Service Commission (“FPSC”) and the Federal Energy Regulatory Commission (“FERC”) requirements are more numerous and rigorous for investor-owned utilities. This is because both the FPSC and FERC have relatively narrow jurisdiction over municipal utilities compared to their broader oversight of investor-owned utilities.

Thus, in addition to the regulatory approvals required to consummate a deal, this memorandum also details how regulatory oversight will increase significantly for the Buyer¹ as it will not have JEA’s status as a municipal utility. This includes, but is not limited to (1) a requirement to file for a Certificate of Authority (“COA”) with the FPSC in order to operate JEA’s water and wastewater assets and to have an approved tariff/rate system,² (2) a requirement to file for electricity rate approval with the FPSC, and (3) more detailed reporting requirements with FERC and the FPSC. Importantly, both the filing for the COA and electricity rate approval with FERC and the FPSC will provide an opportunity for public hearings, which could lengthen the process.³

¹ “Buyer” is used throughout this memorandum to refer to the Buyer as the parent company or the special-purpose entity the parent company may utilize for this transaction. Ultimately, the entity which acquires JEA’s assets and provides service will hold the regulatory approvals.

² The FPSC, at the time of granting a new original COA, will also approve water/wastewater tariffs/rates for the new company. The application for the COA includes information upon which the FPSC can base their decision on a tariff/rate approval. However, a Buyer may be required to make a separate rate case filing, if the FPSC deems it necessary to have enhanced information regarding JEA rates—despite the requirement that the Buyer maintains base rate stability for JEA customers for 3 years.

³ As background, there have been two high-profile sales of municipal utilities to investor-owned utilities in Florida. The most recent involves the Florida Power & Light (“FPL”) acquisition of the Vero Beach electric utility, which concluded in December 2018 and took a total of 12 months. In 1992, there was also an acquisition of Sebring Utilities Commission by Florida Power Corp which took a total of 3 months. In both scenarios, the buyer was a neighboring utility which extended its existing rates to the municipal entity’s former territory. We reference these two cases throughout this memorandum. Importantly, while a Buyer may be aware of and use these cases for comparison of required regulatory approvals and timelines, the Vero Beach purchase was for a municipal utility with a 35,000-person customer base and the Sebring Utilities purchase with a 12,500-person customer base. By comparison, JEA serves approximately 466,000 electric customers, 359,000 water customers, and 270,000 wastewater customers. See JEA, Invitation to Negotiate for Strategic Alternatives (Aug. 2, 2019), https://www.jea.com/ITN_Solicitation (“ITN”).

II. Executive Summary of Major Regulatory Approvals Required to Close

A. Transfer of Water and Wastewater Assets

a. Water and Wastewater Certificate of Authority (“COA”)

As a municipal utility, JEA is exempt from the requirement for a COA; however, the Buyer will not be. As a result, the Buyer will be required to go through a significant process to obtain a COA from the FPSC, including compliance with extensive filing requirements and the need for discovery **and potentially evidentiary hearings if any party objects to issuance of the COA.** In addition to the substantial filing requirements, which include a detailed description of the sale agreement, evidence of both financial and technical ability, information on the basis for JEA’s current rates, and service territory maps with detailed descriptions, additional effort will be required regarding state and local permits, including filings with the Florida Department of Environmental Protection, among others

b. Water and Wastewater Rates

JEA is currently charging rates to its existing customer base that have been approved by the JEA Board. However, the FPSC will need to approve an original tariff (containing rates, charges, and service policies) for the Buyer. Original tariffs are approved as part of the sale and transfer approval process, that is, as part of the application to obtain a COA.⁴ Another factor that may cause additional time to be added to the regulatory schedule, is the potential requirement by the FPSC for a full rate case filing. A full rate case filing, in addition to a COA application, will be required if the Buyer were to change JEA’s base rates and may still be required by the FPSC, even if the Buyer maintains JEA’s water/wastewater base rates due to the complexity and size of the JEA sale.

B. Transfer of Electric Assets

a. FPSC Electric Rate Approval

Under FPSC regulations, no prior approval is needed for the Buyer to acquire JEA’s assets. However, Florida law prohibits a utility from charging a rate not “on file” with the FPSC. JEA’s current rates are filed with the FPSC on a primarily informational basis and are not subject to the full approval process the FPSC applies to rates of public utilities, including the requirement that the FPSC determine the value of a public utility’s assets. Once the Buyer takes control of JEA’s assets, the rates will become subject to this heightened standard. Therefore, whether the Buyer seeks to adopt JEA’s rates and keep them stable for some period of time post-closing or make a filing to adopt other rates, the FPSC will need to hold a rate proceeding to determine the value of the former JEA assets and approve the Buyer’s rates. Under Florida law, once the FPSC Staff have

⁴ FPSC Water and Wastewater Manual, Ch. 4, Tariff Requirements

determined the filing has no deficiencies in the Minimum Filing Requirements (MFRs),⁵ a final order is required to be issued within 12 months.⁶ The Buyer must file the petition, testimony to support the petition, and the required MFRs, but the process to prepare the required filings will include discussions between the Buyer, JEA, and FPSC staff.

The FPSC may use the Proposed Agency Action (PAA) process and issue a PAA Order approving/setting the rates. The PAA Order would then be subject to protest by affected parties. If there is no protest within 21 days of the issuance of the PAA Order, the FPSC issues a “Consummating Order” making the PAA Order “effective and final.” If there is a protest, an evidentiary hearing will be held where parties have the opportunity to conduct discovery and file testimony.⁷ However, if the FPSC anticipates a PAA will be protested in any case, it may choose to forego the PAA route and set the matter directly for an evidentiary hearing, establishing deadlines for discovery and the filing of testimony. After hearings are held, the FPSC will then issue its final order.

b. FERC Approval of the Acquisition

JEA currently owns generation and transmission assets which can be used for wholesale power sales and interstate electric transmission, and thus will become subject to FERC’s jurisdiction once they are owned by a FERC-regulated public utility. Accordingly, FERC approval under Federal Power Act (“FPA”) Section 203, which prohibits acquisition of FERC-jurisdictional assets or facilities by regulated utilities without prior FERC approval, will be required before the transaction can close.⁸ Section 203(a)(4) of the FPA requires FERC to approve a transaction if it: (1) determines that the transaction will be consistent with the public interest and (2) will not result in improper cross-subsidization of a non-utility associate company.⁹ While the filing will be heavily Buyer-dependent and must be filed by the Buyer, JEA can begin by preparing the information and documents a Buyer will need to file—including asset descriptions, maps, and FERC Form 1, which is described below.

Moreover, JEA, as a municipal utility, has previously been exempt from FERC Form 1 filings.¹⁰ FERC Form 1 is a comprehensive financial and operating report submitted annually for electric rate regulation, market oversight analysis, and financial audits for Major electric utilities.¹¹ JEA

⁵ Once FPSC approves the application and MFRs, the “commencement date for the final agency action” is established. However, similar to the water side, the process to get final staff approval of the application could take some time. This is why it is critical to work with the FPSC prior to filing the application, so the process goes smoothly, and the filing is quickly approved.

⁶ Section 366.06(3) of the Florida Statute specifically states, “The commission shall take final commission action in the docket and enter its final order within 12 months of the commencement date for final agency action.” (emphasis added).

⁷ The FPSC requires the prefiling of testimony, which is then adopted by the witness at the evidentiary hearing. The witness is then subject to cross examination by opposing parties.

⁸ 16 U.S.C. § 824b.

⁹ It is possible the Buyer will wish to seek FERC approval to issue securities, especially as the Buyer will presumably be refinancing JEA’s existing debt. This would likely be part of the FPA Section 203 filing.

¹⁰ 18 C.F.R. § 141.1(b)(1)(ii).

¹¹ 18 C.F.R. § Pt. 101, Classification of Utilities.

would be classified as a Major electric utility but for its current exemption as a municipal utility.¹² As a new, regulated utility the Buyer will be required to file Form 1. FERC states that new entities may begin filing based on projected data.

c. FERC Approval of the Buyer's Tariff and Market-Based Rate Authority

For the Buyer to make wholesale sales of energy at market-based rates, the Buyer will be required to seek market-based rate authorization from FERC by filing an application under Section 205 of the FPA. FERC grants authorization to sellers to make wholesale sales of energy, capacity, and certain ancillary services under market-based rates where the seller can demonstrate that they and their affiliates either lack horizontal and vertical market power or where they have adopted sufficient techniques to mitigate the possible exercise of such market power. This filing is also heavily Buyer-dependent and must be prepared by the Buyer.

C. Other Major Federal Approvals

a. Hart-Scott-Rodino

Under the Hart-Scott-Rodino ("HSR") Act, parties to certain large mergers and acquisitions must file premerger notification and wait for government review. The parties may not close their deal until the waiting period outlined in the HSR Act has passed, or the government has granted early termination of the waiting period. JEA stated in its invitation to negotiate that it expects Federal Trade Commission or Department of Justice to grant early termination of the waiting period or allowance of waiting period expiration under the HSR Act.

b. CFIUS

Review by the Committee on Foreign Investment in the United States may be required if a foreign person has at least an ownership of 10% interest in the Buyer. However, the 10% threshold may not be applicable in the case JEA's assets are determined to be "critical infrastructure" under the Foreign Investment Risk Review Modernization Act ("FIRRMA"), and then CFIUS would be applicable if a foreign person holds any interest in the Buyer.

c. FCC License Transfers

JEA also controls a telecommunications infrastructure and dark fiber network for which the transfer of licenses will have to be approved by the FCC prior to closing, pursuant to 47 U.S.C. § 310(d). The processing period varies depending on the types of licenses, but generally takes between 30 and 180 days, and some licenses may be non-transferrable. It is important to understand from JEA the current types of FCC licenses they have in place in order to adequately evaluate this area.

¹² A Major utility is one which has had, in each of the last three consecutive years, sales or transmission service that exceeded one million megawatt-hours of total sales. *Id.* JEA's sales have exceeded ten million megawatt-hours for the past three consecutive years. *See* ITN at 54.

D. Issues to be Further Explored

This memorandum focuses on the major regulatory approvals required to close the transaction and is not exhaustive regarding other potential approvals which may be required in the future. For example, EPA has jurisdiction over JEA's water assets under the 1996 Amendments to the Safe Drinking Water Act. However, because JEA already qualifies as an operator of a public water system under the act, it is already in compliance with the EPA—unlike the scenarios discussed above where JEA has been exempt as a municipal utility.

III. Detailed Filing Requirements and Timing for Major Regulatory Approvals

This section discusses the details of each major regulatory approval, including the reasons for the estimated timelines included in Appendix C, as well as the filing requirements outlined for each.

Note that work on all regulatory approvals may essentially begin now with informal discussions between JEA and the regulator (FERC or the FPSC). This approach is highly recommended. **While the filings must ultimately be made by the Buyer**, the purpose of this dialogue would be to ensure that FERC and FPSC staff find little to no deficiencies, as significant filing deficiencies will require the Buyer to cure the deficiencies, which will add time to the process. The Buyer will likely require additional time post-signing of the contract of sale to ensure they are comfortable with the filings, before making the filings themselves. This process is likely to take 90-120 days, though the length of time will depend on the Buyer's access to JEA's records pre-signing.

Further, once *ex parte* restrictions attach, this will prevent the Buyer or JEA from engaging in informal discussions with the regulator.¹³ There is a limit to what work can be done with an unknown Buyer, but the regulators can provide JEA with different paths for filing with different types of buyers and provide insight into the information that will need to be submitted.

A. Water and Wastewater

In order to provide water and wastewater services in Florida, “[e]ach utility subject to the jurisdiction of the commission must obtain from the commission a certificate of authorization to provide water or wastewater service.”¹⁴ However, as a municipal utility, JEA is exempt from the jurisdiction of the FPSC.¹⁵ Because of this, JEA currently operates its water and wastewater facilities without a Certificate of Authority (“COA”) from the FPSC, but will no longer be exempt if it loses its status as a municipal utility—an almost certain outcome.

¹³ For the FPSC, *ex parte* restrictions attach to FPSC Commissioners once a filing is either pending before the FPSC or if the Commissioner knows or reasonably expects the filing to be submitted within 180 days. Fla. Stat. § 350.042. Section 350.042 does not apply to FPSC staff, however Rule 25-22.033, F.A.C., governs communications between staff and parties to proceedings requiring notice of written communications and of meetings or conference calls with 3 or more persons, and prohibits staff from being a conduit for *ex parte* communications to Commissioners. See F.A.C. 25-22.033.

¹⁴ Fla. Stat. § 367.031.

¹⁵ Fla. Stat. § 367.022.

The most likely case is that the Buyer of JEA's assets will not be exempt from FPSC jurisdiction and will need to file an application with the FPSC to obtain a COA prior to closing, in order to operate the JEA water and wastewater facilities and in order to have its water/wastewater tariff/rates approved by the Commission. In addition to the COA application, the Buyer may also be required to file a full rate case filing, given the size of the sale. Furthermore, if the Buyer files to change JEA's rates currently being charged to its water/wastewater customers, this would also trigger a requirement for a rate case filing.¹⁶ A full rate case filing will almost certainly increase the regulatory timeframe for obtaining the necessary FPSC approvals that will be required for closing. Thus, it will be necessary to begin the process of compiling the information required by the COA application form early; as soon as a Buyer has been identified, if not sooner with JEA, as JEA has the majority of the information required to go into the formal application, though the Buyer will ultimately file.

There are a number of application categories that apply to obtaining an FPSC COA. However, the most likely category for this transaction is where the Buyer does not have a COA but is taking over the assets of "an existing utility currently charging for service" (i.e., JEA).¹⁷ Regardless of the type of application, the FPSC must grant or deny an application for an original COA within 90 days after the "official filing date" of the completed application, unless an objection is filed.¹⁸ **However, the 90-day decision requirement is a red herring for two reasons:** (1) the official filing date is determined by the FPSC¹⁹ and occurs only **after** all deficiencies in the application have been cured. Curing information deficiencies often adds significant time to the application process, (2) objections by intervenors have the practical effect of suspending the 90-day clock.²⁰

The first issue—that the 90-day clock will only start upon the "official filing date" determined by the FPSC staff—is the main reason for meeting with the FPSC early on to avoid or mitigate information deficiencies. This process will continue between the FPSC staff and the Buyer until the FPSC staff is satisfied that the filing meets all filing requirements. Once the completed and final application is filed and notice to all interested parties is provided²¹ objections can be filed to COA application.

Objections have the practical effect of suspending the 90-day decision requirement, and there is no statutory time limit once the 90-day decision requirement is suspended. Settlement of objections to a COA are encouraged, as they are in all FPSC proceedings, but settlements must be approved by the FPSC. If there are no objections to the COA, or if objections filed are resolved,

¹⁶ Fla. Stat. § 367.081 Rates; procedure for fixing and changing and F.A.C. 25-30.135 Tariffs, Rules and Miscellaneous Requirements.

¹⁷ F.A.C. 25-30.034 (Application for Original Certificate of Authorization for Existing Utility Currently Charging for Service).

¹⁸ Fla. Stat. § 367.031. "The commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to ss. 120.569 and 120.57."

¹⁹ Fla. Stat. § 367.083.

²⁰ Notice of Proposed Agency Action Order Declining to Refund 2010 RAFS, Approving Service Availability Charges, Initial Customer Deposits, and Miscellaneous Service Charges, and Addressing Back Flow Prevention Charges and Order Approving Stipulation, Application for Water Certificates and Water Rates, and Declining to Initiate a Show Cause Proceeding at 3 (Oct. 24, 2011), FPSC Order No. PSC-11-4078-PAA-WU.

²¹ F.A.C. 25-30.030.

the FPSC can issue a final order approving or denying the COA. Alternatively, the FPSC can set the application for hearing after which a final order on the COA can be issued.²² The FPSC must also provide parties with a notice of opportunity for reconsideration or judicial review, which is included at the end of the final order. The notice states the parties have fifteen (15) days from the date of the final order to file a motion for reconsideration or thirty (30) days to request judicial review by the First District Court Appeal by filing a notice of appeal with the Office of Commission Clerk with a copy to the court.²³

1. Critical Filing Requirements

a. Application for a Certificate of Authority

The Buyer will need to file an application with the FPSC seeking the issuance of a COA that will allow NewCo to operate the JEA water/wastewater facilities and to charge customers rates approved by the FPSC. The information required to be submitted under a COA application is substantial, regardless of the status of the Buyer. The likely COA application the Buyer of JEA would need to complete is FPSC Form 1002 (12/15), “Application for Original Certificate of Authorization for Existing Utility Currently Charging for Service,” which has been attached as Appendix B, and includes the minimum filing requirements for such an application. This application assumes the Buyer would have no COA. The following is a brief sampling of the information required in an application for a COA, but a full sampling can be seen in Appendix B:²⁴

- Details of the agreement of sale,
- Detailed financial statements (audited if possible) of the financial condition of the applicant, “that show all assets and liabilities of every kind and character.” **All financial statements must be in the Uniform System of Accounts format as adopted in 1996 by the National Association of Regulatory Utilities Commission,**²⁵
- A list of entities upon which the applicant is relying to provide funding for the utility and the manner and amount of such funding,
- Statement of the applicant’s experience in the water/wastewater industry,
- The current land use designation of the proposed service territory, and

²² In COA applications the FPSC considers the notice required by Fla. Stat. § 367.031 and Rule 25-30.030, F.A.C., to be the “point of entry into proceedings” requiring objections be filed within 30 days of the notice of the COA application.

²³ See *supra* n. 20; See also F.A.C. 25-22.060 Motion for Reconsideration of Final Orders, and; F.A.C. 9.110 Florida Rules of Appellate Procedure

²⁴ Form PSC 1002 (12/15).

²⁵ F.A.C. 25-30.115 (Uniform System of Accounts for Water and Wastewater Utilities).

- A complete and accurate description of the territory to be served using maps and other geographical data; metes and bounds.

b. Notice of Filing

Contemporaneous with the application for a COA, under Rule 25-30.030 (F.A.C.) “Notice of Application and of Customer Meeting,” the Buyer must provide a notification of the pending application. The notification must go to relevant governmental entities, each customer and owner of property in the service area, and publication in a newspaper of general circulation. The notice also involves a customer meeting. Objections to the application (that is, to the sale or transfer) must be filed with the FPSC within 30 days of the last date of notice publication.

A written objection to a Notice of Application is timely if it is filed within 30 days after the last day that the Notice is mailed or published by the applicant, whichever is later.²⁶ A formal procedure exists for the FPSC to accept and process objections. The FPSC prefers that the utility and the intervenor work to settle the objection, rather than move forward with an evidentiary hearing. However, if the objection is a disputed issue of material fact and the parties cannot settle, an evidentiary hearing will be scheduled. Hearings will extend the time considerably for the FPSC to reach a decision on granting or denying the COA.²⁷

c. Approval of New Tariff/Potential Rate Case Filing

1. Approval of Tariff with COA

As noted above, a new tariff is generally approved along with the application for the COA. Information requirements related to establishment of the new tariff, to be provided as part of the COA application, are substantial. The following are examples of required information related to rate and tariff issues in the COA application:²⁸

- The existing and projected cost of the system(s) and associated depreciation by year until design capacity is reached using the National Association of Regulatory Utility Commissioners (“NARUC”) 1996 Uniform System of Accounts (“USOA”),
- The existing and projected annual contributions-in-aid-of-construction (CIAC) and associated amortization by year,
- A schedule showing the projected capital structure,
- The current annual operating expenses and the projected annual operating expenses at 80 percent of design capacity,
- A schedule showing how the proposed rates were developed,

²⁶ F.A.C. 25-30.031.

²⁷ Fla. Stat. §§ 120.569, 120.57.

²⁸ Form PSC 1002 (12/15).

- A schedule showing how the proposed service availability policy and charges were developed, including meter installation, main extension, and plant capacity charges, and proposed donated property,
- A schedule showing how the customer deposits and miscellaneous service charges were developed, and
 - a. A tariff containing all rates, classifications, charges, rules, and regulations.

2. New Rate Case Filing

If the FPSC should require a full rate case filing in order to approve a new tariff schedule for the Buyer, additional time will be added to the water/wastewater side regulatory process. According to the FPSC staff, a rate case may take 5 to 15 months to complete, depending on the type of application and whether the Commission must conduct a hearing, although the typical case takes approximately 8 months.²⁹

The procedural requirements for a water and wastewater utility's filing for a rate case are specific and extensive, and vary depending on the size of the utility. Florida water and wastewater utilities are divided by the FPSC into three categories for the purpose of rate case filings. The categories are:

- Class A: Has annual water or wastewater revenues of more than \$1,000,000 (JEA is in this category).
- Class B: Has annual water or wastewater revenues between \$200,000 and \$999,000.
- Class C: Has annual water or wastewater revenues less than \$200,000.

JEA obviously is a Class A utility.

Rule 25-30.433 (F.A.C.) Rate Case Proceedings, details the procedures required of all water and/or wastewater utility rate case filings. Additionally, the Minimum Filing Requirements (MFRs) for a Class A utility (such as JEA) or Class B utility rate case are equally as stringent as those for electric utilities. Rule 25-30.436 (General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase) provides the general information required of a Class A or B water and/or wastewater utility when filing a rate case with the FPSC.

A Class A Florida water and/or wastewater utility must complete all of the MFR information in form PSC/AFD 19-W (Financial, Rate, and Engineering Minimum Filing Requirements) when filing a rate case application. Form 19-W is a 100-plus page

²⁹ FPSC Water and Wastewater Manual, Ch. 4 Tariffs.

application replete with detailed information on rate base, rate schedules, income tax, net operating income, and cost of capital, among other information requirements. One can observe from a review of Form 19-W that the MFRs for water and/or wastewater rate case filings are equally large compared to an electric utility rate case filing, each containing a multitude of different schedules of data that must be completed by the utility.³⁰

The regulatory pathway for obtaining full FPSC authority to operate the JEA water and wastewater facilities and to charge an FPSC-approved system of tariffs/rates/charges to existing JEA water and wastewater customers is complex and time-consuming. The Buyer will likely require additional time post-signing of the contract of sale to ensure they are comfortable with the filings and to have conversations themselves with the FPSC staff, prior to making the filing. This process is likely to take 90-120 days, though the length of time will depend on the Buyer's access to JEA's records pre-signing.

2. Timeline

Filing of a COA application is governed by the FPSC statutes and regulations relating to regulated water and wastewater entities. However, the organization and proceedings of the Commission also come under the Florida Administrative Procedure Act ("FPA"), Chapter 120 of the Florida statutes. The FPA governs the actions of the Commission relating to filings, docketing, notices, agenda conferences, case assignment, proposed agency action, and hearing procedures. In the timeline below, the different actions and time requirements follow the FPA required procedures.

Timeline for Grant or Denial of a COA Application with the FPSC		
Step	Process Stage	Estimated Time
Prior to Deal Signing		
0	JEA begins to gather and develop data and information that will be required for the Buyer's COA filing. Information such as maps and territorial boundaries and tariff/rate data can be developed in accordance with FPSC COA requirements.	120-180 days (4-6 months)
After Deal Signing		
1	Buyer files its COA application with the FPSC, providing all information required by rule or order of the Commission, which may include a detailed inquiry into the ability of the applicant to provide service, the area and facilities involved, the need for service in the area involved, and the existence or nonexistence of service from other sources within geographical proximity to the area in which the applicant seeks to provide service. The filing will also provide schedules showing all rates, classifications, and charges for service of every kind proposed by it and all rules, regulations, and contracts relating thereto. ³¹	0 ³²

³⁰ A copy of Form 19-W is on file with the authors.

³¹ Fla. Stat. §367.031.

³² This assumes that Buyer is ready to go on Day 1, post-signing. However, the likelihood is that the Buyer will need a number of months (3-4) to become comfortable with filing, depending on access pre-signing.

2	The Buyer publishes notice of its application to the governing body of the county(ies) or municipality(ies) affected, the appropriate regional planning council, the Office of Public Counsel, the Commission's Office of Commission Clerk, the appropriate regional office of the Department of Environmental Protection, the appropriate water management district, and privately-owned water and wastewater utilities that hold a certificate granted by the Commission and that are located within the county in which the utility or the territory proposed to be served is located, and to all businesses and property owners in the territory to be served. ³³	5-10 days
3	The Buyer may also be required to submit a rate case filing under § 367.081, using Form PSC/AFD-19W. If necessary, this filing would be made simultaneously with the COA application. A rate case filing as large as the one that would be filed for the JEA water/wastewater facility would likely involve evidentiary hearings and in depth FPSC evaluations.	240-450 days* (8-15 months) Note this process would be in parallel to the application for the COA, not in addition to it.
4	FPSC assigns a docket number and assigns an office of primary responsibility (OPR) to lead staff action. ³⁴ Note that the Florida Office of Public Counsel ("FOPC"), which represents the public interest in any proceeding or action before the commission, is statutorily authorized to intervene at this stage. It is prudent to consider consulting the FOPC for perspective in any case with a significant public interest dimension.	10 days after application filed.
5	Typically, the OPR completes a case assignment and scheduling record (CASR) within 10 working days of docketing. This form details the staff and commissioners assigned, the tasks to be performed, and the dates by which the tasks must be accomplished. ³⁵	10 days after docketing
6	The FPSC either approves the application or issues a statement of deficiencies to the applicant. All deficiencies must be cured before the FPSC will approve the application as complete for filing. This process can happen in perpetuity until the filing is deemed to have no deficiencies, which is why it is important to work with the FPSC staff prior to filing.	30-90 days (1-3 months)
7	The official filing date is the date set by the Commission when the application is deemed to be complete. ³⁶	0
8	An objection(s) may be filed and will be considered timely if it is filed within 30 days after the last day that the Notice of Application is mailed or published by the applicant, whichever is later. ³⁷	30 days (1 month) after notice of filing; (35-40 days from date of filing)

³³ F.A.C. 25-30.030.

³⁴ The Florida Bar, Florida Administrative Practice, §10.4 Typical Handling of Case.

³⁵ *Id.*

³⁶ F.A.C. 25-30.025.

³⁷ F.A.C. 25-30.031.

9	If there are no objections filed, by law, the FPSC has 90 days from the official filing date of the completed application to grant or deny an application for a COA. ³⁸ If objects are filed, it will add time to the process.	N/A (process would happen in parallel)
10	If objections are filed, the FPSC may issue an order setting a date for a <i>de novo</i> hearing and establishing a proceeding. ³⁹	0
11	Following the issuance of that order, the parties engage in discovery and file testimony, etc. in accordance with the procedures set out in the order.	60-90 days (2-3 months)
12	A hearing takes place.	1 or more days
13	The FPSC staff develops a Staff Recommendation and the FPSC issues a final order, usually within 90 days of the hearing. ⁴⁰	30-90 days (1-3 months)
14	Parties have 15 days to request reconsideration. ⁴¹	15 days
	Total Time from Date of Application Filing⁴²	Approx. 235 – 345 days (8-12 months)* *If the FPSC requires a full rate case filing, the total time is expected to be: 8-15 months
Appeals Process		
15	Any party adversely affected by the FPSC's final order may request judicial review by the First District Court of Appeal within 30 days of the final order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. However, operations can begin based on the FPSC's final order, pending a stay.	30 days

B. Electric

1. Florida FPSC Rate Approval

Overview:

Florida law prohibits any utility from charging or receiving a rate “not on file” with the FPSC.⁴³ Therefore, for the Buyer to charge former JEA customers for service it must have rates on file with the FPSC. While JEA has existing rates, JEA is a municipal utility and therefore subject to significantly less regulation than that imposed by Florida law on investor-owned (i.e. private)

³⁸ Fla. Stat. § 367.031.

³⁹ Note that the FPSC will set a COA for hearing if there are unresolved objections to the COA, or they may set it for hearing on their own motion.

If rates are changed as part of the COA application, parties whose “substantial interests” are affected may protest the order and request a formal hearing within 21 days of the Proposed Agency Action (“PAA”). (If no protest is filed the PAA order becomes effective upon the issuance of a final order, but this is unlikely).

⁴⁰ Fla. Stat. § 120.569(2)(l).

⁴¹ F.A.C. 25-22.060.

⁴² This assumes that Buyer is ready to go on Day 1, post-signing. However, the likelihood is that the Buyer will need a number of months (3-4) to become comfortable with filing, depending on access pre-signing. The timeline to 15 months is driven by a potential rate case filing.

⁴³ Fla. Stat. § 366.06(1).

utilities. To the extent JEA has rates “on file” with the FPSC, those rates have been filed for predominantly informational purposes and have never been subject to the scrutiny or approval process which the FPSC is required to impose upon public utility rates. Therefore, the Buyer must have rates approved by the FPSC in order to provide service.

Process:

The Buyer and JEA will make closing conditional upon the Buyer obtaining certain rate approvals from the FPSC. Next, the Buyer will petition the FPSC for authorization to charge requested rates to its new customers in the JEA territory upon closing.

The petition must be filed by the Buyer, and typically what is filed is a petition, supporting testimony, and the required MFRs. Supporting testimony generally includes information on rate base, capital structure and cost of capital, operating expenses and revenues, revenue requirements and requested rate increase, sales and load forecast, cost allocation between rate classes, and rate design. The MFRs for this proceeding are quite complex, and include the following items:

- Submission of PSC Form PSC/AFD/011-E (2/04), “Minimum Filing Requirements for Investor-Owned Electric Utilities.”⁴⁴ This form is extremely complex and enumerates a large amount of specific detail about a company’s finances, costs, and structure. JEA can prepare much of this information in advance of signing with the Buyer, but the form must be completed and filed by the Buyer with its petition;
- Detailed information on the value of the assets to be acquired from JEA to justify the rate base requested by the Buyer. This is also information which JEA can begin working to prepare in advance;
- The Buyer’s proposed tariff;
- Information on the rates to be charged to the Buyer’s new customers.

After receiving the filing, the FPSC staff will assign a docket number and evaluate the filing and determine whether there are any deficiencies in the MFRs.⁴⁵ The staff then has 30 days to notify the petitioner of deficiencies in the MFRs, which the petitioner must correct in order for the petition to be processed. If the FPSC decides to use the Proposed Agency Action process, the FPSC staff and the Buyer will engage in informal discovery, in which the Buyer responds to data and information requests from staff. Staff would then prepare a Staff recommendation for a PAA Order which the FPSC considers and votes on at a public agenda conference. It can be expected that interested parties will protest the PAA, and these protests will trigger the FPSC’s obligation

⁴⁴ Some of this information overlaps with the MFR for the water filing before the FPSC. However, most of the information is unique to JEA’s electric assets and service. The Form PSC/AFD/011-E sections such as rate base schedules, net operating income, or cost of service could likely be completed during the ITN. Other sections addressing the buyer’s financials (such as cost of capital, debt, etc.) would be buyer specific and so cannot be completed prior to signing.

⁴⁵ Section 366.06(3). F.S.

to hold formal evidentiary hearings.⁴⁶ Alternately, the FPSC may decide to skip the PAA process and set the matter for formal hearings if they believe the PAA will be protested. These hearings consist of evidentiary procedures (in Florida this requires prefiled testimony) and a full rate hearing examining the rate base, ROE, and other elements of the Buyer's rates.⁴⁷

Once the hearings are complete the FPSC will issue its final order. While the final order is subject to requests for reconsideration and appeal, upon issuance of the final order the Buyer will be allowed to close and begin charging the approved rates.

Timeline:

Under this pathway the Buyer will be required to file petitions with the FPSC, with the assistance of JEA (for example, by JEA providing the financial information the Buyer needs to meet the FPSC's minimum filing requirements).⁴⁸ The Buyer will likely require additional time post-signing of the contract of sale to ensure they are comfortable with the filings, before making the filings themselves. This process is likely to take 90-120 days, though the length of time will depend on the Buyer's access to JEA's records pre-signing. Once the Buyer files its petition, testimony and MFRs, the FPSC staff has 30 days to identify deficiencies in the MFRs. If deficiencies are identified, the Buyer will be required to correct the identified deficiencies. The FPSC staff, within 15 days of being notified that the deficiencies are corrected, will issue a determination as to whether the deficiencies previously identified have been corrected. This process will repeat until the Buyer has corrected all the identified deficiencies in the MFRs.⁴⁹

⁴⁶ The FPSC must provide parties a "point of entry" where they can request formal proceedings prior to the issuance of a final order. Under the Florida Uniform Rules of Procedure, a right to request proceedings under Florida Statute 120.57, proceedings are invoked when an agency takes adverse action affecting the substantial interests of a party. "It is established law that in taking adverse action affecting the substantial interests of a party, an agency must grant the affected parties a clear point of entry to formal or informal proceedings under [Florida Statute] 120.57." There does not appear to be a way for the FPSC to allow final rates to take effect without having provided parties this "point of entry." In fact, the FPSC has specifically held that even in a situation where a utility files a petition to lower its rates, the FPSC cannot issue a final order without allowing this point of entry. See *In re: Gulf Power Company*, Docket No. 991487-EI, Order No. FPSC-99-1970-PAA-EI, 1999 WL 1037147 (1999) ("We do not believe Gulf's request [to lower its ROE via final order without a hearing] comports with the requirements of Florida Administrative Law. It is axiomatic that before an agency subject to the requirements of Chapter 120, Florida Statutes, takes final action, it must afford persons whose substantial interests are affected a point of entry to an administrative hearing. A decision to lower a utility's ROE for all regulatory purposes (as proposed here by Gulf) is final action. Thus, persons whose substantial interests are affected have a right to a hearing. Gulf's request is not consistent with that right.").

⁴⁷ To enable JEA to deliver the power it purchases under the MEAG PPA to its customers across the Buyer's facilities, it is anticipated that the Buyer's rate case filing will also include a request for approval of a delivery services tariff and a billing and collection agreement between JEA and the Buyer and such other items that may be necessary to deliver the power to customers .

⁴⁸ It is possible that JEA will have to make filings related to its territorial agreements to facilitate the transaction as well. These will likely be dealt with as part of the overall proceeding considering the Buyer's petition.

⁴⁹ Fla. Stat. 366.06(3) ("Within 30 days after receipt of the application . . . the commission or its designee shall either determine the commencement date for final agency action **or issue a statement of deficiencies to the applicant**, specifically listing why said applicant has failed to meet the minimum filing requirements. Such statement of deficiencies shall be binding upon the commission to the extent that, once the deficiencies in the statement are

The FPSC is required to issue a final order within 12 months of the date upon which the Buyer has filed the minimum filing requirements.⁵⁰ The FPSC appears to stick to the required time frame and has affirmed its mandate to issue final orders within 12 months.⁵¹ However, as noted this time frame only applies once the FPSC staff has accepted the filing, and so if deficiencies in the MFRs are identified, the overall process could take longer. The 12-month time frame also excludes any time (90-120 days) from signing the purchase agreement to filing where JEA and/or the Buyer hold informal meetings with FPSC staff and Buyer is preparing, reviewing and finalizing the filing.

While this process can happen at the same time the parties are seeking FERC approvals, the total process with the FPSC is expected to take at least 12 months, as it did with FPL's recent acquisition of the Vero Beach municipal utility. The chart and graphic contained below provide a breakdown of the estimated time frame for each step.

It is also important to note that the FPSC staff has not recently gone through a process of establishing rates for a new investor-owned electric utility. The five Florida public utilities have all existed in some form for decades. The regulatory practice and regulatory guidance for establishing a new electric utility are not clear. This may result in FPSC staff requiring information beyond what the Buyer initially provided, thus extending the time frame. Further, the transaction structure or future service arrangement between JEA and the Buyer may be unique and raise issues the FPSC has not previously considered which could impact the timeline. The following chart outlines the steps in this process:

Time for FPSC Electric Rate Approval		
Step	Process Stage	Estimated Time
Prior to Deal Signing		
0	Minimum Filing Requirements ("MFRs") and other materials can be prepared before the signing, but ultimately whatever prior work is done, the Buyer will need to agree with JEA prior to filing.	Prior to deal
After Deal Signing		
1	Buyer files petitions and MFRs with JEA's input to the FPSC to gain rate approval. ⁵²	0

satisfied, the commencement date for final agency action shall be promptly established as provided herein. Thereafter, within 15 days after the applicant indicates to the commission that it believes that it has met the minimum filing requirements, the commission or its designee shall either determine the commencement date for final agency action or specifically enumerate in writing why the requirements have not been met, in which case this procedure shall be repeated until the commencement date for final agency action is established.”).

⁵⁰ Fla. Stat. § 366.06(3) (“The commission shall take final commission action in the docket and enter its final order within 12 months of the commencement date for final agency action. . . . the ‘commencement date for final agency action’ means the date upon which . . . the utility has filed with the clerk the minimum filing requirements as established by rule of the commission.”).

⁵¹ See *In Re: Petition for Increase in Rates by Fla. Power & Light Co. in Re: 2009 Depreciation & Dismantlement Study by Fla. Power & Light Co. et al.*, Docket No. 080677-EI, Order No. FPSC-09-0753-PCO-EI, 2009 WL 4005285 (Nov. 16, 2009) (“The legislature provides us direction in Section 366.06(3), F.S., on when we must issue our final decision. According to this subsection, the legislature has mandated that we take final commission action and enter our final order within 12 months of the commencement date of final agency action.”).

⁵² This assumes that Buyer is ready to go on Day 1, post-signing. However, the likelihood is that the Buyer will need a number of months (3-4) to become comfortable with filing, depending on access pre-signing.

2	FPSC assigns a docket number and assigns an office of primary responsibility to lead staff action. Note that the Florida Office of Public Counsel (“FOPC”) is statutorily authorized to intervene at this stage. It is prudent to consider consulting the FOPC for perspective in any case with a significant public interest dimension.	10 days
3	The FPSC either approves the application or issues a statement of deficiencies in the MFRs to the applicant. ⁵³ It is very helpful to work with the FPSC prior to filing a petition to facilitate early approval of the MFRs. ⁵⁴ If deficiencies in the MFRs are found they must be corrected before the petition can be processed. ⁵⁵ This process of review of MFRs continues until all deficiencies are corrected.	30 days (15 days if 2 nd round approval) May continue until there are no deficiencies in the petition.
4	Once FPSC approves the MFRs, the “commencement date for the final agency action” is established and the 12-month statutory clock starts pursuant to Fla. St. § 366.06(3). ⁵⁶ The Commission is statutorily obligated to stick to the 12-month limit, even though the “estimated times” we have provided theoretically add up to a longer time frame.	0
5	Communications and information and data requests are exchanged between the Buyer, JEA, and the FPSC staff.	90-150 days (3-5 months)
6	The FPSC may issue a Proposed Agency Action (“PAA”) ⁵⁷ stating its intent to grant or deny the petition which the FPSC votes on at an Agenda Conference.	0
7	If the FPSC chooses to use the PAA process, the PAA Order will be issued within 20 days of the Agenda Conference vote.	20 days
8	Parties whose “substantial interests” may be affected by the PAA,, may file petitions for a formal hearing within 21 days of the PAA. (If no protest is filed the PAA order becomes effective upon the issuance of a consummating order making the PAA Order “effective and final,” but this is unlikely).	21 days
9	The FPSC issues an order setting a date for a <i>de novo</i> hearing and establishing a proceeding.	0
10	Following the issuance of that order, the parties engage in discovery and communications, file testimony, etc., in accordance with the procedures set out in the order.	90-150 days (3-5 months)
11	A hearing takes place.	1 or more days
12	The FPSC staff develops a Staff Recommendation which is voted on at a Commission Agenda Conference. The FPSC issues a final order within 20 days of the FPSC’s	30-90 days (1-3 months)

⁵³ “Within 30 days after receipt of the application, rate request, or other written document for which the commencement date for final agency action is to be established, the commission or its designee shall either determine the commencement date for final agency action or issue a statement of deficiencies to the applicant, specifically listing why said applicant has failed to meet the minimum filing requirements.” Fla. Stat. § 366.06(3).

⁵⁴ As noted, *ex parte* restrictions apply to FPSC commissioners up to 180 days out from an anticipated filing.

⁵⁵ Fla. Stat. § 366.06(3).

⁵⁶ Section 366.06(3) specifically states, “The commission *shall* take final commission action in the docket and enter its final order within 12 months of the commencement date for final agency action.” (emphasis added).

⁵⁷ Note that the FPSC may skip steps 6-8 by initially just setting the matter for a hearing instead of issuing a PAA. The FPSC generally decides to issue a PAA when it believes it can avoid a hearing on the matter by using the process (i.e. issuing a PAA that is not protested, which can then be turned into a Final Order). The FPSC may also issue a PAA if it believes the PAA will help define the issues before hearing. However, in cases where the FPSC believes a hearing is inevitable or even required in order to flesh out evidence, the FPSC may simply set the matter for a hearing initially.

	vote, ⁵⁸ usually within 90 days of the hearing, ⁵⁹ but can extend to any date that is within the 12 month period after the commencement date of the initial petition in Step 4. ⁶⁰	
13	Parties have 15 days to request reconsideration	15 days
	Total Time from Date of Application Filing⁶¹	Total time from Step 3 to Step 13 is a statutory maximum of 12 months.
Appeals Process		
14	Any party adversely affected by the FPSC's final order may request judicial review by the Florida Supreme Court within 30 days of the final order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. However, operations can begin based on the FPSC's final order, pending a stay.	30 days

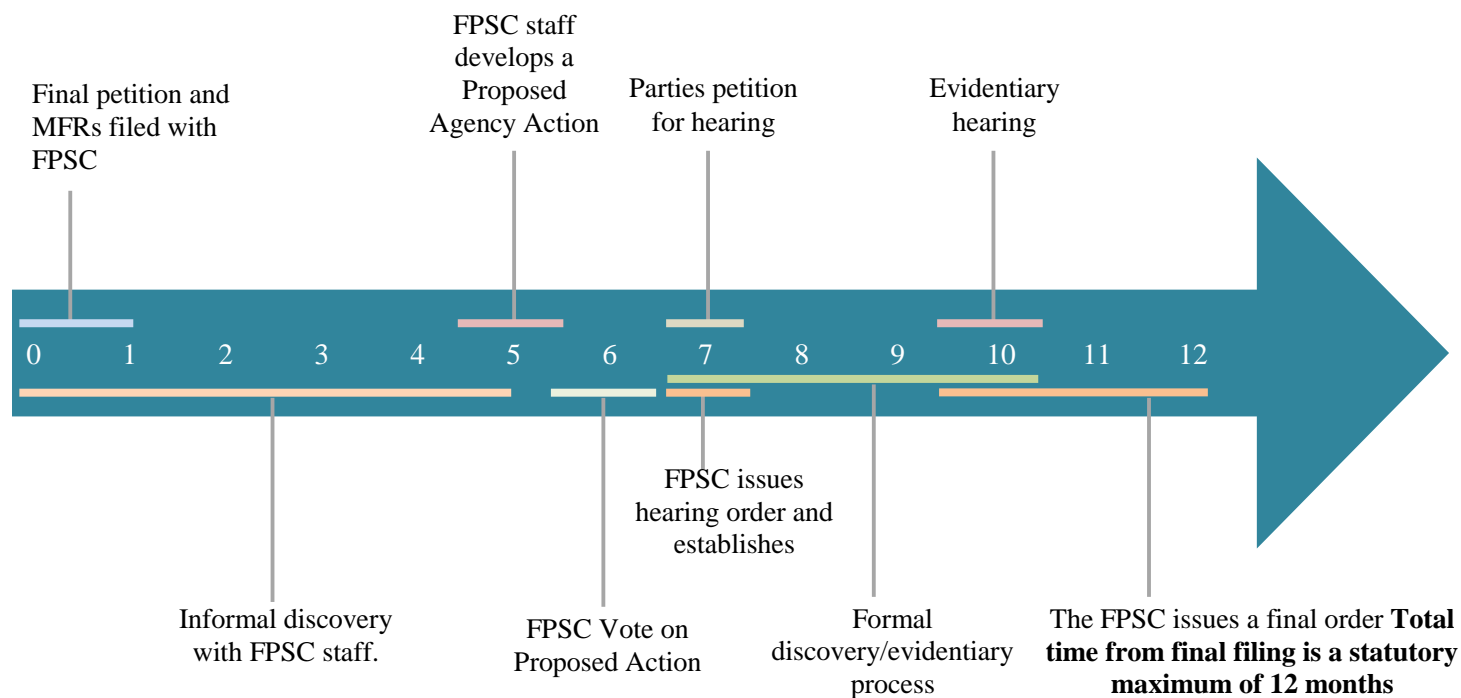
⁵⁸ Fla. Stat. § 366.072.

⁵⁹ Fla. Stat. § 120.569(l)(1) ("Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days . . . [a]fter the hearing is concluded, if conducted by the agency.").

⁶⁰ The FPSC clarified this timeline in a 2009 Order, holding that it was bound by the more specific language in § 366.06(3), which requires the FPSC to make a decision 12 months from the initial petition, rather than the 90-day requirement in § 120.569(l)(1). *See In Re: Petition for Increase in Rates by Fla. Power & Light Co. in Re: 2009 Depreciation & Dismantlement Study by Fla. Power & Light Co. et al.*, Docket No. 080677-EI, Order No. PSC-09-0753-PCO-EI, 2009 WL 4005285 (Nov. 16, 2009).

⁶¹ This assumes that Buyer is ready to go on Day 1, post-signing. However, the likelihood is that the Buyer will need a number of months (3-4) to become comfortable with filing, depending on access pre-signing.

Timeline for Electric Rate Filing with the FPSC: Streamlined Overview⁶²



⁶² Timeline does not include Buyer filing preparation (3-4 months) or extended time to cure deficiencies once the filing is made.

Other Required Approvals

In addition to the Buyer's rate case, the transaction will likely require the following related filings before the FPSC:

- **Territorial Boundary Agreements:** Because JEA's assets are being transferred from JEA to the Buyer, JEA and the Buyer will be required to make a filing (likely a joint filing) to terminate or modify certain of JEA's territorial agreements and establish new territorial agreements reflecting the Buyer's acquisition of the respective facilities from JEA.
- **Modification of JEA's Tariff:** JEA will need to file with the FPSC a revised tariff reflecting its process for allocating costs and delivering power from the MEAG PPA.

2. Previous Municipal Acquisitions in Florida

As background, there have been two previous sales of municipal utilities to investor-owned utilities in Florida.⁶³ The most recent involves the Florida Power & Light ("FP&L") acquisition of the Vero Beach electric utility, which concluded in December 2018.⁶⁴ In 1992, there was also an acquisition of Sebring Utilities Commission by Florida Power Corp.⁶⁵ In both scenarios, the buyer was a neighboring utility which extended its existing rates to the municipal entity's former territory. In both cases, the buyer, prior to closing, sought approval from the PSC for permission to charge its existing rates to the former municipal customers upon closing, and other aspects of the Purchase and Sale Agreement (PSA).

We reference these two cases throughout this memorandum. Importantly, while a Buyer may be aware of and use these cases for comparison of required regulatory approvals and timelines, the Vero Beach purchase was for a municipal utility with a 35,000-person customer base and the Sebring Utilities purchase with a 12,500-person customer base. By comparison, JEA serves approximately 466,000 electric customers, 359,000 water customers, and 270,000 wastewater customers.⁶⁶

b. Vero Beach

The City of Vero Beach electric utility ("COVB") was a municipal electric utility providing service to approximately 35,000 customers. Approximately 60% of those customers lived outside the

⁶³ Technically, in both cases the investor-owned utility acquired substantially all of the municipal utility's assets, rather than acquiring ownership of the municipal entity itself.

⁶⁴ *In re: Petition by Florida Power & Light Company (FPL) for authority to charge FPL rates to former City of Vero Beach customers and for approval of FPL's accounting treatment for City of Vero Beach transaction*, Docket No. 20170235-IE, Order No. PSC-2018-0566-FOF-EU (2018).

⁶⁵ *In Re: Joint Petition of Florida Power Corporation and Sebring Utilities Commission for Approval of Certain Matters in Connection with the Sale of Assets by Sebring Utilities Commission to Florida Power Corporation*, Docket No. 920949-EU, Order No. PSC-92-1468-FOF-EU (1992).

⁶⁶ See ITN at 54.

actual municipal limits of the City of Vero Beach. COVB's rates were significantly higher than FPL, which was the neighboring utility. Customers of COVB who lived outside the city limits had long complained about being subject to COVB's rates and expressed an interest in obtaining service from FPL. Vero Beach eventually decided to sell all of COVB's assets—both those within and outside of the city limits—to FPL.

After negotiations, FPL and COVB entered into an Asset Purchase and Sale Agreement ("PSA"), under which COVB would sell its assets to FPL for approximately \$185m. The PSA was ratified by Vero Beach in May 2017.

FPL filed their petitions and testimony for the above approvals on November 3, 2017, after which the parties and FPSC staff engaged in informal discovery via data requests and the Florida Office of Public Counsel (FOPC) served interrogatories and requests for production of documents. In evaluating the staff's data requests, some of staff's main concerns related to FPL's justification for the positive acquisition adjustment of approximately \$116.2 million, ensuring that customers would not be harmed (e.g. FPL's customers would not be worse off and COVB's customers would be better off), and questions related to the value of the rate base.

On July 2, 2018, following an Agenda Conference, the FPSC issued a Proposed Agency Action ("PAA") order stating its intent to grant the petitions. A substantially affected group of customers objected to the PAA, and so the FPSC set the matter for hearing, after which the parties engaged in formal discovery. A hearing was held on October 18, 2018, and the FPSC issued its final order on November 30, 2018. COVB and FPL closed in December 2018.

a. Sebring

In the Sebring proceeding, Sebring Utilities Commission ("Sebring") was a municipal utility providing electrical transmission and distribution service in Sebring, Florida. Sebring was facing serious financial troubles due to a large amount of outstanding bonds and Sebring's rates were insufficient to cover the debt service on the bonds. In order to be compliant with its bond covenants Sebring would have required a 37% rate increase, and its rates were already the highest in the state.

To resolve this problem, Sebring and Florida Power Corp. ("FPC") entered into an "Agreement for Purchase and Sale of Electric System" ("PSA"), which provided for FPC to purchase Sebring's system for \$54 million. The sale price was calculated as the amount necessary to repay the full amount of all of Sebring's outstanding bonds.

A similar process was followed as in *Vero Beach*, although the FPSC did not issue a PAA. On September 18, 1992, the parties prior to closing filed a petition with the FPSC to obtain the required approvals. The FPSC issued a pre-hearing order on September 24, then held hearings in November and December. The FPSC issued its order granting the requested approvals on December 17, 1992.

3. FERC Approval of the Acquisition of JEA Assets

Overview:

Before the transaction can close and ownership of JEA's assets can be transferred to the Buyer, the Buyer must obtain approval from the Federal Energy Regulatory Commission ("FERC"). The Federal Power Act ("FPA") Section 203 prohibits acquisitions by a public utility of FERC-jurisdictional assets or facilities over a \$10,000,000 threshold without prior FERC approval.⁶⁷ FERC-jurisdictional assets include electric transmission lines which are used in interstate electric commerce.⁶⁸ As JEA owns such facilities, the Buyer is required to obtain FERC FPA 203 approval before closing.

Section 203(a)(4) of the FPA requires FERC to approve an acquisition if it: (1) determines that the transaction will be consistent with the public interest and (2) will not result in improper cross-subsidization of a non-utility associate company. FERC's analysis of whether a transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.⁶⁹ Because FERC's analysis of FPA 203 filings focuses on the impact of the acquisition on regional competition and rates,⁷⁰ the filing will be heavily dependent upon the identity of the Buyer.⁷¹ Similarly, FERC's analysis of cross-subsidization is dependent on the Buyer and the Buyer's affiliates.

Moreover, JEA, as a municipal utility, has previously been exempt from FERC Form 1 filings.⁷² FERC Form 1 is a comprehensive financial and operating report submitted annually for electric rate regulation, market oversight analysis, and financial audits for Major electric utilities.⁷³ JEA would be classified as a Major electric utility but for its current exemption as a municipal utility.⁷⁴ As a new, regulated utility the Buyer will be required to file Form 1. FERC states that new entities may begin filing based on projected data. JEA can begin preparing the information which will need to be included in the FERC Form 1 in advance of signing, but the Form will ultimately need to be filed by the Buyer.

Filing Process and Time Frame:

⁶⁷ 16 U.S.C. § 824b.

⁶⁸ 16 U.S.C. § 824(b)(1).

⁶⁹ See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, FERC Stats. & Regs. ¶ 31,044, at 30,111 (1996), reconsideration denied, Order No. 592-A, 79 FERC ¶ 61,321 (1997) ("Merger Policy Statement").

⁷⁰ Because JEA is currently a municipal entity which is subject to less state and federal regulation than will be the Buyer, it is unlikely that the transaction will raise the potential for adverse impacts on regulation.

⁷¹ For example, if the Buyer is an existing regional utility, the filing is more likely to raise concerns of adverse impacts on regional competition and FERC may require the Buyer to agree to accept conditions to reduce adverse impacts on regional competition.

⁷² 18 C.F.R. § 141.1(b)(1)(ii).

⁷³ 18 C.F.R. § Pt. 101, Classification of Utilities.

⁷⁴ A Major utility is one which has had, in each of the last three consecutive years, sales or transmission service that exceeded one million megawatt-hours of total sales. *Id.* JEA's sales have exceeded ten million megawatt-hours for the past three consecutive years. *See* ITN at 54.

Common practice is to hold an informal pre-filing meeting with FERC staff and individual Commissioner offices to discuss the transaction before *ex parte* restrictions attach. This provides an opportunity to get staff/Commissioner feedback on potential sticking points. Once the application is filed, FERC will issue a notice and provide a window for interested parties to intervene. This window typically is between 15 and 60 days, depending on the complexity of the transaction. The application must contain sufficient information to meet FERC's 203 approval requirements, such as:

- Horizontal and vertical market analyses showing the merger will not result in an adverse effect on competition and/or an explanation of how the Buyer will mitigate these adverse effects;
- Information on the post-merger regulatory environment;
- Information demonstrating that the acquisition will not adversely impact rates or result in improper cross-subsidization;
- Detailed information on the Buyer's affiliates.

Although protests will likely be received, this process is low risk and FERC will probably approve the application within 6 months.⁷⁵ FERC is required to issue an order within 180 days either approving or denying the application or extending the time for FERC to act by an additional 180 days for "good cause."⁷⁶ FERC is only allowed to extend the deadline one time, and so FERC must issue an order either accepting or rejecting the application at the end of 360 days. In practice, FERC staff may issue deficiency letters requesting additional information. These letters extend the timeline as the applicant's response will re-start the initial 180-day clock.⁷⁷

If the transaction structure or future service arrangement between JEA and the Buyer is novel, this could increase the chances that FERC will require additional information or additional time to evaluate the application. Therefore, once a potential Buyer is identified, further examination of the potential transaction or service arrangement structure should be done to determine how best to minimize this risk.

FERC will likely grant conditional approval allowing closing to proceed but require subsequent compliance filings, often intended to address concerns raised during the proceeding. However,

⁷⁵ If an existing Florida utility purchases JEA, it is likely to take up to 6 months because it will result in more than a *de minimis* change in market power—and thus require a competitive analysis screen.

⁷⁶ 16 U.S.C. § 824b(a)(5). ("If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.").

⁷⁷ See, e.g., Letter requesting Florida Power & Light Co to provide w/in 14 days additional information on the impact of the transaction on rates etc., under EC13-91, Docket No. EC13-91-000 (May 13, 2013) (requesting additional information from FP&L about the Vero Beach transaction) ("Pending receipt of the above information, a filing date will not be assigned to the filing.").

the Buyer will typically be allowed to proceed with closing prior to filing all required compliance filings. A rehearing is also allowed. Though a rehearing may be requested, the Buyer may proceed on the original FERC Order. A rehearing may take months to a year, but FERC is unlikely to unwind the deal.

4. FERC Approval of the Buyer's Tariff and Market-Based Rate Authority

Overview:

As FERC has jurisdiction over the sale of electricity at wholesale into interstate commerce,⁷⁸ for the Buyer to make wholesale sales of energy from JEA's generation assets at market-based rates, the Buyer will be required to seek market-based rate authorization from FERC by filing an application under Section 205 of the FPA. Absent such authorization, the Buyer would only be allowed to make wholesale sales at its cost-based rates.

FERC grants market-based authorization where the seller can demonstrate that they and their affiliates either lack horizontal and vertical market power, or where they have adopted sufficient techniques to mitigate the possible exercise of such market power. The Buyer will therefore have to demonstrate it either satisfies FERC standards regarding horizontal and vertical market power or agree to adopt mitigation techniques. Whether the Buyer has regional assets or affiliates or is affiliated with inputs to generation such as natural gas pipelines will impact the market power analysis and increase the likelihood FERC will require the Buyer to adopt mitigation techniques.

In order to address FERC's requirements re: market power, all sellers seeking market-based rate authorization must include a market power analysis as part of their application. Because FERC's market power analysis considers not only the Buyer but the Buyer's affiliates and their regional locations, the complexity of the filing and the likelihood FERC will find market power concerns and require mitigation is dependent on the Buyer.

Filing Process and Time Frame:

The time frame for FERC approval of an application for market-based rates is impacted by whether the market power analysis shows the existence of market power, and if so, what mitigating techniques are proposed by the applicant, FERC, or others. Overall, this process is similar to the FPA 203 filing and is estimated to take 6 months. The filing must include sufficient information to satisfy FERC's standards for granting market-based rate authorization, including the following:

- A description of the specific products to be offered under market-based rates;
- A listing of the Buyer's and its affiliates' business activities;
- An explanation of how the Buyer satisfies the horizontal and vertical market power guidelines, including market power analyses and an explanation of what mitigation techniques, if any, the Buyer is adopting to address market power concerns;

⁷⁸ 16 U.S.C. § 824(b)(1).

- A copy of the proposed market-based rate tariff;
- An asset-ownership matrix listing all of the generation assets, transmission assets, and natural gas pipelines and storage facilities, owned or controlled by the Buyer and its affiliates.

5. FERC Approval of the Buyer's Open Access Transmission Tariff

Pursuant to FERC Order No. 888,⁷⁹ FERC requires all public utilities (i.e. investor owned utilities) to that own, control or operate interstate transmission facilities to file open access transmission tariffs (OATTs) that contain minimum terms and conditions of non-discriminatory service. These OATTs ensure that transmission owners and customers have fair and open access to obtain transmission service on such facilities. The OATT requirement is “intended to foster greater competition in wholesale power markets by reducing barriers to entry in the provision of transmission service.”⁸⁰

As the Buyer will be acquiring interstate transmission facilities from JEA, the Buyer will be required to file with FERC an OATT. FERC set forth a standard *pro forma* OATT in Order No. 888, which has been subsequently modified.⁸¹ It is likely that the Buyer will make this filing at the same time as the FPA 203 filing, or FERC may require the Buyer to make such a filing as a condition of approval of the FPA 203 filing. The existence of an OATT is also an important factor in FERC's evaluation of vertical market power for purposes of its market-power analysis. Therefore, the Buyer will wish to have an OATT in place when seeking market-based rate authorization.

As the OATT is a *pro forma* agreement, it is unlikely that this will be a contentious filing unless the Buyer seeks approval for deviations from FERC's *pro forma* OATT.

C. Other Federal Approvals

a. Hart-Scott-Rodino Antitrust Review

The Hart-Scott-Rodino Act requires parties to notify the Federal Trade Commission and Department of Justice of large mergers and acquisitions before they occur with the filing of an HSR Form, generally known as a “premerger notification report.” The report is meant to alert regulators to the intent of companies to merge so they may perform a review of the action based on antitrust laws. The anti-trust analysis will depend, of course, on the identity of the buyer, which limits the extent to which we can productively analyze the anti-trust issues. However, barring a Second Request from the DOJ or FTC, the process is expected to take 30 days, unless the DOJ or

⁷⁹ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996).

⁸⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (2007), FERC Stats. & Regs. ¶ 31,241 (2007).

⁸¹ *Id.*

the FTC issues an early termination notification, which will take only 20 days. If a Second Request is issued, it could extend the process by 2-3 years for DOJ or FTC review.

b. CFIUS

Review by the Committee on Foreign Investment in the United States may be required if a foreign person has at least an ownership of 10% interest in the Buyer. However, the 10% threshold may not be applicable in the case JEA's assets are determined to be "critical infrastructure" under the Foreign Investment Risk Review Modernization Act ("FIRRMA"), and then CFIUS would be applicable if a foreign person holds any interest in the Buyer.

c. FCC License Transfers

JEA also controls a telecommunications infrastructure and dark fiber network for which the transfer of licenses will have to be approved by the FCC prior to closing, pursuant to 47 U.S.C. § 310(d). The processing period varies depending on the types of licenses, but generally takes between 30 and 180 days, and some licenses may be non-transferrable. It is important to understand from JEA the current types of FCC licenses they have in place in order to adequately evaluate this area.

IV. Potential Alternatives and Accompanying Risk

We have looked at other possible avenues to potentially shorten the time frame for the above regulatory approvals. However, all are unlikely. On the water/wastewater side, we thought there may be a potential for interim approval of the COA, however there is not statutory authority for such a proposition and, significantly, a Buyer is unlikely to take on this risk as the deal could be unwound if the COA is not ultimately approved.

On the electric side, even though there might be a perception that a Buyer can step into the shoes of JEA, this strategy is completely untested and it is doubtful that the FPSC has the legal authority to allow the Buyer to permanently adopt JEA's rates without first holding a rate hearing. A similar issue presents itself when considering whether the parties who might intervene could reach a settlement, which the FPSC could then approve, because Florida law requires the FPSC provide interested parties a point of entry to the proceedings.⁸²

In order to provide the research conducted on these scenarios, and why they are unworkable, we have provided more detailed explanations below.

A. Water and Wastewater

a. Buyer is Not a Florida Regulated Water/Wastewater Utility with a COA

There is a potential that, prior to deal being executed, JEA could meet with FPSC staff to discuss whether the FPSC would be willing to consider granting the buyer a conditional COA, allowing the Buyer to operate the water/wastewater system on an interim basis and continue charging customers under JEA's current tariffs until an original COA is granted and final rates approved.

⁸² See *supra* n. 46.

If the FPSC indicates that it is willing to seriously consider such an approach, JEA must insist, as a condition of the deal, that the buyer commit to:

1. File a completed application for an original certificate and tariff within a certain time period after the deal executed
2. At the time of its filing, seek assurance from the FPSC that, once the transaction closes, the Buyer can immediately take over operation of the system and begin charging customers on an interim basis under JEA's existing tariffs.

Any conditional COA issued by the FPSC would most likely be conditioned upon the Buyer being granted a final COA or, in the event a COA is not granted, agreeing to return the system to JEA (in return for repayment of the purchase price) if the Commission declines to issue a certificate. A Buyer may also need to refund any overcollections if final rates are lower than JEA's.

There are several issues with such a strategy. Namely, there is no statutory authority for a conditional COA for an exempt utility Seller transferring to a non-regulated Buyer and there is no precedent for such a conditional COA for a utility the size of JEA. Parties opposed to privatization may seek to enjoin issuance of a conditional COA, arguing that: (i) Florida law requires that a final certificate be issued before a private party can operate a water/wastewater system in Florida; and (ii) a full blown proceeding is required prior to issuing a certificate (with discovery and an opportunity for an evidentiary hearing if there are objections – as almost certainly will occur).

Given the potential that the transaction may have to be unwound and the uncertainty regarding future rates, Buyer and JEA may not be willing to accept the risks created by this approach without certain preliminary assurances from the FPSC.

b. Buyer is a Florida-Regulated Water/Wastewater Utility with a COA

While the most likely case is that the Buyer of JEA's assets will not be exempt from FPSC jurisdiction and will need to file an application with the FPSC to obtain a COA prior to closing, we explored a second possibility where the Buyer is a Florida-regulated water/wastewater utility and already has a COA. However, we believe this possibility is remote for two reasons (1) no investor-owned electric utility in Florida (FP&L, Duke, etc.) also has a COA for water and wastewater operations, and (2) even the largest of the Florida-regulated water/wastewater utilities is too small to raise the funds required to purchase JEA.⁸³

If a Buyer is a Florida-regulated water/wastewater utility with a COA, the sale may take place without a COA providing that the contract of sale makes the closing contingent upon FPSC approval, i.e., the granting of a COA.⁸⁴ In this narrow and specific case, the Buyer does not need the COA at the time of sale but must file the application for a COA within 90 days of the sale date. While this may seem to be an attractive advantage, it has severe consequences if the FPSC should

⁸³ A table of the Class A Florida-regulated water and wastewater facilities is included as Appendix A to this memorandum.

⁸⁴ Rule 25-39.037, F.A.C.

deny the application. A denied application may result in an unwinding of the deal and the assets returned to the original owner. This risk would be unacceptable to JEA and any Buyer.

B. Electric

a. Adoption of JEA's Rates

We have carefully evaluated whether, under the applicable Florida regulations, the Buyer could close on the deal and then step into JEA's shoes and begin charging customers JEA's existing rates without obtaining any prior approval from the FPSC. The risks of such an approach are very high, even though there might be a perception that the FPSC's regulations in F.A.C. 25-9.044 appear to create this pathway. For starters, this pathway is completely untested, as no electric utility has ever acquired a municipal utility under this regulation aside from *Vero Beach* and *Sebring*, and in both of those cases the acquiring utility sought rate approval from the FPSC prior to closing. Therefore, there are no proceedings to serve as examples if the Buyer wished to pursue this option.

Second, it is doubtful that the FPSC has the legal authority to allow the Buyer to permanently adopt JEA's rates without first holding a rate hearing. Although F.A.C. 25-9.044 instructs the acquiring utility to adopt and provide service under the prior utility's rates, as JEA is a municipal entity its rates have never been approved by the FPSC. Florida law prohibits a utility from charging rates "not on file with the commission."⁸⁵ It is unclear whether JEA's rates, once adopted by the Buyer, would meet this standard as they have never been approved by the FPSC, and if not how the FPSC would resolve this issue.⁸⁶ Further, the PSC would be required to make specific determinations as to the value of JEA's system once purchased from JEA. Specifically, Florida Statute 366.06(1) requires that:

... The commission **shall investigate and determine the actual legitimate costs of the property of each utility company**, actually used and useful in the public service, and **shall keep a current record of the net investment of each public utility company** in such property which value, as determined by the commission, shall be used for ratemaking purposes ...

Because the PSC has not yet "investigate[d] and determine[d]" the actual costs of JEA's system, arguably it would be required to do so for Newco in order for Newco to rely on the value of that system for its rate base.

⁸⁵ Fla. Stat. 366.06(1).

⁸⁶ The closest the FPSC appears to have come to endorsing the F.A.C. 25-9.044 process in the context of a public utility acquiring a municipal utility was in the *Vero Beach PAA*, where the FPSC provided the following restatement of the rule:

Rule 25-9.044(1), F.A.C., states that in the case of a change of ownership or control of a utility that places the operation under a different or new utility, the company which will thereafter operate the utility must adopt and use the rates, classifications, and regulations of the former operating company unless we authorize a change. *Vero Beach PAA* at 8.

However, the FPSC stopped short of saying that FP&L would be able to adopt *Vero Beach's* rates if they did not authorize other rates, this order was a PAA, and as FP&L was petitioning for other rates this statement was dicta.

Parties opposing the transaction would presumably insist that the FPSC hold a rate hearing. Regardless of the validity of JEA's rates for purposes of F.A.C. 25-9.044, the FPSC would almost certainly initiate a rate case once the Buyer began providing service, as the FPSC has never reviewed and approved JEA's rates. To the extent the FPSC allowed the Buyer to proceed under the former JEA rates pending outcome of the rate hearing, the FPSC would likely make these rates subject to refund. Even if the FPSC ultimately allowed the Buyer to permanently adopt JEA's rates, the process presents more uncertainty and risk than a potential buyer will probably accept.

b. Settlement Agreements

The FPSC favors the settlement of disputes by mutual agreement between the contending parties and this general rule applies in rate-setting cases.⁸⁷ The FPSC evaluates proposed settlement agreements by examining whether the agreement is in the public interest, and "determination of what is in the public interest rests exclusively with the [FPSC]," so long as the FPSC's conclusions and findings are supported by competent and substantial evidence.⁸⁸

It is not uncommon for the FPSC to accept settlements to rate cases, and the FPSC is able to approve settlement agreements even if they are non-unanimous and opposed by the Florida Office of Public Counsel.⁸⁹ The FPSC can approve non-unanimous settlement agreements without first holding an evidentiary hearing on the settlement agreement.⁹⁰ Therefore, one way the Buyer could potentially shorten the time for the FPSC rate hearing is by developing a negotiated settlement agreement with the major intervenors in the proceeding.

However, a settlement agreement would not be a panacea by which the Buyer could avoid a rate proceeding. Florida law requires the FPSC provide interested parties a point of entry to the proceedings.⁹¹ In reviewed cases where the FPSC accepted a settlement agreement, this process came after the FPSC had already allowed parties to intervene and engage in discovery and other evidentiary processes. It is therefore unlikely that the FPSC would accept a settlement agreement before issuance of the PAA or an evidentiary proceeding.

⁸⁷ *Citizens of State v. Fla. Pub. Serv. Comm.*, 146 So. 3d 1143, 1155 (Fla. 2014).

⁸⁸ *Id.* at 1173.

⁸⁹ *Id.* at 1151.

⁹⁰ *See S. Fla. Hospital v. Jaber*, 887 So. 2d 1210 (Fla. 2004).

⁹¹ *See supra* n. 46.

APPENDIX A

Table of Class A Florida Regulated Water and Wastewater Utilities⁹²

	Utility Name	Address	Annual Revenues
1	Central Sumter Utility, LLC	1020 Lake Sumter Landing The Villages, FL 32162	\$6,652,172
2	Forest Utilities, Inc	6000 Forest Blvd Ft. Myers, FL 33919	\$1,399,907
3	Indiantown Company, Inc.	16001 SW Market Street P.O. Box 397 Indiantown, FL 34956	\$2,052,364
4	KW Resort Utilities Corp.	6630 Front Street Key West, FL 33040	\$2,935,763
5	Marion Utilities, Inc (Water Section)	710 NE 30 th Avenue Ocala, FL 34470	\$1,712,908
6	NI Florida, LLC	1710 Woodcreek Farms Road Elgin, SC 29045 ⁹³	\$2,606,961
7	North Beach Utilities, Inc	4125 Coastal Highway St. Augustine, FL 32084	\$1,441,006
8	Peoples Water Service Company of Florida, Inc	22 West Road Towson, MD 21204 (for corporate records) 905 Lowndes Avenue Pensacola, FL 32507 (for operational data)	\$3,721,998
9	Pluris Wedgefield, Inc.	150 Turtle Creek Blvd, Ste 207 Dallas, TX 75207 (No Florida address given but have a Florida Certificate of Authority)	\$2,489,727

⁹² Source: 2018 FPSC Water/Wastewater Company Annual Reports. Class A utilities have annual revenues over \$1,000,000.

⁹³ Assume Operating Revenues from the 2018 Annual Report are Florida revenues only.

10	Southlake Utilities, Inc.	2215 River Blvd Jacksonville, FL 32204 Also: 16554 Cagan Crossings Blvd, Ste 2 Clermont, FL 34714	\$2,129,683 ⁹⁴
11	Utilities Inc. – Parent; Water Service Corp – Supplies Services; Utilities Inc of Florida – provides administration	200 Weathersfield Avenue Altamonte Springs, FL 32714	\$35,825,351 ⁹⁵
12	Water Management Services, Inc.	250 John Knox Road, #4 Tallahassee, FL 32303	\$2,136,458

⁹⁴ This utility presents its operating revenues as a negative number. This may be due to its being managed by an outside company: Cagan Management, 3856 Oakton Street, Skokie, IL 60076. It also has a number of different addresses. Additional review of the annual report may be required.

⁹⁵ These operating revenues are significantly higher than any other Class A Florida regulated water utility. The operating statement says “Utilities Inc of Florida” but further review of Utilities, Inc’s annual report is needed to confirm that these revenues are from the Florida operation only.

APPENDIX B

FLORIDA PUBLIC SERVICE COMMISSION

INSTRUCTIONS FOR COMPLETING EXAMPLE APPLICATION FOR ORIGINAL CERTIFICATE OF AUTHORIZATION FOR EXISTING UTILITY CURRENTLY CHARGING FOR SERVICE

**(Pursuant to Sections 367.031, 367.045, and 367.081, Florida Statutes, and
Rule 25-30.034, Florida Administrative Code)**

General Information

The attached form is an example application that may be completed by the applicant and filed with the Office of Commission Clerk to comply with Rule 25-30.034, Florida Administrative Code (F.A.C.). Any questions regarding this form should be directed to the Division of Engineering at (850) 413-6910.

Instructions

1. Fill out the attached application form completely and accurately.
2. Complete all the items that apply to your utility. If an item is not applicable, mark it "N.A."
Do
not leave any items blank.
3. Remit the proper filing fee pursuant to Rule 25-30.020, F.A.C., with the application.
4. Provide proof of noticing pursuant to Rule 25-30.030, F.A.C. This may be provided as a late-filed exhibit.
5. The completed application, attached exhibits, and the proper filing fee should be mailed to:

**Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850**

APPLICATION FOR ORIGINAL CERTIFICATE OF AUTHORIZATION FOR
EXISTING UTILITY CURRENTLY CHARGING FOR SERVICE

**(Pursuant to Sections 367.031, 367.045, and 367.081, Florida Statutes, and
Rule 25-30.034, Florida Administrative Code)**

To: **Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850**

The undersigned hereby makes application for original certificate(s) to operate a water ☐ and/or wastewater ☐ utility in _____ County, Florida, and submits the following information:

PART I

APPLICANT INFORMATION

A) Contact Information for Utility. The utility's name, address, telephone number, Federal Employer Identification Number, and if applicable, fax number, e-mail address, and website address. The utility's name should reflect the business and/or fictitious name(s) registered with the Department of State's Division of Corporations:

Utility Name

Office Street Address

City

State

Zip Code

Mailing Address (if different from Street Address)

City

State

Zip Code

() _____

Phone Number

() _____

Fax Number

Federal Employer Identification Number

E-Mail Address

Website Address

- B) The contact information of the authorized representative to contact concerning this application:

Name

Mailing Address (if different from Street Address)

City

State

Zip Code

() -

Phone Number

() -

Fax Number

E-Mail Address

- C) Indicate the nature of the utility's business organization (check one). Provide documentation from the Florida Department of State, Division of Corporations showing the utility's business name and registration/document number for the business, unless operating as a sole proprietor.

☐ Corporation _____
Number

☐ Limited Liability Company _____
Number

☐ Partnership _____
Number

☐ Limited Partnership _____
Number

☐ Limited Liability Partnership _____
Number

☐ Sole Proprietorship

☐ Association

☐ Other (Specify) _____

If the utility is doing business under a fictitious name, provide documentation from the Florida Department of State, Division of Corporations showing the utility's fictitious name and registration number for the fictitious name.

☐ Fictitious Name (d/b/a) _____
Registration Number _____

- D) The name(s), address(es), and percentage of ownership of each entity or person which owns or will own more than 5 percent interest in the utility (use an additional sheet if necessary).

PART II

ORIGINAL CERTIFICATE FOR EXISTING UTILITY

A) DESCRIPTION OF SERVICE

- 1) Exhibit _____ - Provide a statement indicating whether the application is for water, wastewater, or both. If the applicant is applying only for water or wastewater, the statement shall include how the other service is provided.

- 2) Exhibit _____ - Provide a description of the types of customers served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, or commercial.

- 3) Exhibit _____ - Provide a schedule showing the number of customers currently served, by class and meter size, as well as the number of customers projected to be served when the requested service territory is fully developed.

B) FINANCIAL ABILITY

- 1) Exhibit _____ - Provide a detailed financial statement (balance sheet and income statement), audited if available, of the financial condition of the applicant, that shows all assets and liabilities of every kind and character. The financial statements shall be for the preceding calendar or fiscal year. The financial statement shall be prepared in accordance with Rule 25-30.115, F.A.C. If available, a statement of the sources and uses of funds shall also be provided.
- 2) Exhibit _____ - Provide a list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding. The list need not include any person or entity holding less than 5 percent ownership interest in the utility. The applicant shall provide copies of any financial agreements between the listed entities and the utility and proof of the listed entities' ability to provide funding, such as financial statements.

C) TECHNICAL ABILITY

- 1) Exhibit _____ - Provide a statement of the applicant's experience in the water or wastewater industry;

- 2) Exhibit _____ - Provide a copy of all current permits from the Department of Environmental Protection (DEP) and the water management district;
- 3) Exhibit _____ - Provide a copy of the most recent sanitary survey, the compliance inspection report available from the DEP or county health department, and the most recent secondary water quality standards report; and
- 4) Exhibit _____ - Provide a copy of all correspondence with the DEP, county health department, and water management district, including consent orders and warning letters, and the utility's responses to the same, for the past five years.

D) NEED FOR SERVICE

- 1) Exhibit ____ - Provide a statement explaining when and under what circumstances the applicant began providing service prior to obtaining a certificate of authorization.

- 2) Exhibit ____ - If the applicant is requesting any territory not served at the time of application, provide the following documentation of the need for service in the proposed area:

- a) The number of customers proposed to be served, by customer class and meter size, including a description of the types of customers anticipated to be served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, commercial. If the development will be in phases, this information shall be separated by phase.
- b) A copy of all requests for service from property owners or developers in areas not currently served.
- c) The current land use designation of the proposed service territory as described in the local comprehensive plan at the time the application is filed. If the proposed development will require a revision to the comprehensive plan, describe the steps taken and to be taken to facilitate those changes, including changes needed to address the proposed need for service described above.
- d) Any known land use restrictions, such as environmental restrictions imposed by governmental authorities.

E) TERRITORY DESCRIPTION AND MAPS

- 1) Exhibit ____ - Provide a legal description of the proposed service area in the format prescribed in Rule 25-30.029, F.A.C.

- 2) Exhibit _____ - Provide documentation of the utility's right to access continued use of the land upon which the utility treatment facilities are located. This documentation shall be in the form of a recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded lease such as a 99-year lease, or recorded easement. The applicant may submit an unrecorded copy of the instrument granting the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located, provided the applicant files a recorded copy within the time prescribed in the order granting the certificate.
- 3) Exhibit _____ - Provide a detailed system map showing existing and proposed lines and treatment facilities with the territory proposed to be served plotted thereon, consistent with the legal description provided in E-1 above. Any territory not served at the time of the application shall be specifically identified on the system map. The map shall be of sufficient scale and detail to enable correlation with the description of the territory proposed to be served.
- 4) Exhibit _____ - Provide an official county tax assessment map or other map showing township, range, and section with a scale such as 1"=200' or 1"=400', with the proposed territory plotted thereon, consistent with the legal description provided in E-1 above.

F) PROPOSED TARIFF AND RATE INFORMATION

- 1) Exhibit _____ - Provide a tariff containing all rates, classifications, charges, rules, and regulations, which shall be consistent with Chapter 25-9, F.A.C. See Rule 25-30.034, F.A.C., for information about water and wastewater tariffs that are available and may be completed by the applicant and included in the application.
- 2) Exhibit _____ - Provide documentation specifying on what date and under what authority the current rates and charges were established.

G) NOTICING REQUIREMENTS

Exhibit _____ - Provide proof of noticing pursuant to Rule 25-30.030, F.A.C. This may be provided as a late-filed exhibit.

PART III

SIGNATURE

Please sign and date the utility's completed application.

APPLICATION SUBMITTED BY: _____
Applicant's Signature

Applicant's Name (Printed)

Applicant's Title

Date

APPENDIX C

JEA PRIVATIZATION

KEY REGULATORY APPROVALS¹

¹ Approvals and consent requirements relating to JEA's existing transmission agreements, Power Purchase Agreements (other than the MEAG PPA), and joint ownership arrangements have not yet been assessed.

FLORIDA WATER FILINGS									
Applicant	Approval	Agency	Min/Max Time from Final Filing ²	Likely Time from Final Filing ³	Start Work Now?	Litigation Risk / Other Comments	Required to Close?	Interim Approval Before Closing Possible?	Responsible Parties
Buyer ⁴	Florida Certificate of Authorization (“COA”) – Florida law §367.031 (F.S.) requires all water/wastewater utilities under FPSC jurisdiction to have a COA.	FPSC	10-15 Months ⁵	12 Months (15 Months if Rate Case Filing Required)	Yes – Includes work on Territorial Maps (a major issue) and compliance with Minimum Filing Requirements	Low Risk	Yes	No ⁶	Buyer with JEA and 3 rd Party support.
Buyer	FPSC Rate Approval - The new tariff will need to be approved as part of the application for the COA. Whether there is a requirement to make a full rate case filing will depend upon whether there is any change in the rate tariff and future determinations by the FPSC.	FPSC	10-15 Months	12 Months (15 Months if Rate Case Filing Required)	Yes	Low Risk	Yes	No	Buyer with JEA and 3 rd Party support.

² Timeline does not include Buyer filing preparation (3-4 months) or extended time to cure deficiencies once the filing is made.

³ Timeline does not include Buyer filing preparation (3-4 months) or extended time to cure deficiencies once the filing is made.

⁴ It is likely that the Buyer will not have an existing COA; that is, it will not be a Florida-regulated water/wastewater utility or a utility exempt from having a COA pursuant to Fla. Stat. § 367.022 (i.e., a municipal utility like JEA). Please note that none of the existing Florida investor-owned utilities (Florida Power & Light, Duke, etc.) are water utilities and therefore do not have COAs. In this case, with no COA, the Buyer will need to apply to the FPSC for a COA under Fla. Stat. § 367.045 as implemented through Rule 25-30.033 (F.A.C.). Further, under § 367.031 “*Each utility subject to the jurisdiction of the commission must obtain from the commission a certificate of authorization to provide water or wastewater service.*” Thus, the Buyer will need to have a COA in place at closing in order to operate the JEA water and wastewater facilities. The application for a COA requires extensive information be provided to the FPSC and so it would be prudent for the Buyer and JEA to begin to accumulate the data early to mitigate delays in applying for and receiving a COA.

⁵ Florida law requires that “[t]he commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application, ***unless an objection is filed.***” Fla. Stat. § 367.031. However, the 90-day timeframe does not begin to run until the all the deficiencies are cured in the filing. Moreover, the timeframe is paused once an intervenor files an objection to the application. Thus, though the statute states 90 days, the process is in effect much longer.

⁶ There is a limited circumstance pursuant to Fla. Stat. § 367.071 and Rule 25-30.037 (F.A.C.), where an exempt Florida water/wastewater utility (i.e., a municipal utility like JEA) sells its facilities to a Florida-regulated utility with an existing COA. When the limited exemption applies, the FPSC would allow the Buyer to proceed with the purchase under the condition that the contract for sale have a condition to closing that FPSC approval of the COA be received. However, as stated above, none of the existing Florida investor-owned utilities have COAs. Moreover, even if a Buyer had an existing COA, they would still be required to amend their existing COA in order to incorporate JEA’s territory. Finally, the regulated Buyer would have to commit to unwind deal if final approval denied, which Buyer is very unlikely to accept and is not in JEA’s interest, even if Buyer amenable.

Filing Requirements and Notes

As a municipal utility, JEA is exempt from the requirement for a COA; however, the Buyer will not be. As a result, the Buyer will be required to go through a significant process to obtain a COA from the Florida Public Service Commission (“FPSC”) including filing supporting testimony, compliance with extensive filing requirements and the need for discovery **and an evidentiary hearing if any party objects to issuance of the COA.** In addition to substantial Minimum Filing Requirements, which include a detailed description of the sale agreement, evidence of both financial and technical ability, and service territory maps with detailed descriptions, additional effort will be required regarding state and local permits, including filings with the Florida Department of Environmental Protection, among others.

JEA is currently charging rates to its existing customer base that have been approved by the JEA Board. However, the FPSC will need to approve an original tariff (containing rates, charges, and service policies) for the Buyer. Original tariffs are approved as part of the sale and transfer approval process, that is, as part of the application to obtain a COA.⁷ Substantial Minimum Filing Requirements are required in the COA application process, discussed above, to support the Buyer’s proposed rates and charges.

⁷ FPSC Water and Wastewater Manual, Ch. 4, Tariff Requirements

FERC ELECTRIC FILINGS

Applicant	Approval	Agency	Min/Max Time from Final Filing ⁸	Likely Time from Final Filing ⁹	Start Work Now?	Litigation Risk / Other Comments	Required to Close?	Interim Approval Before Closing Possible?	Responsible Parties
Buyer	FPA § 203	FERC	6-12 Months	6 Months ¹⁰	Buyer Dependent	Very Low Risk	Yes	No	Buyer with JEA and 3 rd Party support.
Buyer	FPA § 205 (Open Access Transmission Tariff)	FERC	6-12 Months	6 Months	Buyer Dependent	Very Low Risk	Yes	No	Buyer
Buyer	FPA § 205 (Market-Based Rates)	FERC	6-12 Months	6 Months	Buyer Dependent	Low Risk	Yes	No	Buyer with JEA and 3 rd Party support.

Filing Requirements and Notes

JEA currently owns generation and transmission assets which can be used for wholesale power sales and electric transmission, and thus will become subject to FERC's jurisdiction once they are owned by a FERC-regulated public utility. Accordingly, FERC approval under Federal Power Act ("FPA") section 203, which prohibits acquisition of FERC-jurisdictional assets or facilities by regulated utilities without prior FERC approval, will be required before the transaction can close.¹¹ Section 203(a)(4) of the FPA requires FERC to approve a transaction if it: (1) determines that the transaction will be consistent with the public interest and (2) will not result in improper cross-subsidization of a non-utility associate company.¹² While the filing will be heavily Buyer-dependent and must be filed by the Buyer, JEA can begin by preparing the information and documents a Buyer will need to file—including asset descriptions, maps, and FERC Form 1, which is described below. Because the Buyer will be acquiring FERC-jurisdictional transmission assets, the Buyer will be required to file an Open Access Transmission Tariff ("OATT") under FPA Section 205. Having an OATT in place is a key factor in FERC's evaluation of market power to ensure a transaction will not result in an adverse impact on vertical market power. As the OATT is typically a *pro forma* agreement, this filing will likely be low risk. However, if the Buyer owns or is affiliated with companies owning existing transmission assets, it may prefer to file its own version of an OATT that contains provisions differing from the *pro forma* OATT.

For the Buyer to make wholesale sales of energy at market-based rates, the Buyer will be required to seek market-based rate authorization from FERC by filing an application under Section 205 of the FPA. FERC grants authorization to sellers to make wholesale sales of energy, capacity, and certain ancillary services under market-based rates where the seller can demonstrate that they and their affiliates either lack horizontal and vertical market power or where they have adopted sufficient techniques to mitigate the possible exercise of such market power. This filing is also heavily Buyer-dependent and must be prepared by the Buyer.

⁸ Timeline does not include Buyer filing preparation (3-4 months).

⁹ Timeline does not include Buyer filing preparation (3-4 months).

¹⁰ If an existing Florida utility purchases JEA and seeks to extend its rates to JEA's territory, it is likely to take up to 6 months, because the transaction will result in more than a *de minimis* change in market power—and thus require a competitive analysis screen.

¹¹ 16 U.S.C. § 824b.

¹² It is possible the Buyer will wish to seek FERC approval to issue securities, especially as the Buyer will presumably be refinancing JEA's existing debt. This would likely be part of the FPA Section 203 filing.

FLORIDA ELECTRIC FILINGS									
Applicant	Approval	Agency	Min/Max Time from Final Filing ¹³	Likely Time from Final Filing ¹⁴	Start Work Now?	Litigation Risk / Other Comments	Required to Close?	Interim Approval Before Closing Possible?	Responsible Parties
Buyer	Florida Rate Approval	FPSC	10-12 Months	12 Months	Yes	Low Risk	Yes	Yes, but unlikely and may not significantly reduce time required to close since FPSC may be required to allow discovery and conduct an evidentiary hearing before granting interim approval. There is also significant risk of litigation, since the FPSC's ability to grant interim approval is likely to be challenged in court.	Buyer with JEA and 3 rd Party support
JEA	Revise JEA Tariff	FPSC	10-12 Months	12 Months	Yes	Low Risk	Yes	Interim approval would only be required or necessary if the Buyer sought interim approval. As noted above this would entail significant risk of litigation.	JEA
JEA and Buyer (joint filing)	Terminate or Amend Existing Territorial Agreements	FPSC	10-12 Months	12 Months	Yes	Low Risk	Yes	No.	The Buyer and JEA

Filing Requirements and Notes

Under FPSC regulations, no prior approval is needed for the Buyer to acquire JEA's assets. However, Florida law prohibits a utility from charging a rate not "on file" with the FPSC. JEA's current rates are filed with the FPSC on a primarily informational basis and are not subject to the full approval process the FPSC applies to rates of public utilities, including the requirement that the FPSC determine the value of a public utility's assets. Once the Buyer takes control of JEA's assets, the rates will become subject to this heightened standard. Therefore, whether the Buyer seeks to adopt JEA's rates and keep them stable for some period of time post-closing or make a filing to adopt other rates, the FPSC will need to hold a rate proceeding to determine the value of the former JEA assets and approve the Buyer's rates.¹⁵ While this process can happen at the same time the parties are seeking FERC approvals, statutorily, once the FPSC Staff has determined the filing has no deficiencies,¹⁶ a final order is required to be issued within 12 months.¹⁷ The process includes the filing of the petition, discussions between the Buyer, JEA, and the FPSC, a preliminary order (which may be challenged by members of the public), **a public hearing where petitioners**

¹³ Timeline does not include Buyer filing preparation (3-4 months) or extended time to cure deficiencies once the filing is made.

¹⁴ Timeline does not include Buyer filing preparation (3-4 months) or extended time to cure deficiencies once the filing is made.

¹⁵ The Buyer's rate case filing will also include a request for approval of a delivery services tariff and a billing and collection agreement between JEA and the Buyer. These will enable JEA to deliver the power under the MEAG PPA to its customers across the Buyer's facilities.

¹⁶ Once FPSC approves the MFRs, the "commencement date for the final agency action" is established and the 12-month statutory clock starts. Fla. St. § 366.06(3). However, similar to the water side, the process to get final staff approval could take some time. This is why it is critical to work with the FPSC prior to filing the application, so the process goes smoothly and the filing is quickly approved.

¹⁷ Section 366.06(3) of the Florida Statute specifically states, "The commission shall take final commission action in the docket and enter its final order within 12 months of the commencement date for final agency action." (emphasis added).

are permitted to have discovery, and a final order. The lowest risk approach to this process, and the one any Buyer is most likely to pursue, is for the Buyer to obtain rate approval from the FPSC prior to closing.

We have carefully evaluated whether, under the applicable Florida regulations, the Buyer could close on the deal and then step into JEA's shoes and begin charging customers JEA's existing rates without obtaining any prior approval from the FPSC. The risks of such an approach are very high.. Under the regulatory framework, it does appear possible pursuant to F.A.C. 25-9.044, where, (a) within 10 days after the closing, the Buyer must issue and file a notice adopting JEA's rates as its own, and (b) within 30 days of the filing of that adoption notice, the Buyer must either (1) adopt JEA's rates and tariff as its own (at least until a future rate case) by issuing and filing a tariff in the Buyer's name incorporating the adopted rates and tariff or (2) make a filing with the FPSC for authorization to adopt other rates. However, this approach is contrary to that followed in the two prior cases in which a regulated utility acquired a municipal system (Vero Beach and Sebring). Furthermore, it is doubtful that the FPSC has the legal authority to allow the Buyer to permanently adopt JEA's rates without first holding a rate hearing. Although F.A.C. 25-9.044 instructs the acquiring utility to adopt and provide service under the prior utility's rates, as JEA is a municipal entity its rates have never been approved by the FPSC. Florida law prohibits a utility from charging rates "not on file with the commission." It is unclear whether JEA's rates, once adopted by the Buyer, would meet this standard as they have never been approved by the FPSC, and if not how the FPSC would resolve this issue. Further, the PSC would be required to make specific determinations as to the value of JEA's system once purchased from JEA. Specifically, Florida Statute 366.06(1) requires that:

... The commission **shall investigate and determine the actual legitimate costs of the property of each utility company**, actually used and useful in the public service, and **shall keep a current record of the net investment of each public utility company** in such property which value, as determined by the commission, shall be used for ratemaking purposes

Because the PSC has not yet "investigate[d] and determine[d]" the actual costs of JEA's system, arguably it would be required to do so for Newco in order for Newco to rely on the value of that system for its rate base. This puts significant risk on both JEA and the Buyer, which would be fully at risk if the FPSC does not approve the Buyer's rates. In either case, the FPSC will likely still require the Buyer to make a rate case for the purposes of F.A.C. 25-9.044, which is significant, because JEA—up to this point—has been exempt from making a rate case before the FPSC.

JEA will need to make a filing with the FPSC to revise its tariff, in order to allow JEA to deliver power purchased under the MEAG PPA to customers over the Buyer's facilities. The revisions to JEA's tariff will reflect JEA's limited scope of services following the Buyer's acquisition of JEA's assets. JEA will also require FPSC approval of its tariff revisions as regards the tariff's rate design for allocating the costs related to the MEAG PPA.

Finally, the Buyer and JEA will need to make a joint filing to terminate or amend JEA's existing territorial service agreements to reflect the acquisition of JEA's assets by the Buyer.

OTHER FEDERAL APPROVALS									
Applicant	Approval	Agency	Min/Max Time from Final Filing ¹⁸	Likely Time from Final Filing ¹⁹	Start Work Now?	Litigation Risk / Other Comments	Required to Close?	Interim Approval Before Closing Possible?	Responsible Parties
Buyer	15 U.S.C. § 18a (HSR Act)	DOJ/FTC	20 days (if early termination / 30 days / 2-3 years (if Second Request)	30 days (if no second request) ²⁰	Buyer Dependent	If DOJ/FTC issues a second request, a more in-depth, time intensive, and costly review will take place. However, there are some ways to manage a second request (i.e., withdraw and re-file)	Yes	No	Buyer with JEA and 3 rd Party support
Foreign person having an ownership interest of 10% or less of the outstanding voting interests in the Buyer or in the case JEA's assets are determined to be "critical infrastructure" under the Foreign Investment Risk Review Modernization Act ("FIRRMA"), any foreign person having any interest.	Defense Production Act Section 721	CFIUS	3-6 Months	3 Months	Buyer Dependent	Filing is only required to be made after deal is closed, but deal could be blocked/unwound by an adverse finding.	Buyer Dependent	Buyer may file for CFIUS approval after closing, but a foreign Buyer may not want to take that risk—particularly with the likelihood that JEA's assets will be classified as "critical infrastructure" under FIRRMA.	Buyer
Buyer	Wireless License Transfers	FCC	1-6 months	TBD-It depends on the types of FCC licenses JEA holds	Yes. Identify JEA's current FCC licenses and types.	Low risk	Yes	No	Buyer with JEA and 3 rd Party Support

¹⁸ Timeline does not include Buyer filing preparation (3-4 months).

¹⁹ Timeline does not include Buyer filing preparation (3-4 months).

²⁰ Determining whether the deal will get cleared in 30 days or less or may get a second requires a thorough competitive evaluation to be adequately assessed, which takes time. However, for the purposes of assessing timing of the deal, we expect the Buyer and JEA will need to make the filing and await the expiration of the 30-day waiting period. To expedite any approval process, it is possible to file for approval on a term sheet (and not wait for the final signed transaction agreement).

Note that work on all regulatory approvals may essentially begin now with informal discussions between JEA and the regulator (FERC or FPSC). This approach is highly recommended. The purpose of this would be to ensure that the filing will be streamlined when the time comes to file, and the regulatory approval process will go smoothly. While, there is a limit to what work can be done with an unknown Buyer, regulators can provide JEA with different scenario paths for filing with different types of Buyers.