

CITY COUNCIL



CITY HALL, ST. JAMES BUILDING
117 WEST DUVAL STREET, SUITE 425
JACKSONVILLE, FLORIDA 32202

SUBPOENA DUCES TECUM

RE: The City Council's Special Investigatory Committee on JEA Matters

**TO: BCSP, LLC
c/o Timothy Baker, as registered agent
221 N Hogan St
#306
Jacksonville, FL 32202**

General Statement: The inquiry will cover the areas of inquiry identified in Exhibit A and the documents requested in Exhibit B.

YOU ARE HEREBY COMMANDED to appear before the City Council Special Investigatory Committee on JEA Matters (the "SIC") at its scheduled meeting at 5:00 p.m. EDT on November 16, 2020, in Council Chambers at 117 West Duval Street, 1st Floor, City Hall, Jacksonville, Florida (subject to change due to Covid-19), to testify under oath and to speak the truth regarding the areas of inquiry identified in Exhibit A. You must also produce all documents in accordance with the definitions and instructions identified in Exhibit B.

The testimony requirement of this subpoena may be satisfied by your appearance at a sworn interview conducted by counsel for the SIC at a mutually agreed time and location. Scheduling of such Interview should be coordinated with Stephen D. Busey, Esq. of Smith Hulsey & Busey at (904) 359-7777.

This subpoena is issued under the authority of Sections 5.09 and 18.01, Charter of the City of Jacksonville, and Chapter 134, Jacksonville Ordinance Code. This subpoena is continuing in nature; if you are not served at least seven (7) days prior to the referenced Special Investigatory Committee meeting, you are required to appear at the next Special Investigatory Committee meeting that is more than seven (7) days after service.

WITNESS my hand and the Seal of the City of Jacksonville, Florida, this _____ day
of October, 2020.

Cheryl Brown
Council Secretary
Jacksonville City Council

EXHIBIT A

Areas of Inquiry for BCSP, LLC Interview

Areas of Inquiry

1. Matters relating to the recent pursuit of JEA privatization, including:
 - Tom Petway’s recommendation at the JEA Board meeting on November 28, 2017 that JEA explore privatization;
 - the Request for Proposals to Provide Strategic Initiatives Financial Advisory Services to the City of Jacksonville issued on December 20, 2017;
 - your contract with FPL effective from November 21, 2017 through July 31, 2019;
 - the JAX Infrastructure Innovation Summit on October 5, 2018;
 - any meeting regarding privatization you attended with more than one member of JEA’s senior leadership team at any time from May 15, 2018 through January 1, 2020, including the meeting at Club Continental beginning on July 10, 2019; and
 - JEA’s Invitation to Negotiate 127-19 for Strategic Alternatives issued on August 2, 2019 (the “ITN”), together with the resulting procurement process in which NextEra Energy, Inc. participated.

2. Matters relating to JEA’s decision-making process in pursuit of privatization, including:
 - Aaron Zahn’s appointment to the JEA Board in February 2018, selection as JEA’s interim CEO in April 2018, and selection as JEA’s CEO in November 2018;
 - JEA’s strategic planning process from May 15, 2018 through July 23, 2019 to address purportedly declining electric system sales and revenues;
 - JEA’s new downtown headquarters, including related procurement processes;
 - JEA Board meetings from May 15, 2018 through December 24, 2019, including any Board packages or presentations for such meetings; and
 - discussions in 2018 or 2019 regarding JEA’s Plant Vogtle liabilities, together with efforts to resolve those liabilities (through litigation or other means).

3. Matters that, through the powers vested in the City Council, could be prevented through future legislative action, including legislation intended to:
 - improve Jacksonville’s Ethics Code (Chapter 602 of the Jacksonville Ordinance Code);
 - improve the City Charter, including its provisions relating to the separation of powers;
 - improve the City’s and JEA’s procurement codes;
 - improve accountability and transparency in future City or JEA procurements or privatizations; and
 - ensure JEA, the City, and their representatives adhere to the Florida Sunshine Law and Public Records Act.
4. JEA’s Performance Unit Plan (the “PUP”) authorized at the JEA Board meeting on July 23, 2019.
5. The Committee’s document requests to you, together with your document productions, responses, and objections to same.

Definitions

1. The phrase “BCSP, LLC” means BCSP, LLC, together with its agents, employees, contractors, subcontractors, consultants, attorneys, lobbyists, or any other person acting on behalf of BCSP, LLC.
2. “FPL” means Florida Power & Light Company and its (a) agents, employees, contractors, subcontractors, consultants, attorneys, lobbyists, representatives; and (b) direct or indirect affiliates, subsidiaries, and parent companies, including NextEra Energy, Inc.
3. The phrases “you,” “your,” and “yours” refer to BCSP, LLC (as defined above).

EXHIBIT B

Document Requests to BCSP, LLC

Instructions

1. On or before 5:00 p.m. EDT on Monday, November 9, 2020, deliver to Stephen D. Busey at One Independent Drive, Suite 3300, Jacksonville, FL 32202, busey@smithhulsey.com, all documents responsive to any of these requests.
2. You must produce all responsive documents in your possession, custody, or control, including all responsive documents possessed by any of your agents, employees, contractors, subcontractors, attorneys, consultants, representatives, or lobbyists.
3. You must produce each responsive document for which you have not asserted a privilege.
4. For each responsive document you have claimed a privilege, you must provide a log by 5:00 p.m. EDT on Monday, November 9, 2020 with the following information: (a) a description of each document you claim is privileged, including its date, author, title, and general subject matter; (b) the name, address, and telephone number of each custodian or recipient of the document; (c) the factual basis for the claim of privilege; and (d) each legal basis for the claim of privilege.
5. Produce ESI in its native or near native form. Do not convert ESI to an imaged format (e.g., *.TIF or *.PDF).
6. Unless otherwise specified, these document requests have a temporal scope of December 1, 2017 through January 1, 2020.

Document Requests

1. Contracts, including their respective attachments and amendments, relating to JEA to which you were a party, together with BCSP, LLC's contract with FPL effective from December 21, 2017 through July 31, 2019.
2. Documents, including calendar invites, agendas, minutes, presentations, and handouts, regarding any meeting relating to JEA that you attended, including the meeting at Club Continental beginning on July 10, 2019.
3. Documents, including scopes of work, work orders, and billing invoices, regarding any service relating to JEA that you performed.
4. Documents, including checks, wire transfer confirmations, and money orders, regarding any payment you received or were promised for any service relating to JEA.

5. Documents relating to JEA that you exchanged with any of the following at any time from December 20, 2017 through May 15, 2018 or from April 1, 2019 through January 1, 2020:
- Mayor Lenny Curry, Sam Mousa, Brian Hughes, Michael Weinstein, or Patrick Grieve;
 - any member of the Jacksonville City Council;
 - JEA, including Melissa Dykes, Ryan Wannemacher, Aaron Zahn, and any JEA Board member;
 - FPL, including Eric Silagy and Daniel Martell;
 - The Southern Group of Florida, Inc., including Deno Hicks and Matt Brockelman;
 - The Dalton Agency, Inc., including Michael Munz and Banks Willis; and
 - any agent, employee, contractor, subcontractor, attorney, consultant, representative, lobbyist, or person acting on behalf of any person referenced in any sub-part of this request.

Definitions

1. The phrase “BCSP, LLC” means BCSP, LLC, together with its agents, employees, contractors, subcontractors, consultants, attorneys, lobbyists, or any other person acting on behalf of BCSP, LLC.
2. The terms “document” and “documents” mean, without limitation, all responsive correspondence, electronic messages (as defined below), emails, contracts, agreements, memoranda, notes, calendar and diary entries, studies, reports, charts, graphs, photographs, film, microfilm, books, ledgers, invoices, bills, and all other tangible things upon which any ESI (electronically stored information, as defined below) or other form of information is recorded, including but not limited to the originals (or any copy when originals are not available) and drafts of documents.
3. The phrase “electronic messages” means any electronic text or media content exchanged between two or more users of a software application, including both SMS messages sent over cellular networks and messages sent over the internet using applications such as WhatsApp, iMessage, Facebook Messenger, Twitter, Google Chat, Confide, Signal, and others.

4. “ESI” means electronically stored information, as defined by Federal Rule of Civil Procedure 34(a)(1)(A).
5. “FPL” means Florida Power & Light Company and its (a) agents, employees, contractors, subcontractors, consultants, attorneys, lobbyists, representatives; and (b) direct or indirect affiliates, subsidiaries, and parent companies, including NextEra Energy, Inc.
6. The phrase “relating to JEA” means relating to any of the following:
 - Tom Petway’s recommendation at the JEA Board meeting on November 28, 2017 that JEA explore privatization;
 - any exploration of privatizing or recapitalizing JEA or its electric system at any time from November 28, 2017 through December 24, 2019;
 - the Request for Proposals to Provide Strategic Initiatives Financial Advisory Services to the City of Jacksonville issued on December 20, 2017;
 - Aaron Zahn’s appointment to the JEA Board in February 2018;
 - Aaron Zahn’s selection as JEA’s interim chief executive officer in April 2018;
 - discussions in 2018 or 2019 regarding JEA’s Plant Vogtle liabilities, together with efforts to resolve those liabilities through litigation or otherwise;
 - the JAX Infrastructure Innovation Summit on October 5, 2018;
 - Aaron Zahn’s selection as JEA’s chief executive officer on November 27, 2018;
 - any meeting you attended with more than one member of JEA’s senior leadership team at any time from May 15, 2018 through January 1, 2020, including the meeting at Club Continental beginning on July 10, 2019;
 - JEA’s strategic planning process from May 15, 2018 through July 23, 2019 to address purportedly declining electric system sales and revenues;
 - JEA’s new downtown headquarters, including related procurement processes;
 - JEA Board meetings from May 15, 2018 through December 24, 2019, including any Board packages or presentations for such meetings;

- JEA’s Invitation to Negotiate 127-19 for Strategic Alternatives issued on August 2, 2019, together with the resulting procurement process in which NextEra Energy, Inc. participated; or
 - JEA’s Performance Unit Plan (“PUP”) authorized at the JEA Board meeting on July 23, 2019.
7. The phrases “you,” “your,” and “yours” refer to BCSP, LLC (as defined above).