

SPECIAL INVESTIGATORY COMMITTEE ON JEA

SESSION #2

DATE: Monday, February 24, 2020
TIME: 8:03 a.m. - 10:57 a.m.
PLACE: Council Chambers
First Floor
City Hall at St. James Building
117 West Duval Street
Jacksonville, Florida 32202

COUNCIL MEMBERS PRESENT:

Scott Wilson, Council President, District 4
Rory Diamond, Chairman, District 13
Randy DeFoor, District 14
Brenda Priestly Jackson, District 10
Joyce Morgan, District 1
Al Ferraro, District 2
LeAnna Cumber, District 5
Michael Boylan, District 6
Ju'Coby Pittman, District 8
Garrett Dennis, District 9
Danny Becton, District 11
Randy White, District 12
Terrance Freeman, Group 1
Ronald Salem, Group 2
Tommy Hazouri, Group 3

ALSO PRESENT:

Dr. Cheryl Brown, City Council Director
Jessica Matthews, Chief of Legislative
Services
Steve Cassada, IT Administrator
Jeff Clements, Chief or Research
Makenzi Conner, Executive Council Assistant
Peggy Sidman, Office of General Counsel
Sean Granat, Office of General Counsel
Jason Gabriel, Office of General Counsel
Steve Busey, Smith, Hulsey & Busey

I N D E X

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WITNESS

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PATRICIA MAILLIS

Examination by Chairman Diamond

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P R O C E E D I N G S

COUNCIL MEMBER DIAMOND: All right.
Good morning. This Special Investigatory Meeting of JEA is called to order. It's February 24th, just after 8:00 a.m. And we will start by going around the room.

COUNCIL MEMBER FERRARO: Al Ferraro, City Council District 2.

COUNCIL MEMBER BECTON: Danny Becton, District 11.

COUNCIL MEMBER BOYLAN: Michael Boylan, District 6.

COUNCIL MEMBER HAZOURI: Good morning. Tommy Hazouri, Group 3 At-Large.

COUNCIL MEMBER DeFOOR: Morning. Randy DeFoor, District 14.

CHAIRMAN DIAMOND: Good morning. Rory Diamond, District 13.

COUNCIL MEMBER PRIESTLY JACKSON: Good morning. Brenda Priestly Jackson, District 10.

COUNCIL PRESIDENT WILSON: Scott Wilson, District 4.

COUNCIL MEMBER SALEM: Ron Salem, Group 2 At-Large.

1 COUNCIL MEMBER PITTMAN: Ju'Coby

2 Pittman, District 8.

3 MS. SIDMAN: Peggy Sidman, Office of
4 General Counsel.

5 MR. GABRIEL: Jason Gabriel, General
6 Counsel.

7 MR. BUSEY: Steve Busey, Special Counsel
8 to the Committee.

9 MR. GRANAT: Sean Granat, Office of
10 General Counsel.

11 COUNCIL MEMBER DIAMOND: Please rise.

12 (Pledge of Allegiance.)

13 CHAIRMAN DIAMOND: Okay. We have a very
14 busy schedule today. So we're going to get
15 right into it, with no delay. We're going
16 to move things around slightly, and take up
17 Item Number 4, Nelson Mullins, before our
18 witness.

19 So, gentlemen from Nelson Mullins,
20 please introduce yourself for the record and
21 let's roll.

22 MR. NUNN: Daniel Nunn, Nelson Mullins.

23 MR. WEDEKIND: Lee Wedekind, Nelson
24 Mullins.

25 COUNCIL MEMBER BECTON: You have to hit

1 the green button so the green light comes
2 on.

3 MR. WEDEKIND: Lee Wedekind, with Nelson
4 Mullins. We're working on pulling up our
5 presentation right now.

6 CHAIRMAN DIAMOND: While we have a
7 moment, I'll just let the City Council
8 Members here present know that later today
9 I'll be making the disclosures that Council
10 Woman Brenda Priestly Jackson discussed at
11 our last meeting, kind of any meetings with
12 JEA executives about the ITN, et cetera, et
13 cetera. So those disclosures will go out
14 for me later this afternoon, along with all
15 the text messages I have with Aaron Zahn.

16 And welcome our City Council President.

17 COUNCIL PRESIDENT WILSON: Good morning.

18 CHAIRMAN DIAMOND: Good morning, sir.

19 If everyone will press your presentation
20 button up at the top here.

21 Go for it. Thank you.

22 MR. WEDEKIND: All right. Good morning.
23 Thank you all for having us very much. My
24 name is Lee Wedekind. I'm with the Law Firm
25 of Nelson Mullins. I wanted to thank you

1 for the opportunity to present here today
2 and maybe explain who we are and why we're
3 here.

4 Dan Nunn and I were privileged to
5 prepare for a bid to potentially represent
6 the City Council in connection with its
7 investigation regarding this. And as part
8 of that process, we leveraged our energy
9 team, we put together what we thought was a
10 really strong team with deep experience and
11 knowledge in industry of energy sectors, but
12 we also reviewed a lot of documents. We
13 looked at board meetings, we reviewed PSC
14 filings, and we had compiled an extensive, I
15 think, understanding of the issues facing
16 JEA.

17 When we weren't hired, we had this
18 wealth of information. We didn't really
19 have a purpose for it, but we felt like it
20 needed to be documented somehow. So we went
21 ahead and prepared a memorandum that,
22 ultimately, we provided to the City Council
23 and then published to the public so they
24 would have -- so that everybody would have
25 the opportunity to see what we had done and

1 take advantage of the information we were
2 able to gather.

3 So that's kind of the background of what
4 we have and why we're here. We also
5 published an op-ed. It's kind of a summary
6 of what we found in our memo. And so I just
7 wanted to kind of run through our role and
8 why we're here, what we're doing here.

9 CHAIRMAN DIAMOND: Mr. Wedekind, just
10 one moment. Whoever has got this
11 interference back there, can we take care of
12 that, please.

13 Please proceed.

14 MR. WEDEKIND: Thank you.

15 So one of the things that we identified
16 pretty quickly is that JEA is facing
17 headwinds and that there are challenges
18 facing JEA just like there are challenges
19 facing all municipally owned utilities. But
20 we also identified a number of issues that
21 really were challenging to JEA's long-term
22 strategic planning process. Specifically, I
23 think we identified a number of issues
24 regarding the quality of information that
25 was ultimately provided to the board of

1 directors by management that were of serious
2 concern to us.

3 One of the reasons why it's important to
4 talk about this and the process that was
5 undertaken is that I think that we also
6 identified that there is a legitimate
7 business case to be made to sell JEA. That
8 is incredibly politically unpopular, but it
9 would make sense to at least engage in an
10 open and honest conversation. The problem
11 is that that never happened because of the
12 way the information was presented by
13 management to the board. And so the process
14 was tainted very early. And so the City
15 ultimately was robbed of the opportunity to
16 have that conversation and to see what might
17 be made of billions of dollars of cash and
18 how that cash might be put to great use in
19 our city. So that is a missed opportunity
20 as part of the process.

21 So some of the trends impacting JEA
22 include -- these are kind of macroeconomic
23 trends -- scale and territorial growth would
24 be critical to adapting to a regulatory and
25 competitive environment for utilities.

1 We also understand it's possible that
2 JEA's financial value has peaked given that
3 JEA's current estimations and projections
4 going forward show modest growth over the
5 next decade-plus time. There is also the
6 issue of JEA's debt burden, including the
7 Plant Vogtle commitment, which is subject to
8 ongoing litigation, combined with the local
9 customer mix here, and just fundamental
10 changes in the energy and utilities markets,
11 including greater technological advances
12 that allow for more efficiency, which drives
13 demand for power down. That's something
14 that, obviously, is going to be an issue
15 going forward.

16 One thing that I forgot to mention
17 earlier, by the way, is that this entire
18 analysis that we did, we weren't hired by
19 anybody to do it, we weren't paid for it.
20 So it's free of charge and it doesn't come
21 with it any of the biases that you might
22 expect for work product that was prepared
23 for a particular client for a particular
24 reason.

25 Another issue is carbon tax legislation,

1 which is an ongoing national discussion, but
2 it continues to gain industry and bipartisan
3 political support. If carbon tax
4 legislation is ever passed, it will have an
5 impact, obviously, on all utilities, but
6 this proportion would impact those utilities
7 that are more heavily dependent on fossil
8 fuels. And JEA does happen to be fairly
9 dependent on fossil fuels as we stand today.
10 So if carbon tax legislation ultimately does
11 pass, JEA's ratepayers will feel it.

12 We also know that JEA has significant
13 value. As I talked about earlier, the
14 proceeds of that sale, if a sale were to
15 occur, or any other kind of recapitalization
16 could be redeployed for the City under your
17 leadership and guidance to do a wide number
18 of things. Those include, you know,
19 investment in infrastructure, our school
20 system, Lot J, we could build a huge bronze
21 statue for Gardner Minshew, a wide number of
22 things. But the point really is that those
23 funds and that process has now stopped and
24 we won't even have the opportunity to
25 consider what might have been done with

1 those funds if a recap ever could have
2 happened.

3 So I want to talk about four specific
4 areas of concern that we identified when we
5 were looking at all of JEA's materials. I'm
6 going to talk about the first two of these
7 points, which has been, I think, probably
8 described best as the death spiral of JEA,
9 and some of the issues that we saw in
10 connection with that story. And then my
11 partner, Dan Nunn, is going to talk about
12 items three and four, which is the PUP, and
13 kind of the strategic planning process more
14 generally, and some of the issues that we
15 saw with the strategic planning process.

16 But before I start, I think it might be
17 helpful, by way of background, to provide
18 you with a little bit of information about
19 how JEA traditionally underwent its
20 long-term strategic planning process. And
21 so I'm sure all of you by now are familiar
22 with the ten-year site plan. That is a
23 report that is required by Florida PSC of
24 every Florida utility. That is a report
25 that is done in order to ensure that all the

1 state's utilities are creating sufficient
2 generation to meet the demand of all of
3 Florida's customers. So they call it the
4 load requirement, so whatever the load
5 requirements are. It's a ten-year look
6 forward, which provides utilities and the
7 state, generally, with an opportunity to
8 plan how their systems will generate and
9 deliver power reliably in order to meet the
10 load requirements.

11 The ten-year site plan is submitted to
12 the PSC on an annual basis. It was
13 submitted and discussed at the board level
14 by management from 2014 to 2017 and probably
15 years prior. But we're really kind of
16 focusing on the more recent time period.

17 The last time it was discussed or
18 presented at a board meeting was April of
19 2017. It was not presented in April of
20 2018. It was discussed generally, but it
21 was not presented to the board. It was
22 filed with the PSC, but it wasn't presented
23 to the board in advance.

24 And then something interesting happens.
25 In March of 2019, we're no longer talking

1 about the ten-year site plan as our planning
2 tool. And by "we," I mean the board of JEA.
3 And we signal through management a shift to
4 what they --

5 CHAIRMAN DIAMOND: Mr. Wedekind, let me
6 interrupt you. Can you explain what
7 ten-year site plan is? I don't think people
8 know.

9 MR. NUNN: If I could, let me take a
10 little time to explain that. The ten-year
11 site plan is an integrated resource plan
12 that is prepared by each of the 11 utilities
13 in the state that have over a certain
14 capacity. And what they do is first try to
15 project what the electricity demand is going
16 to be in their service area. And they do
17 that by looking at historical demand and
18 they use some fairly sophisticated analysis
19 to look at expected economic growth,
20 expected population growth, expected
21 customer growth. They look at the impact of
22 energy efficiency. They look at the impact
23 of solar adoption. In other words, they
24 plan for all of the factors that will drive
25 demand, including, importantly, weather,

1 which is increasingly an important factor.

2 So the rest of the ten-year site plan
3 deals with what resources do we have to meet
4 that demand and here are our resources.
5 There are a couple of other things that it
6 deals with, including the demand side
7 management programs that utilities have, as
8 well as what their resource breakdown is.

9 So each of the 11 utilities that
10 generates over a certain level of
11 electricity in the state has to file them
12 in. And then the Florida Public Service
13 Commission and the Florida Reliability
14 Coordinating Council both review them and
15 prepare reports based on them.

16 CHAIRMAN DIAMOND: Thank you.

17 MR. WEDEKIND: Does that make sense?

18 CHAIRMAN DIAMOND: It does.

19 MR. WEDEKIND: So we have a sea change
20 in March of 2019 when Aaron Zahn, for the
21 first time, presents what he refers to as a
22 management case as part of JEA's new
23 long-term strategic planning process. This
24 is concerning for a number of reasons, not
25 the least of which is the TYSP has been used

1 for a long period of time, indicates that
2 maybe that isn't the best way for JEA to
3 evaluate its long-term strategy. That makes
4 interesting sense to me.

5 But I think what it does is it signals a
6 paradigm shift from operations-based data to
7 valuation-based data when evaluating JEA and
8 the long-term strategy of the business.

9 And it begs a lot of questions about why
10 would we do that. One interesting note too
11 is that right before Mr. Zahn presents his
12 management case to the board, he plays a
13 video of a ship that's about to crash into a
14 lighthouse. It's very dramatic. There's
15 big music. It's like a clip from a TV show
16 or a movie or something. But I think that
17 it underscores the theatrical flourishes
18 with which this story was presented to the
19 board by management. And I think that's
20 going to be important as we kind of get into
21 some of the details here.

22 All right. So our first slide -- so
23 what I'm going to talk about is two things:
24 I'm going to talk about the eight percent --
25 the so-called eight percent decline in unit

1 sales over the prior 12 years that was
2 presented by management to the board, and
3 then I'm also going to talk about the eight
4 percent projected decline going forward.

5 So first we're going to take a look at
6 the lookback. And this is a slide that was
7 presented to the board in May, June, and
8 July of last year. It shows, you'll see, an
9 eight percent decline in what is described
10 as unit sales.

11 Well, what are unit sales? And this --
12 by the way, this is the beginning of the
13 death spiral story line is this eight
14 percent decline figure.

15 So unit sales under this chart that's
16 presented includes territorial sales, also
17 including sales for resale. In other words,
18 JEA's wholesale business, which was
19 predominantly sales made to Fernandina
20 Beach. So that, interestingly, changed when
21 that contract expired in December of 2017.

22 And so when you look at 2018 actual, his
23 numbers do not include JEA's formerly
24 wholesale business. So what you're looking
25 at here is a comparison between actuals of

1 2006 and 2018, but what it doesn't say is
2 that it's an apples-to-oranges comparison,
3 because some of the data that was in 2006,
4 some of the revenues that were being
5 generated are no longer being generated in
6 '18.

7 CHAIRMAN DIAMOND: Councilwoman DeFoor.

8 COUNCIL MEMBER DeFOOR: Can you hear me?

9 CHAIRMAN DIAMOND: For Members of the
10 Committee, I'm following the queue, if you
11 have a question.

12 COUNCIL MEMBER DeFOOR: Okay. Great.

13 I think that is key. Did they ever
14 represent, did the management ever represent
15 to the board the loss -- and I'm going to go
16 to your memo -- of like 43 percent, 43
17 percent of the loss of sales was related to
18 the Nassau County out-sales, did they ever
19 tell the board that?

20 MR. WEDEKIND: I think it's 45 percent.

21 COUNCIL MEMBER DeFOOR: Okay, 45.

22 MR. WEDEKIND: I don't think they ever
23 explicitly made that clear in connection
24 with this particular presentation. So while
25 the data may have been presented at some

1 point, I don't think it was ever presented
2 as part of this presentation. So it would
3 require deep understanding of all these
4 issues for board members to piece together
5 different facts from different time periods.

6 MR. NUNN: And we watched every single
7 board meeting from April of 2018 until the
8 present.

9 CHAIRMAN DIAMOND: That sounds terrible.

10 MR. NUNN: Which was not a good way to
11 spend a weekend. But that was never
12 disclosed in the board meetings that we
13 watched.

14 COUNCIL MEMBER DeFOOR: That is very
15 big. That is -- okay. That, to me, is
16 critical in this analysis as you go forward.
17 Thank you.

18 CHAIRMAN DIAMOND: Councilwoman Priestly
19 Jackson.

20 COUNCIL MEMBER PRIESTLY JACKSON: Thank
21 you. Through the Chair.

22 Following up on what Council Member
23 DeFoor said, can you specifically articulate
24 for the public the differences in terms of
25 the exclusion of Amelia Island/Fernandina

1 Beach calculations prior to that time and
2 then the impact on the outlook for JEA after
3 that time, layman's terms?

4 MR. WEDEKIND: Absolutely. I have a
5 slide that may be one or two after this that
6 goes through that detail, and I'll be happy
7 to, if it's okay, answer then.

8 And so what we're looking at here is
9 somewhat manipulated data in that it
10 handpicks two specific years. It doesn't
11 evaluate trends over time. It's only
12 comparing 2006, which is the absolute peak
13 of demand for energy by JEA, at least so
14 far, to 2018. And so it's a selective
15 comparison of only two years' worth of data,
16 but it's presented as a trend. And that's
17 problematic, because if you decided to pick
18 2005 or 2007 or 2002 and compare it to 2018,
19 the story might be totally different.

20 And so the evaluation really, if you're
21 really trying to understand what is going on
22 here, you're really trying to understand
23 these trends, you would look at it over a
24 much wider period of time, instead of
25 picking one year and picking another year

1 and then comparing those two.

2 So the eight percent change in unit
3 sales here is then shown in this graph.
4 This is a slide from the May 2019 board
5 meeting. And you can see the trend lines
6 that are drawn here. I'm going to show you
7 another slide very quickly, and then I'm
8 going to jump back to this one.

9 But this is -- okay. So this, what
10 we're looking at right now, is May 2019.
11 This is a prior version of a graph showing,
12 essentially, the same data. But there are a
13 number of differences, compelling
14 differences, in these two charts.

15 So if you look at the -- and this was
16 presented at -- in an April 2018 board
17 workshop on privatization, so about a year
18 earlier. We're looking at, essentially, the
19 same data. This doesn't have 2018 data, but
20 it does show trend lines.

21 And you can see, if you look on the
22 vertical axis, I'm going to take you back to
23 geometry for a second, but if you look at
24 the vertical axis, you can see they're in
25 units of 500, right. So you go from 5,000

1 to 6,500. That will be important in a
2 minute. You also see two other interesting
3 things. You see that the chart is laid out
4 in landscape, as opposed to portrait, which
5 makes it nice and long on the horizontal
6 axis, and you'll also see the trend line is
7 green going forward.

8 But there is also one more bit of data
9 in here. This is the red line that you see
10 at the very right hand of the screen. That
11 is the ten-year site plan based sales
12 projections going forward, as of 2017 that
13 is what JEA predicts, at least according to
14 their filings with the PSC as to what their
15 sales are going to be going forward.

16 And you can see the red line deviates
17 from the green trend line in that it's more
18 positive. There is a more positive outlook
19 that's being provided to the PSC than is
20 shown in this chart.

21 All right. So let's go back and look at
22 how the chart evolves over the prior year,
23 then the following year. So from April 2018
24 to May 2019, the chart changes. The data is
25 all the same, but it looks different. And

1 it looks different for a number of different
2 reasons. If you look, all of a sudden, the
3 units on the vertical axis have gone from
4 500 to 1,500. And the horizontal axis is
5 much more compressed. That does a couple of
6 things visually. It magnifies the trends,
7 and so the upswings look more severe and the
8 downturn also looks more severe.

9 See, if you look at it, in April 2018,
10 trends are more flat, but you go to May
11 2019, they're more severe. You'll also note
12 that they change the color of the trend line
13 from green to red, which is interesting.
14 That's a little bit of a visual trick.

15 And importantly, perhaps most
16 importantly, two more things to point out,
17 they delete the projection from the ten-year
18 site plan off of this. So the more positive
19 story they're telling to the PSC is removed
20 from the story that management is telling to
21 the board.

22 CHAIRMAN DIAMOND: Councilman Salem.

23 One second.

24 COUNCIL MEMBER SALEM: Do you know who
25 specifically developed these graphs within

1 JEA?

2 MR. NUNN: We do not, Councilman Salem,
3 what I can tell you is that the May 2019
4 slide was prepared when Mr. Zahn was the
5 CEO. The one from the board workshop on
6 privatization was prepared when Mr. McElroy
7 was CEO.

8 COUNCIL MEMBER SALEM: Has anyone within
9 our group questioned JEA about these graphs
10 and who developed them, under whose
11 instructions? Because, to me, that's
12 critical to this situation.

13 CHAIRMAN DIAMOND: Yeah. I can assure
14 you, Councilman Salem, this is the trail
15 we're going down without question. This is
16 just kind of very first time we're looking
17 at it.

18 COUNCIL MEMBER SALEM: Gotcha. Thank
19 you so much Mr. Chair.

20 CHAIRMAN DIAMOND: While we're on this,
21 just recognizing Councilman Freeman and
22 Councilman White are both here. Thank you
23 for joining us.

24 MR. WEDEKIND: All right. The other
25 thing that this May 2019 slide shows is you

1 can see in the blue bar on the right under
2 Energy Efficiency Impact, it states that
3 efficiency accounts for 90 percent of
4 reduction in electrical sales. That will be
5 questioned by a lot of people, including us,
6 but probably more importantly the bidders to
7 the ITN who obviously had a vested interest
8 in understanding what the impacts of
9 efficiency were going to be on this utility
10 that they're proposing to buy. They were
11 all very confused by that particular number.
12 And I don't think they ever got a
13 satisfactory explanation from JEA as part of
14 the ITN process.

15 So you can begin to see here how the
16 data is being presented to the board in ways
17 that are different than the data is being
18 presented to, for example, PSC as JEA's --
19 that's kind of the net effect of these two
20 slides.

21 All right. So what we decided to do is
22 kind of dig down and take a real hard look
23 at the metrics they were using, because
24 that's another issue when you use metrics
25 that include kind of what I was talking

1 about earlier, the apples-to-oranges
2 comparison, it really -- you're able to
3 manipulate data when you use specific
4 metrics. And so this is, I think, back to
5 Council Member DeFoor's comment about the 45
6 percent. So what this shows is the unit
7 sales break down by different categories.
8 And this is 2006 to 2018. So we just took
9 the same years that management did in
10 presenting and tried to break it down by
11 category.

12 And what you see, when you unpack that
13 unit sales number, is that it includes more
14 modest decreases in residential, commercial,
15 and industrial energy sales; a substantial
16 increase in streetlight lighting, mostly due
17 to conversion to LED lights; but you also
18 see basically the complete elimination of
19 the territorial sales for resale, which is
20 that wholesale, that's the Fernandina Beach
21 line of business. And so that essentially
22 completely goes away. You lose 93 percent
23 of that business, which accounts for 45
24 percent of that 8 percent decline, right.
25 If that makes sense statistically.

1 So when you really unpack it, the metric
2 that they're using is -- doesn't tell the
3 whole story. And then when you really start
4 to kind of dig down, you better understand
5 what's actually going on with the business
6 and what they're actually facing.

7 By the way, this is our --

8 CHAIRMAN DIAMOND: Councilwoman DeFoor.

9 COUNCIL MEMBER DeFOOR: Thank you.

10 Just so -- for purposes of
11 clarification, so in other words, it's not
12 90 percent, 90 percent of reduction wasn't
13 relating to the consumption; is that
14 correct? It was actually due to the
15 out-sales, 45 percent of that was actually
16 due to the out-sales.

17 MR. WEDEKIND: That's correct, the
18 wholesale line of business sales for resale.
19 So 45 percent of the 8 percent has been
20 eliminated, that is a material change in the
21 business that happens between 2006 and 2018.
22 Hence, it doesn't really make sense to
23 compare a business that had that line of
24 business in 2006 to when it doesn't have it
25 in 2018.

1 COUNCIL MEMBER DeFOOR: So once again,
2 that was never shared with the board?

3 MR. WEDEKIND: That's right.

4 COUNCIL MEMBER DeFOOR: And instead, it
5 was represented as a reduction in
6 consumption?

7 MR. WEDEKIND: I guess if I wanted to be
8 conservative and give them the benefit of
9 the doubt, the best I can say is that it
10 wasn't presented at a board meeting
11 publicly. I don't know what conversations
12 were had behind the scenes, but we never saw
13 it in any of the board meetings we watched.

14 COUNCIL MEMBER DeFOOR: The data, as
15 shown on the slides, did not reflect the
16 out-sales; therefore, a layman looking at
17 the slides would think it was due to
18 consumption decline?

19 MR. WEDEKIND: Correct. And just to be
20 clear, this slide is our own work product.
21 This is not JEA work product. Most of the
22 slides in here are taken directly from the
23 board materials that were presented to JEA.
24 This is our own, and that's an important
25 distinction because we -- this wasn't

1 presented to the board in this format.

2 It would be very simple, I think, for a
3 board to begin to understand the eight
4 percent if you kind of broke it down by
5 category. That wasn't done. So obviously,
6 the inference is that they were hiding the
7 ball.

8 COUNCIL MEMBER DeFOOR: Okay.

9 CHAIRMAN DIAMOND: Councilman Salem.

10 COUNCIL MEMBER SALEM: Thank you.

11 You are presenting, you said, 45 percent
12 of the 8 percent was due to this wholesale
13 to Fernandina. In saying that, you're
14 suggesting that 45 percent is unincorporated to
15 JEA or a much less profitable line of
16 business. I'm trying to understand why is
17 it so significant that roughly half the 8
18 percent was wholesale versus, let's say,
19 retail to our usual customers. What's the
20 difference in those two lines and why is
21 that so significant.

22 MR. NUNN: So if I may, Council Member
23 Salem, the case that was being made by
24 management to the board was that energy
25 efficiency was reducing the megawatt hours

1 sales. It had reduced it by eight percent
2 in the past and was going to reduce it in
3 the future. In fact, the net effect of
4 energy efficiency as we saw it was about
5 four percent, as opposed to eight percent.
6 And so that's why it's so important, because
7 it gave management a story line that energy
8 efficiency was essentially destroying their
9 business.

10 COUNCIL MEMBER SALEM: Okay. That makes
11 complete sense to me. I just wasn't sure --

12 MR. NUNN: No. And in fact, the
13 contract with Florida Public Utilities, it
14 extended until December 31, 2017, and the
15 \$38,000 number is -- for 2018 is actually in
16 the first quarter of the fiscal 2018 year.
17 So it was in that last quarter that it was
18 going to be December 31, so that's just a
19 little bit of trailing sales to Florida
20 Public Utilities.

21 COUNCIL MEMBER SALEM: Completely
22 understand now. Thank you so much.

23 MR. WEDEKIND: And just to be clear, the
24 point isn't that the wholesale business
25 isn't important to JEA. It's just that,

1 when you are presenting metrics and not
2 fully explaining them, it tells a slightly
3 different story. But then when you start to
4 dig down, you begin to understand what the
5 real impact of efficiency is, for example.

6 So then, what we did was we wanted to
7 look at retail sales. So we cut out --

8 CHAIRMAN DIAMOND: One moment.

9 Councilman Ferraro.

10 And I do want to give the non-committee
11 members as many opportunities as I can. It
12 would be great -- unless it's very specific,
13 let's try and get through this, and towards
14 the end save your questions, but I totally
15 understand you might have some.

16 COUNCIL MEMBER FERRARO: I think I have
17 one on this.

18 So I've heard you mention twice load
19 requirements. So I know the load
20 requirements may have changed on some of
21 this because we ended up taking down a power
22 plant as well. So does that change some of
23 the percentages of the use of some of the
24 power?

25 MR. NUNN: If I understand your

1 question, the St. Johns River Power Park,
2 which came down, that was a part of the
3 separate joint venture with FPL, there were
4 sales for -- to FPL under that. These sales
5 are not in the reported numbers we dealt
6 with. Those were treated as off-system
7 sales. And it doesn't change anything in
8 terms of the net energy for load. It just
9 changes the resource capacity of the JEA.

10 COUNCIL MEMBER FERRARO: Okay. Does it
11 change any of these numbers here also of
12 either magnifying or taking away?

13 MR. NUNN: No, sir.

14 COUNCIL MEMBER FERRARO: Okay. Thank
15 you.

16 MR. WEDEKIND: So what we wanted to do
17 is take a look for ourselves -- this is also
18 a slide that is our own work product; it
19 wasn't presented to the board. We wanted to
20 take a look at retail resales, so we were
21 trying to avoid the apples-to-oranges
22 comparison, so we cut out the wholesale
23 business, we ignored that, in 2006 because
24 it was no longer relevant to the business
25 going forward after 2017. So we just looked

1 at retail sales.

2 And for the seven years from 2012 to
3 2019, what we saw told a different story.
4 And what we saw from retail sales were that
5 in seven of the eight years, retail sales
6 were modestly increasing. And so I think
7 that that demonstrates how the story is
8 different depending on how you look at the
9 information that's being provided.

10 CHAIRMAN DIAMOND: Sorry to interrupt
11 you. And I'm not a mathematician or
12 anything, but I see numbers that are going
13 up, not down; is that fair?

14 MR. WEDEKIND: Yes, that's fair.

15 CHAIRMAN DIAMOND: By your analysis of
16 the sales of both retail and commercial by
17 JEA, they were actually modestly going up,
18 not down; correct?

19 MR. WEDEKIND: That is correct with one
20 exception. And if you look at the year 2017
21 here, you can see that there is a modest
22 dip, and that is driven almost entirely by
23 weather. So what we had were a couple of
24 hurricanes that year. And I think it was
25 unusually mild, and so that is more -- those

1 are weather-driven fluctuations, not really
2 necessarily results of long-term business
3 trends. And that's something that's
4 interesting that you'll see as you really
5 dig down, how much weather impacts the
6 finances of these utilities. It makes a
7 huge difference. It's something that has to
8 be taken into account when you look at
9 fluctuations year to year.

10 All right. So but to fully answer your
11 question, in seven of the most recent eight
12 years that we were actually -- sales were
13 increasing. And that makes it -- I mean,
14 modestly, but it makes sense because what
15 you're seeing is customer growth and degree
16 days are outpacing efficiency gains. So
17 you've got more customers. And degree days
18 are days that have a -- they're off of 65
19 degrees, so you would expect higher heating
20 and/or cooling temperatures on those days,
21 higher energy use, so you're seeing -- as a
22 result of climate change, you're seeing more
23 degree days, which results in greater
24 demand. And so that, I think, explains kind
25 of the modest growth over time for these

1 retail sales.

2 And when you look at that, it doesn't
3 seem so bad, right. But that is --

4 CHAIRMAN DIAMOND: One moment.
5 Councilman Becton.

6 COUNCIL MEMBER BECTON: Thank you.
7 Through -- thank you. Through the Chair.

8 Do you ever do an analysis as it
9 compares to the growth of rooftops in
10 Jacksonville over these years? Do you ever
11 match up -- as you pointed out, you just
12 kind of related that to the change in
13 temperature, but we see an awful lot of
14 rooftops going up in Jacksonville over the
15 last five years that I would think should be
16 part of that equation as well.

17 MR. NUNN: And, sir, are you talking
18 about rooftop solar?

19 COUNCIL MEMBER BECTON: New homes,
20 I'm talking about new homes. We have a ton
21 of apartment, multifamily, we have a ton of
22 new homes, new neighborhoods.

23 MR. NUNN: Absolutely. And what you see
24 over the last eight years really is
25 population growth, household formation and

1 increased degree days. These are the things
2 that are driving usage, megawatt hour sales
3 up on the retail sales level.

4 COUNCIL MEMBER BECTON: But do you ever
5 do a comparison as to the forecast of those
6 new homes that are coming in to production
7 in Duval County?

8 MR. NUNN: No. But it is part of JEA's
9 ten-year site plan process.

10 COUNCIL MEMBER BECTON: I think that
11 would be quite interesting to compare that
12 up and match it up and see how that growth
13 aligns with these retail sales as well, if
14 we ever get to that point, Mr. Chair.

15 CHAIRMAN DIAMOND: Understood.

16 And just for everyone's knowledge, you
17 know, we need to land around 9:15 with this
18 presentation. I'm not going to rush you,
19 but I get we have questions, I get this is
20 all very interesting. But in order to get
21 everything done, we have to land around that
22 time. So if we have to do another session
23 where Nelson Mullins comes back and we have
24 more time to ask these questions, I'm
25 totally fine with that, but let's try to get

1 through it.

2 COUNCIL MEMBER DeFOOR: I just want to
3 clarify, so what I heard him say was that
4 the growth, number of people coming to
5 Jacksonville, outpaced the declining
6 consumption, is that correct, the
7 efficiency?

8 MR. NUNN: Correct. The declining
9 consumption per customer is outpaced by the
10 growth in customers, as well as the increase
11 in degree days.

12 MR. WEDEKIND: All right. So that is
13 the lookback. We're going to move on now.
14 So that gives you some historical
15 perspective on what we're going to now move
16 into, which is the projection into the next
17 ten years, okay.

18 And so based on that, this is a slide
19 from the May 2019 board meeting that tells a
20 different story. And it says by 2030 --
21 this is JEA board packet materials. By 2030
22 JEA's customers may likely increase 16
23 percent and energy sales may likely fall by
24 8 percent. So they take that 8 percent
25 figure before, which we already understand

1 was possibly exaggerated to begin with, and
2 they extrapolate out for the next decade.

3 I'll try to move a little bit quicker to
4 be respectful of your time.

5 So what you'll see then is the same
6 information from that last chart is now
7 presented numerically in this chart. And
8 it's basically the same one that we looked
9 at a few minutes ago where it still has that
10 unit sales metric. It shows a declining
11 eight percent. And the real interesting
12 thing about this slide is it's given at the
13 exact same board meeting in June 2019 as
14 they approve the fiscal year 2020 budget.

15 And the budgetary assumptions in that
16 are different. And if you look -- this
17 slide has a lot of data on it. But if you
18 look in the Energy System column, the very
19 first triangle point says a 2.8 decrease --
20 2.8 percent decrease to system sales from
21 fiscal year 2019 to properly aligned sales
22 with accurate growth assumptions and trends.

23 So when they're budgeting going forward,
24 they're looking, at, quote, accurate growth
25 assumptions and trends. And the budget

1 projects a 2.8 percent decrease in sales.

2 CHAIRMAN DIAMOND: And just for that
3 painful hammering over the head, so everyone
4 understands, what they're saying to the
5 board is 8 percent, and what they're saying
6 in their budgets is 2 percent, 2.8.

7 MR. NUNN: Let me clarify. What they're
8 budgeting there is simply for the 2020
9 budget. So they're projecting a 2.8 percent
10 decrease for that year. And -- which is a
11 fairly dramatic increase given that you've
12 been going up for the last eight years.

13 MR. WEDEKIND: Also, very interesting in
14 this board packet is this slide that appears
15 for the first time. This is a disclaimer
16 and you can read it, but essentially what it
17 says is don't rely on these figures. So
18 it's very interesting that they provide --
19 they ditch the ten-year site plan. They
20 come up with this new report called a
21 management case. This new management case
22 is going to fundamentally drive long-term
23 strategic planning. It shifts from
24 operationally based data to valuation based
25 data. And then in order to comply with

1 securities laws, it inserts a disclaimer
2 in -- regarding the information they provide
3 in their management case.

4 I'm not sure why you would need to do
5 that unless you were strongly considering
6 recapitalization. In that case, it would
7 make a lot of sense to include those.

8 And they include this disclaimer, I
9 think, for good reason. And that is that --
10 and this is kind of the seven points that we
11 found, inconsistencies and why you would
12 want to have a disclaimer is that the
13 information that was provided in this
14 management case and the projections that
15 they provide to the PSC were inconsistent
16 with one another. The projections in their
17 management case either conflict with or are
18 inconsistent with the ten-year site plan
19 that was filed on March 28th, 2019. It's
20 inconsistent with the amended projections
21 that were filed with the PSC only a couple
22 of days before the July 23rd board meeting,
23 so after this slide showed up. But that --
24 the amended projections, interestingly,
25 project a five percent growth from 2019 --

1 or 2018 to 2028.

2 It's also inconsistent with the PSC's
3 November 2019 review. You heard Dan mention
4 earlier that the PSC actually reviews all of
5 these ten-year site plans and offers its own
6 review of the plans. And Florida PSCs 2019
7 review showed that sales throughout the
8 state are projected to grow at .83 percent
9 per year, which is compared to .43 percent
10 per year from 20-- well, from 2009 to
11 2018. So they're basically saying that,
12 although modest, the growth is basically
13 going to double from the past ten years.
14 It's also --

15 CHAIRMAN DIAMOND: Let me pause you
16 there.

17 Councilwoman DeFoor.

18 COUNCIL MEMBER DeFOOR: When you're
19 done, I want to make a statement.

20 COUNCIL MEMBER HAZOURI: Just a thought,
21 and this last bit of information, was that
22 the kick starter for the -- I'm jumping
23 down -- for the last ten months? Was that
24 the kick starter, May, when they tried to
25 justify what they need to do -- needed to do

1 going forward with the privatization? I
2 mean, it may have been discussed before.

3 I'm really editorializing, but this May
4 date stands out to me and this information
5 stands out even more so that it was the kick
6 starter for what was yet to come. Is that
7 your opinion or -- I don't know if you can
8 give me that opinion, but it just seems so
9 obvious to me, and maybe to others.

10 MR. NUNN: Councilman, you are correct
11 in the sense that May was the first sort of
12 presentation of what they call the strategic
13 plan going forward and laying out the
14 various options. And so this was sort of
15 laying out the business as usual case as
16 they presented it.

17 COUNCIL MEMBER HAZOURI: That's when the
18 sky began to fall.

19 MR. WEDEKIND: And really that went back
20 to March of 2019. That was kind of the real
21 beginning. Remember the ship and the
22 lighthouse, that visual imagery, that was
23 kind of the beginning of the sky is falling;
24 we're going to crash if we don't do
25 something drastic here.

1 CHAIRMAN DIAMOND: Councilwoman Priestly
2 Jackson.

3 COUNCIL MEMBER PRIESTLY JACKSON: Just
4 to be clear, your review starts on or about
5 2018 of the information you looked at
6 forward; correct?

7 MR. WEDEKIND: We looked at information
8 that went back too. I mean, I think we went
9 back to at least '17 as relevant to go back.

10 COUNCIL MEMBER PRIESTLY JACKSON: And
11 the reason I'm just saying that, I don't
12 know that we have decided as a body that May
13 of 2019 was the kick starter. I think we
14 moved our date back to 2015, which will draw
15 in the sale, you know, of the -- the ability
16 of Amelia Island and Fernandina Beach to
17 pick someone else, you know, pick another
18 entity to handle their utility costs and
19 things. So I didn't want the public to
20 think all of a sudden this just started
21 happening in May. There may have been more
22 of an aggression of push for documentation
23 then, but I think we determined last meeting
24 we need to go farther back.

25 COUNCIL MEMBER HAZOURI: Just quickly, I

1 get what --

2 CHAIRMAN DIAMOND: Please wait for the
3 Chair to recognize you. Yes, sir.

4 COUNCIL MEMBER HAZOURI: Through the
5 Chair, of course.

6 I think what you're saying is absolutely
7 right. I see it as the storm building to
8 justify the final hit from the hurricane,
9 and that's in May. I agree with what you're
10 saying. I think it did start in, you know,
11 the year before or two years, three years
12 before, but it was building up to what they
13 wanted to do in May. Thank you.

14 CHAIRMAN DIAMOND: Okay. Please keep
15 going.

16 MR. WEDEKIND: All right. We're almost
17 done here.

18 So I'm walking through why you would
19 need this disclaimer in your management case
20 and the in- -- how those numbers are
21 inconsistent with other numbers. So we
22 talked about the ten-year site plan, the
23 amended ten-year site plan. We talked about
24 PSC's November review of all of Florida's
25 ten-year site plans.

1 It's also -- the projections here are
2 inconsistent with every single other
3 ten-year site plan that was filed by a
4 Florida utility in 2019. All of them have
5 rosier projections for what this industry is
6 going to look at going forward than what is
7 presented here in the management case.

8 It's also inconsistent, actually, with
9 JEA's actual retail sales. We talked about
10 over the last -- seven of the last eight
11 years, retail sales are improving. So the
12 management case is inconsistent with that.
13 It's also inconsistent with the ratings
14 provided by the ratings agencies of JEA's
15 bonds. And it's also inconsistent, I would
16 note, with all of the bids received as part
17 of the ITN process. If this is a failing
18 company, then why did we get so robust bids?
19 It doesn't -- there is an inconsistency that
20 doesn't add up to me.

21 So after all of our analysis, a lot of
22 people with a vested interest ask the same
23 sorts of questions as part of the ITN
24 process. The bidders dug in and really
25 wanted to better understand JEA's management

1 case. And I think what we found in looking
2 at the questions and the answers that were
3 provided was that JEA either just totally
4 ignored the question or gave an extremely
5 vague unresponsive answer to its bidders.
6 And at that point the ITN process was
7 killed, so there was no need to go any
8 further. But there was never an explanation
9 given by the company to explain these sorts
10 of inconsistencies.

11 CHAIRMAN DIAMOND: One moment.

12 Councilwoman DeFoor.

13 COUNCIL MEMBER DeFOOR: I may steal your
14 thunder, but a couple questions. So
15 wouldn't you agree that the JEA management
16 had a fiduciary duty by law to the board and
17 to the people of Jacksonville to present
18 correct information?

19 MR. WEDEKIND: Certainly to the board,
20 absolutely to the board.

21 COUNCIL MEMBER DeFOOR: So in your
22 conclusion, as I understand it, was that the
23 management presented selected data and
24 projections without proper context to
25 provide a negative false narrative with the

1 intent to drive the board to explore a sale;
2 is that correct? Was that your findings on
3 page 12 of your memo?

4 MR. WEDEKIND: Yes.

5 COUNCIL MEMBER DeFOOR: Wouldn't that
6 amount to fraud?

7 MR. WEDEKIND: I can't answer that
8 question. I think that I would leave that
9 for the courts to determine. But I will say
10 that I do think that it justifies Mr. Zahn's
11 termination for cause.

12 CHAIRMAN DIAMOND: Councilwoman Priestly
13 Jackson.

14 COUNCIL MEMBER PRIESTLY JACKSON: A
15 follow-up question to that: Does the
16 ten-year site that's filed require any
17 notation of any material changes or
18 deviations for what has traditionally been
19 included in the plan?

20 MR. NUNN: So, no, I don't believe so.

21 CHAIRMAN DIAMOND: Make sure you speak
22 into the microphone.

23 MR. NUNN: I'm sorry. No, I don't
24 believe that would require any -- actually,
25 the Florida Public Utilities contract had

1 declined in significance to JEA by that
2 time. But it would be taken into account
3 from a demand perspective.

4 COUNCIL MEMBER PRIESTLY JACKSON: And
5 what I'm getting to, if there is a different
6 way they're quantifying and evaluating their
7 work, after the off-sale of Amelia Island
8 for another utility provider, there was no
9 requirement by them to make any notations of
10 any changes in their evaluation process in
11 their ten-year site plan.

12 MR. NUNN: No. I don't believe so.
13 They're required to talk about demand and
14 generation resources, so, yes, as it
15 expects -- as any of these things affect
16 demand and generation, then, absolutely,
17 they're required to discuss those things.

18 COUNCIL MEMBER PRIESTLY JACKSON: So it
19 should have been perhaps included in the
20 2018, we would have seen a notation if it's
21 demand and usage changed because of the sale
22 in '17? I'm just trying to find out if
23 there was a requirement to put that in
24 there.

25 MR. NUNN: Yeah. In fact, I believe the

1 discussion -- there was discussion in the
2 2018 site plan of the Florida Public
3 Utilities arrangement.

4 COUNCIL MEMBER PRIESTLY JACKSON: Thank
5 you.

6 CHAIRMAN DIAMOND: Councilman Salem,
7 then Councilwoman Pittman, then Councilman
8 Boylan.

9 COUNCIL MEMBER SALEM: Just for the sake
10 of time, JEA has a short-term incentive plan
11 that I have really examined and I'm very
12 concerned and we're not going to resolve
13 this today. Have we paid out bonuses to JEA
14 employees based on false figures? I know
15 Aaron Zahn got a \$30,000 short-term
16 incentive plan bonus recently.

17 CHAIRMAN DIAMOND: Yeah, that's on my
18 list of issues to investigate, but we'll put
19 an exclamation point on it.

20 COUNCIL MEMBER SALEM: I just want to
21 make sure that was on the list.

22 CHAIRMAN DIAMOND: Fair enough. Thank
23 you, sir.

24 Councilwoman Pittman.

25 COUNCIL MEMBER PITTMAN: Through the

1 Chair.

2 I must say that I'm sitting here -- I
3 just want to make a comment -- feeling very,
4 very disturbed. And I'm really glad that
5 you're here today taking this deep dive with
6 us, because I feel like we've been
7 bamboozled. And I hope as we go -- as we
8 move further or we go in the future, I'm
9 really glad that this Committee was
10 developed, because we wouldn't have never
11 known this.

12 I'm feeling -- I can't even describe how
13 I'm feeling. What we would have done to our
14 customers if we had sold JEA, it is very,
15 very disturbing.

16 CHAIRMAN DIAMOND: Thank you.
17 Councilman Boylan.

18 COUNCIL MEMBER BOYLAN: Through the
19 Chair.

20 Before we turn the page to the strategic
21 plan process itself, you opened your
22 comments by talking about your
23 disappointment that the ITN was taken off
24 the table. Now, recognizing how directed
25 that process was and perhaps the flawed

1 nature of it, it's still millions of dollars
2 had been invested to generate the ITN.
3 Would it have been your recommendation to
4 see the ITN through just so you knew what
5 the numbers were. And then for us as a
6 Council, ultimately, then to make a
7 determination if that was a correct path for
8 us to go on? My frustration was in the fact
9 that the ITN was just plain stopped and we
10 didn't get a chance to see what others saw
11 as the value of our utility.

12 MR. NUNN: I think that -- if we weren't
13 clear, I think our concern was that there
14 was a conversation to be had about the
15 future of JEA that's an important
16 conversation. And it wasn't being informed
17 by correct information. I would suggest --
18 I have practiced mergers and acquisition law
19 for about 30 years. I would suggest to you
20 that the bankers could have given you a
21 pretty good sense of valuation back in July
22 2019 in the first meeting.

23 CHAIRMAN DIAMOND: Councilwoman DeFoor.

24 COUNCIL MEMBER DeFOOR: If you have a
25 flawed process, you get a flawed result.

1 There was no possible way we were going to
2 get a valid result from that. So I am very
3 grateful that the ITN process was
4 terminated.

5 CHAIRMAN DIAMOND: Mr. Nunn.

6 MR. NUNN: Yes. I'm going to try to
7 walk very quickly through some issues
8 regarding the strategic planning process and
9 the PUP. And I'm going to move quickly
10 because I think there is some important
11 points here and limited time.

12 This slide is a matrix of what I'll call
13 legal complications preventing JEA from
14 moving forward with adaptation in the same
15 manner that other utilities might be able to
16 adapt to changing conditions. What I'm
17 going to suggest to you is this matrix is --
18 looks like there has been a lot of work done
19 on it. I haven't seen any homework backing
20 it up.

21 It does focus largely on two
22 constitutional provisions. And what I'm
23 going to suggest to you, that in the process
24 my overall observation was that there could
25 have been substantial work done in strategic

1 planning in terms of evaluating how you
2 would structure around these constitutional
3 restrictions in order to be able to, for
4 example, do more in the distributed
5 generation market. And I think that there
6 was not a lot -- there was also some things
7 that were underplayed and overplayed, but I
8 want to move on from here because I think
9 there is some more important points about
10 the strategic planning process.

11 The downtown headquarters lease, what
12 was represented to the board in June of 2019
13 was that, if we didn't move forward with
14 scenario three, we would have to move out of
15 downtown. We would -- so we'd find cheaper
16 space on the south side. So what they did
17 was they asked the board, at the June 2019
18 meeting, to approve a lease, which was
19 signed, that included a termination clause
20 that gave JEA a right to get out of the
21 lease within 90 days because it had not
22 completed its strategic planning process.

23 Now, if you think about that for a
24 minute, all that you know in 90 days is
25 whether your board will approve you to go

1 forward. You have no idea whether the City
2 Council is going to go forward. And you
3 have no idea if the voters are going to
4 approve it. So if you really believe that
5 you have to move out of downtown, you don't
6 sign this lease in the first place.

7 Other observation that I make on this is
8 that, in order to get out of the lease
9 within 90 days, you would have had to pay
10 the landlord's expenses of up to \$2.9
11 million. Now, that's dependent on a
12 decision that your board is going to make a
13 month later. So it doesn't seem like the
14 best use of funds.

15 CHAIRMAN DIAMOND: Mr. Nunn, boil this
16 thing down so that I can understand like I'm
17 12 years old what was going on with this
18 lease.

19 MR. NUNN: It was being used as
20 additional leverage to convince the board to
21 approve a recapitalization event.

22 CHAIRMAN DIAMOND: Gotcha.

23 MR. NUNN: What they approved in July
24 was three potential recapitalization
25 scenarios, an initial public offering,

1 community ownership, a coop, or a sale to an
2 investor owned utilities.

3 What I'm going to say to you is -- well,
4 I'll have the conversation with you that I
5 could have had with the JEA Board back in
6 July. This is what the lawyers and the
7 bankers would have told them. There is,
8 first of all, a threshold legal question as
9 to whether JEA could conduct an IPO. It has
10 to do with a restriction in their
11 constitution about joint ownership by the
12 government with private individuals of a
13 corporation.

14 If you really were going to pursue an
15 IPO, what you would have done was imagine
16 the best structure that your legal minds
17 could come up with that you think avoided
18 this constitutional restriction and seek an
19 opinion from the Attorney General as to
20 whether it was -- it qualified for an
21 exemption under constitution.

22 They didn't do that. That tells me they
23 weren't serious about an IPO. The other
24 reason they wouldn't be serious about an IPO
25 is what the banker would have told them back

1 in July is the public markets are not going
2 to give you as much money as you would get
3 from an investor owned utility, because it
4 has strategic value to them. They will pay
5 a control premium because they're getting
6 100 percent. And by the way, if you believe
7 that you have all these things that
8 hamstring you for these other reasons, an
9 IPO doesn't necessarily solve that problem.
10 So an IPO was never a realist option.

11 The cooperative, again, I'm going to go
12 very quickly. But I am going to tell you
13 why electric cooperatives exist. Electric
14 cooperatives exist because back in the
15 1930s, if you didn't live in a city, you
16 didn't have electricity. Investor owned
17 utilities didn't want to go there.

18 And so back in the FDR era they passed
19 the Rural Electrification Act. And what it
20 did was created an agency that would make
21 loans or issue loan guarantees to help
22 finance the construction of utilities in
23 rural areas. It also created a model law
24 for states to adopt. Florida has adopted a
25 version of that law, it's called the Rural

1 Electric Cooperative Law. It's Chapter 425
2 of the Florida statutes.

3 What I would tell you is that JEA,
4 because it's an urban area, doesn't qualify
5 as a rural electric cooperative.

6 Is it possible that you could have put
7 together a consortium of cooperatives to
8 purchase the assets of JEA? Maybe. But
9 they would not have been able to use the
10 favorable financing or loan guarantees from
11 the government that there would be the
12 normal source of their financing for
13 acquiring rural electric facilities, because
14 it wouldn't qualify; it's not rural
15 facilities.

16 And so, accordingly, that consortium of
17 coops could never have paid you the same
18 amount that an investor owned utility could
19 have paid you. These were straw men. They
20 were never intended as realistic options.

21 The fourth area -- and I know we're
22 running very short on time -- was the
23 performance unit plan. And the performance
24 unit plan, in our view, was designed --
25 created and designed to pay out 10 percent

1 of the sales proceeds above 7.5 billion.
2 It's actually the way it was structured
3 above 7.1 billion, but I'll get back to it.

4 There was a complicated formula and
5 calculation in my presentation. I will
6 scroll down to where I am. I show you how I
7 come up with the math based on the formula
8 in the PUP plan, finding the challenge value
9 target, which is a value that puts a
10 valuation on JEA of 7 and a half billion
11 dollars.

12 Now, we know that the PFM report from
13 2018 put a value on the low end of 7.5
14 billion and on the high end of 11 billion.

15 CHAIRMAN DIAMOND: Just for clarity's
16 sake, can you describe what the PFM report
17 is?

18 MR. NUNN: Yes. The PFM report was a
19 report called the Future of JEA. And that
20 was commissioned by the JEA Board back in
21 approximately April of 2018. And it was,
22 essentially, a valuation of JEA.

23 And as I mentioned earlier, the
24 investment bankers, as is typical for a
25 first meeting, they come in with, Here is

1 what we think the value of your company is.
2 So they would have given that information to
3 management early on.

4 So one point I want to make is, while a
5 \$10 billion sale would have reaped a \$246
6 million payout. A sale at \$7.5 billion
7 would still have rendered a payout. And the
8 reason why is even though 7 and a half
9 billion is the challenge target, there is a
10 requirement in the ITN process for a
11 customer rebate. It was 300 million or 400
12 million of customer rebates. Ten percent of
13 their customer rebate would have been paid
14 to management under the PUP.

15 So let me talk real quickly about what
16 was disclosed to the board in the PUP. And
17 I'm going to move very quickly through these
18 slides. General discussion on this slide
19 about how they paid \$10 a year and value
20 goes up depending on increase or decrease in
21 value over the years.

22 It talks in this slide about ten percent
23 of the value created. This is the sort of
24 decoding ring where you're talking about
25 here is how you know this is ten percent of

1 the value, and that's what the math works
2 out to be. You have to increase the value
3 by at least \$300 million. That's the
4 challenge target concept.

5 And then there is a series of slides
6 here that talk about the payout range. And
7 talk about the estimated costs. These are
8 all from the comp committee presentation.
9 And they talk about payouts as a percentage
10 of salary.

11 And while, obviously, these weren't
12 percentages of salaries, I would suggest to
13 you that that percentage of salary column
14 may ultimately have been meant to show the
15 relative ratio of who is getting what in the
16 30,000 units in the PUP plan. In other
17 words, the executive is getting eight times
18 more than the director.

19 CHAIRMAN DIAMOND: Let me just stop you
20 there. Just so it's clear, the performance
21 unit plans were a kind of almost stock
22 option; you buy them at \$10 each and then,
23 based on a sale of JEA, there would be,
24 within 30 days, a payout on those. And by
25 your calculation, \$10 might turn into how

1 much money?

2 MR. NUNN: \$10 might turn into -- in a
3 sale at \$10 billion in value, it would turn
4 into \$8,210.

5 CHAIRMAN DIAMOND: So \$10 turns into
6 \$8,000 at that sale price. And what you're
7 telling us now is that the vast majority of
8 that money and that benefit would have been
9 to the executives, based on our assumption,
10 based on salaries?

11 MR. NUNN: Yes, sir.

12 CHAIRMAN DIAMOND: Councilwoman DeFoor.

13 COUNCIL MEMBER DeFOOR: Just to follow
14 up on that line of questioning and thought,
15 what you said prior to that was they
16 basically -- because they hire JP Morgan and
17 Morgan Stanley, those two banks would have
18 come in and given assessment probably from
19 day one as to the value. So they knew when
20 they were putting this plan together, they
21 already had a pretty good idea in your
22 estimation, as I understand what you're
23 saying, of the value, is that correct, of
24 the --

25 MR. NUNN: JP Morgan is a very, very

1 good investment bank. I interviewed JP
2 Morgan recently for a client who was looking
3 to sell their business. And in the very
4 first meeting, as has always happened over
5 my 30 years, they came in with a very
6 precise estimate of value they could get
7 when they sold that business. So, yes --

8 COUNCIL MEMBER DeFOOR: So before this
9 was even passed, probably in July, they had
10 a very, very clear understanding of the
11 value of the JEA and what this PUP was going
12 to -- the return of the PUP? And as my
13 colleague described as legal theft. I'm not
14 sure it's legal theft, but thank you.

15 CHAIRMAN DIAMOND: Councilwoman Priestly
16 Jackson.

17 COUNCIL MEMBER PRIESTLY JACKSON: One
18 question: Are you aware of any stock
19 options or buy-ins being available to
20 employees of any municipally owned utilities
21 anywhere in Florida or the United States?

22 MR. NUNN: No, ma'am.

23 CHAIRMAN DIAMOND: Councilman Salem.

24 COUNCIL MEMBER SALEM: Thank you,
25 Mr. Chair.

1 I have read Aaron Zahn's testimony,
2 400-and-some-odd pages. He uses a figure of
3 anything above 3.4 billion, if I recall
4 correctly, and 10 percent of that would go
5 into the plan. You're using a figure of 7.5
6 billion. Because he talks about he can
7 calculate very quickly off the top of his
8 head how much would go into the PUP.

9 MR. NUNN: He could. And in fact, the
10 reason why there never was any math, because
11 the math is so easy you can do it in your
12 head.

13 COUNCIL MEMBER SALEM: No. But you're
14 using a figure of 7.5, and he used 3.6,
15 which makes the PUP plan even more valuable.

16 MR. NUNN: The difference is that I am
17 including the debt, because what any buyer
18 would have to pay -- and he's using the book
19 value, the equity value, right. So if a
20 buyer came in and bought it for 7 and a half
21 billion, approximately 4 billion goes to pay
22 the debt. And then whatever there is left
23 over above paying off the debt, if that's
24 more than the 3.4, 3.5-million-dollar
25 figure, 10 percent of that gets paid out to

1 the PUP.

2 COUNCIL MEMBER SALEM: Well, he was
3 using the 3.4, and that was his calculation.

4 MR. NUNN: No, understood. And the
5 reason he's using it is because that's what
6 they said was the book value. They were
7 using book value as a proxy for fair market
8 value, that's what they're saying it's
9 worth. And under his scenario, he is
10 correct. It is 10 percent of everything you
11 get, the City gets above 3 point -- he's
12 using 3.4, I'm using 3.5, plus 10 percent of
13 the customer rebate that is paid in
14 connection with the transaction.

15 But the reason my figure is different is
16 simply because I'm recognizing the buyer
17 also has to pay off the debt. So he's
18 assuming the debt is paid off in that
19 scenario.

20 COUNCIL MEMBER SALEM: I should also say
21 the figures I quoted are consistent with the
22 Council Auditor's report that showed roughly
23 a billion dollar payout to the PUP at
24 roughly a \$9 billion -- and I'm saying for a
25 hundred thousand PUPs, it would be a billion

1 dollar payout on a roughly \$9 billion
2 purchase.

3 MR. NUNN: Our calculations aren't, in
4 fact, different. It is a question of how
5 many units are issued under the PUP. My
6 point is that -- my belief is there was
7 never any intention for this PUP plan to be
8 a long-term plan. There was never any
9 intention for anything other than the
10 initial 30,000 units to be issued.

11 CHAIRMAN DIAMOND: Councilwoman Priestly
12 Jackson.

13 COUNCIL MEMBER PRIESTLY JACKSON: A
14 follow-up question on that: Would it be
15 fair to say that then the PUP was used to
16 facilitate the recapitalization of the sale
17 and not the sale was used to facilitate the
18 PUP?

19 MR. NUNN: Yes. I absolutely believe
20 that. And as to that point, I would start
21 to look at a couple things. When we're
22 talking about what was disclosed to the
23 board, remember it was disclosed to the
24 board the \$3.4 million number, the payout
25 ranges, that's the information they had.

1 And then there were the last 6 pages of
2 this 350-page board book, and that's what
3 the board had to look at to figure it out.
4 And when you look at it, it is clearly tied
5 to a recapitalization event.

6 The definition of a recapitalization
7 event is a transaction in which the city
8 gets at least \$3 billion of unencumbered
9 proceeds. It is very clearly -- so if you
10 were on the board and you were trying to
11 understand, based on what management had
12 told you at this meeting that, in fact,
13 there was going to be a huge payout, you
14 would have to understand this legalese that
15 talks about -- when they talk about
16 performance period, it says it's a
17 three-year period. But if a
18 recapitalization event occurs, the
19 performance period is truncated and will end
20 on the closing date of the recapitalization
21 event.

22 Well, if you're smart and you've thought
23 about it and you have a lot of experience in
24 this area, then maybe you think about the
25 fact that, Hey, that's the date that they

1 receive the proceeds. So all of a sudden my
2 book value has been increased because I've
3 got all this cash on hand. So there is a
4 big payout.

5 But most board members are not going to
6 realize that, especially volunteer board
7 members who presented with this 352-page
8 memo, board package, and that are receiving
9 information -- relying on information
10 they're providing the board.

11 What they really need to do is get to
12 the very last page of that package where it
13 says, For the avoidance of doubt, for
14 purposes of calculating the amounts in
15 clauses A, B, and C, any consideration in
16 the change of net position applicable in
17 connection with the recapitalization event
18 shall be taken into account.

19 That's magic language that says you
20 count the sales proceeds. Now, many people
21 aren't going to understand that, if they're
22 not a lawyer who has been doing this for 30
23 years. I don't know.

24 But I will tell you that what the board
25 wasn't told is that, on June 17th of 2019,

1 the OGC provided a very excellent memo -- I
2 would have been proud to have drafted it --
3 outlining the requirements for bonus and
4 incentive compensation payments to public
5 employees.

6 They didn't present that to the board.
7 But they did use it sort of as a template,
8 the lawyers used it as a way to say, All
9 right, how do I construct a plan to avoid
10 these restrictions?

11 And the idea they came up with is, We're
12 not going to treat this as compensation;
13 we're going to treat this as something you
14 can buy into. It's a benefit plan, so it's
15 not compensation, so we're going to avoid
16 the restrictions of Florida law.

17 What wasn't disclosed to the board was
18 that there is a public policy in place. And
19 the public policy is you only use public
20 funds for a public purpose. And it's not a
21 public purpose to pay bonus compensation
22 just to public employees already done work
23 for an agreed upon rate. And they weren't
24 told that this created huge incentive s for
25 management to push for a sale.

1 And the reason that is so important is,
2 first of all, they could assess whether this
3 is fair or not fair, but it also would have
4 caused them to perhaps question the
5 information that they were getting knowing
6 that management, if you pursue a
7 recapitalization, is getting a huge payout,
8 and so maybe we ought to get some better
9 outside information on -- about what
10 management is telling us.

11 CHAIRMAN DIAMOND: And to be clear,
12 Mr. Nunn, this plan, the PUP plan, was
13 passed by the board at the exact same board
14 meeting where they looked at the ITN
15 options; correct?

16 MR. NUNN: That is exactly correct. It
17 is inextricably linked.

18 CHAIRMAN DIAMOND: So there is a massive
19 shift in the incentives of the senior
20 executive team to sell JEA so they can make
21 literally hundreds of millions of dollars in
22 the event of a sale; is that fair to say?

23 MR. NUNN: Correct.

24 CHAIRMAN DIAMOND: In your experience
25 working with boards and senior management,

1 how is this not a massive problem?

2 MR. NUNN: It is. It is. And it is
3 something that they -- certainly, management
4 certainly had a fiduciary duty to fully
5 disclose this to the board, management had
6 that duty, outside counsel had the duty to
7 make sure the board was properly informed
8 about the decisions they were making.

9 I only have one page left, if you'll
10 bear with me.

11 CHAIRMAN DIAMOND: Please, continue.
12 It's important.

13 MR. NUNN: But this is from -- this last
14 slide deals with what the board wasn't told
15 and what it was told. Four things that I
16 picked up on: Mr. Howard at one point notes
17 that there is accelerated vesting upon a
18 recapitalization event. Management agrees,
19 but what it doesn't then say is, Oh, and by
20 the way, you calculated by including the
21 purchase price from the recapitalization.

22 Mr. Howard asked whether it's been
23 approved by the OGC. Ms. Rhode says yes. I
24 know there has been conversation about that
25 point already.

1 Ms. Flanagan asked Mr. Wannemacher to
2 walk the board through how a value of the
3 units is determined. So he answers the
4 question based on a three-year performance
5 period. What he doesn't do is say, All
6 right, here is what happens on a sale.

7 So, in fact, Ms. Flanagan, to her
8 credit, she asks the exact right questions.
9 She asked, What are the implications of
10 scenario three, a recapitalization, on the
11 plan? And Mr. Wannemacher responds that the
12 only implication is that a recapitalization
13 ends the performance period, and the
14 calculation would be done at that time. He,
15 of course, does not say, You're going to do
16 it after we just put \$5 billion in the bank.

17 CHAIRMAN DIAMOND: And no one at that
18 table provides any other information, do
19 they, for Ms. Flanagan?

20 MR. NUNN: That's correct.

21 CHAIRMAN DIAMOND: Please continue.

22 MR. NUNN: So that is all we have. We
23 haven't covered, I know, everything that's
24 in our memo, but I'm happy to answer
25 questions.

1 CHAIRMAN DIAMOND: Councilwoman Priestly
2 Jackson has a question, then I have a quick
3 comment.

4 COUNCIL MEMBER PRIESTLY JACKSON: And so
5 I appreciate you sharing that the stock
6 option, or the PUP, was used to incentivize
7 the sale, so the value of it would be at the
8 time of the sale of the utility for the PUP.
9 And you stated a moment ago that you believe
10 that, in creation of a stock option buying
11 into the municipal utility at that time, the
12 language of the PUP was drafted around
13 General Counsel's advice of what you cannot
14 do so they could do what they wanted to do.
15 Is that fair to say?

16 MR. NUNN: Correct. So what I would
17 characterize this plan as is it is more
18 analogous to what we call in the corporate
19 sector a phantom stock plan, rather than a
20 stock option plan. And so what a phantom
21 stock plan does is it rewards employees
22 typically based on the increase in value of
23 the business over a fixed period of time.
24 And it starts with a baseline value. This
25 was very similar to this.

1 The nuance that they did, they took a
2 phantom stock plan sort of off the shelf and
3 they changed it by having the feature that
4 you buy into it. So it's now an investment
5 that you're making; it is not part of your
6 compensation. So that's how they were
7 trying to avoid the General Counsel's
8 advice.

9 COUNCIL MEMBER PRIESTLY JACKSON: So a
10 follow-up on that, so if it's a phantom
11 stock plan, what were they buying into?
12 When it was sold? Because there was nothing
13 to buy into at that moment. If it's
14 municipally owned by the residents under
15 this phantom stock plan, clearly they
16 weren't buying into the JEA of today, they
17 were buying into the JEA we sold into the
18 future; correct?

19 MR. NUNN: Correct.

20 CHAIRMAN DIAMOND: Is that generally the
21 conclusion of your presentation?

22 MR. NUNN: Yes, it is.

23 CHAIRMAN DIAMOND: Okay. Let me just
24 say a couple things. I know we have
25 questions; we are short on time. First of

1 all, thank you. And I mean that genuinely
2 and as deeply as I can say, for free, you
3 both have put a massive amount of time into
4 helping the people of Jacksonville
5 understand what this swindle is all about
6 and how it was done.

7 Help sanity check me for a minute here.
8 If I'm the CEO of a utility and I want to
9 sell it, a public utility, and all these
10 things have happened, is this a logical
11 series of conclusions and assumptions to
12 make?

13 Sanity check me here for a second. I
14 want to sell JEA, so I need to make sure
15 that it looks bad financially. And so I am
16 going to selectively show my board different
17 numbers completely out of context so it
18 looks like our sales are going down, when,
19 in fact, our sales are actually going up. I
20 am going to remove the fact we're out of the
21 line of business from the context, the only
22 thing that shows it going down, in order to
23 give them that information.

24 I'm going to make it look like our
25 organization is being threatened by

1 efficiencies and disruption out there so
2 that we need to quickly do something before
3 we're left flatfooted, but at the same time
4 I have a problem. I have to tell my
5 regulator, the PSC, the truth, I have to
6 tell the ratings agency the truth, and I
7 have to get a board budget passed. So I
8 can't lie to them, but I can lie to my board
9 and make JEA look much worse than it was.

10 And at the same time knowing that this
11 train is going to happen and my board is
12 convinced that I'm right because I'm showing
13 them this tiny, manipulated data set, I'm
14 going to make a ton of money. And how am I
15 going to do it? I'm going to create a
16 phantom stock option plan, phantom option
17 plan.

18 And when I'm told it's illegal, you
19 can't do that because you are a public
20 employee, you get paid with public dollars
21 so you don't get extra stuff, you go to the
22 private sector for that, I create something
23 that skirts Florida law to the best I can.
24 I push as hard as I can to my external
25 people to make this thing happen so that I

1 can get paid out hundreds of millions of
2 dollars in the event of -- have I said
3 anything that doesn't work with the facts as
4 you have presented them and analyzed them.

5 MR. NUNN: I think what you presented is
6 a fair characterization of the narrative
7 that Mr. Zahn was putting forward and what
8 his plan seems to have been.

9 CHAIRMAN DIAMOND: I'll just say this
10 and then I'll go to comments here or
11 questions from the rest of the Council, but
12 without question, to me, this analysis shows
13 that this was an attempt and maybe the
14 biggest attempt to swindle the people of
15 Jacksonville based on the biggest lie ever
16 told in our City's history. And I find it
17 absolutely disgusting.

18 And again, I thank you for making it so
19 easy for everyone to see it. This is as
20 black and white as it gets.

21 I promised Randy first.

22 Councilwoman DeFoor.

23 COUNCIL MEMBER DeFOOR: That's really
24 hard to follow. Well said.

25 I just -- following up, I mean, swindle

1 is a really great word. I think that I was
2 going to go to legalese. And based on when
3 you were talking about Ms. Flanagan's
4 question and Mr. Wannemacher's response to
5 that question, with my legal hat, that's the
6 way I would characterize that, was an
7 intentional misrepresentation by
8 Mr. Wannemacher. Would you agree with that?

9 MR. NUNN: I would call it a material
10 omission in the securities law field, yes.

11 COUNCIL MEMBER DeFOOR: Material
12 omission, okay. So once again, I can't help
13 but say isn't this whole thing, whether you
14 want to call it a swindle, isn't this --
15 wasn't this, in layman's terms, fraud?

16 MR. NUNN: I am reluctant to
17 characterize it because I'm not a
18 prosecutor, but it certainly looks like
19 that.

20 CHAIRMAN DIAMOND: I'm going to go to
21 Councilwoman Priestly Jackson. Then I'm
22 sorry to everyone else on the queue, I have
23 to cut it there. We need to get to our
24 business. I mean no disrespect.

25 Councilwoman Priestly Jackson.

1 COUNCIL MEMBER PRIESTLY JACKSON: Just
2 one additional factor: So we've had an
3 outline of the PUP, we've had an outline of
4 the ITN first, then the PUP, and we did not
5 mention today this was the same meeting that
6 the executive staff, or senior leadership
7 team, had contracts, employment contracts,
8 entered with no (inaudible) into perpetuity,
9 which is generally against public policy,
10 along with severance packages that were
11 rich; correct?

12 MR. NUNN: Correct.

13 CHAIRMAN DIAMOND: Is it quick?

14 COUNCIL MEMBER SALEM: Yes.

15 CHAIRMAN DIAMOND: Councilman Salem.

16 COUNCIL MEMBER SALEM: I think it's --
17 we had outside firms that participated in
18 this. And we have paid them some figure
19 north of \$10 million. And I hope OGC and
20 others are looking at how they participated
21 in this and what dollars we can get back.
22 That's point number one.

23 Point number two, we have a team running
24 JEA today that was involved in this. And I
25 think it's extremely important that we get a

1 board over there as quickly as we can so
2 that this can be dealt with, because I am
3 just furious at what I've heard. But we've
4 got to get people in place so that we can
5 take -- they can take the appropriate
6 action.

7 CHAIRMAN DIAMOND: Councilman Wilson,
8 Council President.

9 COUNCIL PRESIDENT WILSON: Thank you.

10 And thank you both and thank you for
11 your team for all the work you did. I know
12 you weren't chosen, but we would have been
13 well served by you. And thank you for your
14 leadership in this. I certainly appreciate
15 it.

16 To Council Member Salem's point, we do
17 have seven bills out there to appoint new
18 members. And I would like to have a
19 discussion in an agenda meeting whether some
20 of those members or all of those members
21 should be considered in a one-cycle
22 emergency so we can get them seated and
23 prepared to serve. So I thought an agenda
24 meeting on Tuesday, we can have that
25 discussion tomorrow. So thank you.

1 CHAIRMAN DIAMOND: Councilman Becton.

2 COUNCIL MEMBER BECTON: Real quick,
3 through the Chair.

4 This makes me ponder, given the outcome
5 that we've come up with, whether some
6 recipients or companies that were giving us
7 an ITN bidding were told the truth versus
8 others. And certainly, that would be
9 something that I would hope that at the end
10 of all of this that we could come to a
11 conclusion.

12 CHAIRMAN DIAMOND: I think it's very
13 worth following up whether or not every
14 bidder had a fair chance to the bid, because
15 I'm not convinced of it.

16 Gentlemen, again, thank you for
17 everything. I truly appreciate your time.

18 MR. NUNN: Thank you.

19 CHAIRMAN DIAMOND: Okay. So moving on.
20 Thank you, Ms. Maillis, for being patient
21 and waiting for us.

22 We now have testimony from Patricia
23 Maillis from JEA.

24 If you want to come up to this table
25 here and be sworn.

1 I think our court reporter is going to
2 swear; correct?

3 COURT REPORTER: You want me to do it?

4 CHAIRMAN DIAMOND: Please.

5 **PATRICIA MAILLIS,**

6 having been produced and first duly sworn as a
7 witness on behalf of the City, then testified as
8 follows:

9 **EXAMINATION**

10 BY CHAIRMAN DIAMOND:

11 Q Thank you, Ms. Maillis. You can sit
12 right there. As you'll see, there is a big
13 binder put there. And everyone up here has the
14 same binder.

15 So a couple of things, first of all,
16 thank you for being here. We appreciate it.

17 Unfortunately, this is historic; you are
18 literally the first witness of the first in
19 investigatory committee in the history of the
20 City of Jacksonville. And being sworn in is
21 unusual for us, so thank you.

22 I know it's a little lonely up there. I
23 know this is kind of a formal setting. But
24 really we just have some questions and,
25 hopefully, you can give us good testimony and we

1 can do this in about an hour. That's my hope.

2 CHAIRMAN DIAMOND: For my colleagues,
3 what I would like to do, if it's okay by
4 you, is for me to kind of move through. I
5 think I can get through about 90 percent of
6 this in about 30 minutes, and then leave
7 extra questions, if you all have. Does that
8 sound okay?

9 BY CHAIRMAN DIAMOND:

10 Q All right. So just a couple of things,
11 first of all, we're going to have questions and
12 answers. And as you see, there is a court
13 reporter right here -- and again, I'm sorry, I
14 know I speak very fast, I'll do my best -- but
15 it's important. I'll ask a question, if you can
16 wait until I answer it -- ask it completely, and
17 then I'll wait for you to answer it, because
18 crosstalk makes this transcript difficult.

19 I'd also remind you that you did just
20 swear under oath. It's a crime under Florida law
21 and federal law to lie under oath, so just a fair
22 warning to remind you of that.

23 In addition, you will have a chance to
24 review this transcript so you can see what it is
25 you said after the fact. I'll do my best, when

1 I'm pointing to different exhibits, and give you
2 the time to flip to that page to review it,
3 familiarize yourself with it. If you need extra
4 time, just let me know. There is no gotcha here,
5 we're just trying to get to the information.

6 Likewise, I'm going to assume you
7 understood my question unless you say, Hey, I
8 don't understand that. So please don't be shy to
9 say, Hey, that didn't make any sense to me. Does
10 that all sound fair?

11 A Yes.

12 Q Okay. And then we have a great
13 benefit -- you know this, but the members of the
14 public don't know -- you have already been
15 deposed in kind of the JEA matters; isn't that
16 right?

17 A Yes.

18 Q And that happened on January 22nd?

19 A Yes.

20 Q And you sat down for several hours with
21 Office of General Counsel and they asked you lots
22 of questions about the performance unit plan and
23 things like that; correct?

24 A Yes.

25 Q Okay. So the great thing about that

1 is -- and it's on tab 22, your entire deposition
2 transcript, if you'll just flip to that for me.

3 Do you recognize -- have you seen this before --

4 A Yes.

5 Q -- your transcript?

6 Okay. And I'm going to flip to it a
7 couple times, because the great news is we have
8 this. And during that deposition, you all really
9 got into the weeds on many things. And so today
10 we don't have to; we already have it into the
11 record.

12 Is there anything in that transcript,
13 after you reviewed it, that you felt wasn't
14 accurate or that you didn't get right or did you
15 think generally it was on the mark?

16 A I think the court reporter might have
17 missed a couple of statements.

18 Q The statements that the court reporter
19 missed, were they important ones or were they
20 kind of like just little errors here and there
21 that maybe didn't matter?

22 A I don't recall.

23 Q Okay. That's okay. I think after the
24 fact what we can do is maybe find out separately
25 what was maybe materially problematic and what

1 might just have been she got that word wrong.

2 Does that sound fair?

3 A Yes.

4 Q And we'll do that. What I'm going to do
5 is called leading. So I'm just going to get to a
6 whole bunch of points, which typically you can't
7 do in a hearing, but we can do it here because
8 this isn't really a legal proceeding.

9 So your name is Patricia Maillis, you go
10 by Pat Maillis?

11 A Yes.

12 Q And your title at JEA -- you currently
13 work there; correct?

14 A Yes.

15 Q And you're Director of Employee
16 Services?

17 A Yes.

18 Q And as Director of Employee Services
19 you're in charge of talent acquisition and
20 employee compensation?

21 A And benefits.

22 Q And benefits. And you've worked there
23 for about six and a half years?

24 A Yes.

25 Q Okay. How long have you had this

1 current job?

2 A All years, all six and a half years.

3 Q The whole time?

4 A Uh-huh.

5 Q Okay. And then you currently report to

6 Jon Kendrick; correct?

7 A Yes.

8 Q And before that you were reporting to

9 Angie Hiers?

10 A Hiers (pronouncing), yes.

11 Q Hiers, pardon me.

12 Who does Jon Kendrick report to?

13 A Currently the interim CEO, Melissa

14 Dykes.

15 Q And say, a year ago, who was he

16 reporting to?

17 A He reported directly to Melissa Dykes

18 and indirectly to the CEO, Aaron Zahn.

19 Q Okay. And just so I understand kind of
20 where you are in the scheme of things, is it fair

21 to say that you're not part of the senior

22 leadership team?

23 A I am not.

24 Q And that you report up to them?

25 A Yes.

1 Q Okay. And then generally speaking, how
2 often did you work directly with Aaron Zahn?

3 A Less than ten percent of the time.

4 Q Okay. So it was rare?

5 A Very rare.

6 Q Okay. All right. So with that, let me
7 try and capture a couple of things. And what I'm
8 trying to do is save all of us some time rather
9 than going painstakingly through emails. Tell me
10 if this sounds right: Sometime in late 2017
11 people started to talk about a long-term
12 incentive plan for JEA. Does that sound right?

13 A Not that I'm aware of.

14 Q When did you first start to hear talk
15 about a new long-term incentive plan for JEA?

16 A It was first brought to my attention
17 around late October 2018.

18 Q October of 2018?

19 A Yeah.

20 Q Who brought it to your attention, do you
21 remember?

22 A Angie Hiers.

23 Q Do you know where she was kind of
24 getting that from? Why she wanted to do that?

25 A She expressed to me in a one-on-one that

1 Aaron Zahn had asked her to pursue a long-term
2 incentive plan.

3 Q Okay. Did she give you any other
4 details at that point, the why or what?

5 A She did not provide the why, but she
6 provided some basic construct that it would
7 include a contribution to the City, possibly a
8 profit sharing model, and that it was for all
9 employees.

10 Q Just so we're clear, what date was that
11 around? You don't have to be perfect.

12 A I would say, again, it was either late
13 October, early November --

14 Q October --

15 A -- of 2018.

16 Q October, November of 2018 and we're
17 already talking about some sort of sharing money
18 of JEA with employees?

19 A Yes.

20 Q Gotcha. And that was coming from Aaron
21 Zahn all the way back then?

22 A Yes.

23 Q Okay. And then is it fair to say that,
24 as part of that process, you went out and spoke
25 with your outside vendor, Willis Towers Watson?

1 A Before I did that, I actually did some
2 benchmarking of the public utilities that we
3 would compare ourselves to. And we identified
4 that none of the 14 that we received responses
5 back from had a long-term incentive plan.

6 Q So you looked at 14. Were they in
7 Florida? Were they across the country?

8 A They were across the country.

9 Q Okay. And not a single one of them had
10 a long-term incentive plan?

11 A Not a single one.

12 Q Did you see any with any sort of stock
13 option plan?

14 A No.

15 Q In years -- how long have you done this
16 work?

17 A I've been working in compensation for
18 about 30 years.

19 Q How much of that was in government?

20 A Only the last six and a half years.

21 Q In your six and a half years, have you
22 ever heard of a government employee getting a
23 stock option-type plan?

24 A No.

25 Q Can you explain to everyone who Willis

1 Towers Watson is?

2 A They're an international consulting firm
3 that specializes in compensation and benefits.
4 And JEA had used them a number of different
5 times, as far back as 2011.

6 Q Were they kind of already on a retainer
7 or just kind of like an approved vendor already?

8 A They were an approved vendor already.

9 Q Okay. And then at some point you
10 reached out to them to do some work on a
11 long-term incentive plan?

12 A Yes.

13 Q Do you remember about when you reached
14 out to them?

15 A So in early November of 2018 when Angie
16 had mentioned we want to go down this path to
17 explore it, I reached out to a couple of our
18 previous consultants, Andrea Deeb and Kim Evatt,
19 and asked them, you know, we've got a short-term
20 incentive, if we went down this path of long-term
21 incentive, what are their thoughts. You know, we
22 were talking about all employees; you don't
23 typically see all employees receive a long-term
24 incentive plan. So I was just asking them for
25 some input on their perspective.

1 Q Okay. And then what happened?

2 A They responded back -- this was probably
3 late November. They responded back and said that
4 it was very atypical to find a public utility
5 having a long-term incentive plan. It wasn't
6 atypical to have a short-term incentive plan, but
7 not a long-term incentive plan. And they even
8 went on to say that they thought that the
9 perceptions would not necessarily be positive.

10 Q Tell me more about that.

11 A That was all they said. They just felt
12 like in not being -- being in a public entity
13 where they had not normally had long-term
14 incentives, it probably would not be received
15 very positively by the public.

16 Q Gotcha. In your role, do you typically
17 help prepare board materials or materials for
18 subcommittees of the JEA Board?

19 A I might provide some information
20 regarding short-term incentive or I would help
21 facilitate a study like we did with Towers
22 Watson, but I would not be the one presenting the
23 information to the board.

24 Q Okay. And at some point you all hired
25 Willis Towers Watson to look at short-term and

1 long-term incentives; correct?

2 A Correct.

3 Q And what was it they were supposed to
4 do?

5 A So they had a statement of work that
6 included a total compensation evaluation, which
7 included looking at our base salaries as compared
8 to the market, at that particular time, as well
9 as our short-term incentive plan and how that
10 compared to the market, and then helped us
11 develop a straw man for long-term incentive plan.

12 Q Okay. And at some point they produced a
13 first document; is that right?

14 A Correct.

15 Q I've got that binder in front of you.
16 If you flip to -- I'll find it for you -- tab
17 five, just take a look at it. And then if you
18 can, kind of just tell me what this document is.

19 A This was a board presentation that I
20 believe Aaron and Angie presented to the
21 compensation committee at some point. And it
22 talked about realigning JEA's philosophy,
23 compensation philosophy, and the strategy
24 changing.

25 And the board, I believe, was advised --

1 well, the result of the meeting was that the
2 compensation philosophy was modified from being
3 just base salary and benefits to include the word
4 short-term incentive and long-term incentive.

5 Q Gotcha. And this document, it says
6 January 2018. I think we've discovered that this
7 is actually just January 2019. Does that sound
8 right to you?

9 A I believe that's correct.

10 Q And then if you flip to JEA page 41, it
11 says, "Recommended: JEA Board Policy Manual."
12 Let me know when you get there.

13 A Are you on section five?

14 Q Yeah, under tab five. And then you'll
15 see there's, like, numbers at the bottom. It
16 says JEA 00041. Are you there?

17 A 41?

18 Q Correct. You'll see up on this board.
19 If you look up on the screen, it's that page.

20 A I see it.

21 Q Have you seen this before?

22 A I saw it after the fact.

23 Q After the fact?

24 A Uh-huh.

25 Q Can you tell me what you think was

1 happening here with this policy change?

2 A This is realigning JEA to be more
3 competitive in the marketplace outside of the
4 public utilities and include a broader base of
5 compensation.

6 Q Gotcha. Okay. Let me get you to
7 fast-forward here because we're short on time.
8 Lucky for you the last presentation took awhile,
9 so we can move forward.

10 On March 19, 2019, did you have a
11 meeting that included Aaron Zahn, do you
12 remember?

13 A Yes.

14 Q What was discussed at that meeting?

15 A So March 19th, that was a meeting with
16 Willis Towers Watson, which included David
17 Wathen, Andrea Deeb, Angie Hiers, Ryan
18 Wannemacher, Aaron Zahn, myself and Scott
19 Strackbine, who is one of my staff people.

20 Q What was discussed? What was the
21 purpose of the meeting?

22 A The purpose of the meeting was to go
23 over the presentation that Willis Towers Watson
24 had been retained to present to JEA on how their
25 base short-term incentive and long-term

1 incentives compared in the marketplace, and talk
2 a little bit about what that straw man LTI could
3 look like.

4 Q And when you say straw man LTI plan,
5 just pretend like I'm really dumb, and you'll be
6 close. So this is a long-term incentive plan. A
7 straw man means you're kind of coming up with
8 what the pieces might look like, but you're not
9 getting all the details and getting it ready for
10 rollout; is that fair?

11 A Yes. It also included understanding
12 what other companies might have been doing at the
13 time and what they might be using, if that's
14 correct.

15 Q During that meeting, was it discussed
16 that other public utilities didn't have anything
17 like a long-term incentive plan, do you remember?

18 A Yes.

19 Q And who was aware -- I mean, was it a
20 question-and-answer, or how did that happen?

21 A I believe everybody in the room knew
22 that the public utilities very rarely used
23 long-term incentives.

24 Q And was it discussed -- having a phantom
25 stock option, or stock option, or performance

1 unit plan discussed at that meeting?

2 A I don't recall that being discussed.

3 Q Sure. And then how did the meeting go
4 generally? Was it a positive meeting? What was
5 your takeaways from it?

6 A I think that the company got a lot of
7 good information. There was additional
8 directives that were provided to Willis Towers
9 Watson, because the next step would have gone --
10 would have been to go to the compensation
11 committee and then on to the board and present
12 the information.

13 My understanding was that the board had
14 actually directed us to do the study, so there
15 was a reason to go back to the board and share
16 the information to them.

17 Q Just to back up, so I understand, you
18 left with the impression that the board had
19 directed this?

20 A I had heard Aaron say the board had
21 asked for this information at some point. Now, I
22 don't have any proof, but that's what my
23 understanding was, is that the board had asked
24 for it as well at some point.

25 Q That's the impression you left with?

1 A That's what I left with.

2 Q Okay. Fair enough. And then let's go
3 to tab 11. We'll just stick with this first
4 page. If you just flip it over one more to
5 JEA-100, you'll see there is an email from you to
6 David Wathen. Do you see that there?

7 A Uh-huh, yes.

8 Q And that's dated March 26th. I assume
9 you've looked at this email again since it came
10 back and forth. Are you familiar with it?

11 A Yes.

12 Q And who is David Wathen?

13 A He was a consultant that was hired to
14 assist with the long-term incentive plan design.

15 Q Okay. And it says here, if you look
16 down where you're asking him to send today's
17 pieces from the board meeting regarding
18 compensation, Aaron referenced the methodology
19 today. What is -- I assume that means Aaron
20 Zahn.

21 A (No audible response.)

22 Q And what methodology were you talking
23 about?

24 A So my understanding was we hadn't even
25 gotten to the point of identifying what the

1 factors would be to be used for the formula or
2 what a formula would be. And so the Willis
3 Towers Watson organization was trying to -- they
4 were asked to put more construction around this.
5 And in order to do that, they needed to start to
6 understand what was the vision and factors that
7 would be used to determine that calculation in
8 order for them to do any kind of mockup of a
9 formula or a plan and then provide that back with
10 some estimated numbers.

11 Q So basically, you started with an
12 analysis with Willis Towers Watson, then they
13 came up with some data from the industry, and
14 then now you're asking them to kind of put
15 together the plan; is that fair?

16 A Yes.

17 Q Okay. And in this email it looks, to
18 me, and correct me if I'm wrong, that Aaron Zahn
19 had his possible flavor for how this incentive
20 plan would go, was rates, net book value, and
21 contributions to the City of Jacksonville; is
22 that fair to say?

23 A Yes.

24 Q Okay. And then if you flip back to the
25 first page, there is an email from you that's the

1 next day. And it says at the top -- and this is,
2 again, to David Wathen. It says, "This is not
3 the first time he has put it out there." Can you
4 help me. What did you mean by that?

5 A What I recall is that it was the board
6 meeting where they talked about the compensation
7 philosophy. So that's -- I think the context was
8 this is not the first time this month, this day
9 that we've talked about it. It actually was
10 talked about back in January. And I believe that
11 he had had those discussions with either the comp
12 committee chair or someone on the board, that was
13 my understanding. So I was going under the
14 premise that this had been a discussion.

15 Q So I mean, just to kind of add more
16 flavor to this, Aaron Zahn had already talked
17 with the board about long-term incentive plans.
18 Was that your understanding?

19 A I believe he referenced it in the
20 compensation committee. I don't know how much
21 detail --

22 Q Sure.

23 A -- he had with them.

24 Q Yeah, yeah. And then it says farther
25 down in the third paragraph, this is from you:

1 While I do not agree with this methodology, and
2 not sure they actually did the market analysis to
3 show this is appropriate, they definitely were
4 seeking to be more competitively compensated
5 companies in the national public sector space.

6 Help me understand what you're trying to
7 say there.

8 A So part of the project was to educate
9 Willis Towers Watson on JEA's compensation. And
10 they also were very experienced in the public
11 sector spaces and/or utility space. And I
12 believe just what I knew, we were coming off of a
13 time when he first started that we were looking
14 at innovation and we were looking at doing things
15 different and moving the company in a positive
16 direction.

17 So as a line employee, I was operating
18 under the understanding that we were trying to do
19 something that was going to enhance the
20 employees' compensation and be more competitive
21 and move us to a different level. In addition,
22 you know, I had heard that he wanted the
23 employees to have more ownership of the company
24 or, you know, stake in the company. So that was
25 more the nature of the conversation was, you

1 know -- that was the direction we were going in,
2 so I believed.

3 Q And you're familiar with this concept of
4 the performance unit plan that is now infamous
5 across the city; right?

6 A Yes.

7 Q They're asking you to work with Willis
8 Towers Watson to create a plan, but did Willis
9 Towers Watson ever actually create the
10 performance unit plan?

11 A No.

12 Q So at what point did your conversations
13 with Willis Towers Watson kind of stop? Were you
14 asked to stop?

15 A So, you know, again, we approached
16 the -- I approached the initiative that we were
17 gathering information to construct or consider a
18 plan. At some point I would have thought that,
19 you know, attorneys would have been involved and
20 they would have been involved even in the
21 meetings with Willis Towers Watson.

22 After March we were just modifying and
23 doing some general edits to the presentation in
24 preparation to go to the comp committee and
25 ultimately go to the board meeting.

1 Around May it seemed like the Willis
2 Towers Watson was not aware, for some reason,
3 that we are required to disclose our work
4 publicly. And so there began to be discussion
5 about redacting certain information from Willis
6 Towers Watson's perspective.

7 Q Because there might have been
8 proprietary information in there?

9 A Correct. We did not agree with that.
10 We felt like the information that was provided
11 was appropriate and should be released and should
12 be used. And so I think that's where some
13 friction began. Willis Towers Watson was
14 supposed to present to the comp committee and
15 ultimately to the board. And we kept trying to
16 get that arranged, and it wasn't getting
17 arranged.

18 So at that point around, like I said,
19 late -- probably late April, our work was done,
20 the presentation should have been turned over and
21 a meeting should have occurred. Those meetings
22 never occurred. And at that point I stepped
23 back.

24 Q So Willis Towers Watson was supposed to
25 present to the compensation committee and then to

1 the board as a whole; right?

2 A Correct.

3 Q And that never happened?

4 A Correct.

5 Q Do you have any understanding as to why
6 that didn't happen?

7 A No.

8 Q Do you have an opinion?

9 A At the time I just assumed that it was a
10 discussion maybe between Aaron and the board
11 chair independently. Honestly, did not
12 understand why it was not going any further.

13 Q Fair enough.

14 CHAIRMAN DIAMOND: Councilwoman DeFoor.

15 COUNCIL MEMBER DeFOOR: Thank you,
16 Mr. Chair.

17 And had Willis Watson Towers (sic) ever
18 presented to the compensation committee?

19 THE WITNESS: I do not believe they
20 presented on this matter.

21 COUNCIL MEMBER DeFOOR: No, but
22 historically, was it common for them to come
23 and present their findings because --

24 THE WITNESS: I was under the
25 understanding that it was. If we did a

1 study with the CHRO we would work with them
2 and then they might work with the
3 compensation chair.

4 COUNCIL MEMBER DeFOOR: So this was
5 highly unusual that they did not present
6 their findings; is that correct?

7 THE WITNESS: It seemed unusual since it
8 was in the statement of work.

9 COUNCIL MEMBER DeFOOR: Thank you.

10 BY CHAIRMAN DIAMOND:

11 Q At some point you learned a performance
12 unit plan had been approved by the board; is that
13 right?

14 A Yes.

15 Q When did you learn that, do you
16 remember?

17 A July 23rd.

18 Q So the day of the board meeting?

19 A The day of the board meeting.

20 Q Did you know before that board meeting
21 that they were going to present a performance
22 unit plan?

23 A No.

24 Q And you're in charge of compensation of
25 benefits?

1 A Supposedly, yes.

2 Q It's kind of an unusual thing to happen,
3 don't you think?

4 A Yes.

5 Q Three years ago, if there was going to
6 be a new compensation plan for all JEA employees,
7 would you have known about it typically before a
8 board meeting?

9 A Yes. I would have been involved in
10 designing it.

11 Q Did you feel cut out of the process?

12 A Yes.

13 Q Talking about the PUP, just to go back,
14 \$10 units that had JEA been sold would suddenly
15 have been worth a lot more money; right?

16 A Yes.

17 Q If you disagree with anything, let me
18 know; or if you just don't know, that's fine.

19 They were supposed to be 100,000 PUPs
20 created. Are you familiar with that number?

21 A I had heard that, at some point that was
22 in the model that Ryan had shared.

23 Q And by Ryan, do you mean Ryan
24 Wannemacher?

25 A Yes.

1 Q When did he share that model with you?

2 A I don't recall.

3 Q Do you remember what he shared with you?

4 A So back in November of 2018, I wasn't
5 real clear on what factors we wanted to use, so
6 him and I actually met. And I said, I need some
7 direction on the budget or the factors that we're
8 going to use. At that time it wasn't very clear.
9 And so I said, Well, we'll go out there and we'll
10 benchmark and figure out what could be a cost
11 associated with this. So that was an initial
12 discussion.

13 There were -- he was also included in a
14 couple of different discussions with Willis
15 Towers Watson. So he was providing the framework
16 around what would book value mean, what would the
17 financials look like. That wasn't an area that
18 was my expertise. And then after March he would
19 have been providing a little bit more detail and
20 possibly formula.

21 Q In all these conversations up until when
22 Mr. Wannemacher leaves, did you guys -- were you
23 ever in the room when he or any other member of
24 the senior leadership team talked about the cost
25 of the PUP totally, in it's totality? Was that

1 ever discussed?

2 A Back in late 2018, when we were trying
3 to figure out, Well, what could this cost, we, my
4 team, Scott Strackbine and myself, actually did
5 some modeling, but not with a formula. It was
6 just, Well, if we provided this to a group of
7 people, what could it cost us. And we came up
8 with somewhere around 18 million, you know, but
9 there was no real structure around it at that
10 time. And we did not come up with a formula
11 associated with that.

12 Q Other than that, did you -- were you
13 ever in any meeting where someone was talking
14 about the cost of the PUP, especially if it
15 were -- if JEA were sold?

16 A No.

17 Q Were you ever in any meeting, did you
18 ever hear anyone talking about who would get the
19 PUPs or how they might be distributed, any
20 schedule or anything like that?

21 A I had heard that they were thinking
22 about all employees getting units, but it would
23 not be the same number of units. But I didn't
24 know anything about the formula or how to
25 calculate -- how they'd come up with that. My

1 understanding was maybe Aaron and Ryan were
2 involved in that more heavily.

3 Q Aaron Zahn and Ryan Wannemacher?

4 A Correct.

5 Q So was it your understanding -- correct
6 me if I'm wrong, I don't want to put words in
7 your mouth -- but that senior leadership was
8 going to get more PUPs and then perhaps like,
9 linemen and women would get fewer? What was your
10 understanding?

11 A My understanding was that they would
12 have the opportunity to purchase more, but I
13 didn't find that out until after the 23rd, when
14 they actually released the plan, that they would
15 have the ability to buy units. But again, I
16 still had not known anything in terms of the
17 number of units that any particular group of
18 employees would be eligible to buy or receive.

19 Q Do you remember how you learned that
20 some employees would get more units than others?

21 A I don't know that I -- I wouldn't say
22 that I learned they would definitely get those
23 units. I had heard comments that if a person --
24 if there are units that they were not eligible to
25 buy, were not purchased, they were out there. So

1 I didn't know who or what would happen with the
2 units. They were available.

3 Q Okay. At some point Angie Hiers is
4 gone. Do you remember when that was?

5 A End of April, beginning of May.

6 Q 2019?

7 A Yes.

8 Q Okay. And then Jon Kendrick takes her
9 place?

10 A Yes.

11 Q And then you report to him throughout?

12 A Yes.

13 Q And you're still reporting to him?

14 A Yes.

15 Q Okay. Is it fair to say that
16 Mr. Kendrick is the one who gave you the
17 performance unit plan documents?

18 A I was watching the board meeting. I saw
19 it. And so I could retrieve it. But he did
20 eventually provide it to me and say, You might
21 want to look at this. That was after 7/23,
22 probably more around the end of August, early
23 September.

24 Q Okay. How many conversations did you
25 have with Mr. Kendrick about the performance unit

1 plan, do you remember?

2 A Prior to 7/23 I thought that it went
3 away. I really didn't think that it was a matter
4 of discussion any further, because I didn't know
5 what had happened.

6 Once it was approved, there was probably
7 about two months that I was focused on other
8 things not related to the PUP at all. So it
9 wasn't probably until September when he gave me
10 the document and they asked for -- he asked and
11 said, Why don't you take a look at these and
12 provide us some input. I thought at the time
13 it's a done deal, but maybe they want my input.
14 So I didn't really think then that maybe the PUP
15 was as solid as it was. I thought maybe it was
16 just approved in concept.

17 So I reviewed it, gave my feedback to
18 Lynne Rhode. And I specifically asked, Has this
19 been fully vetted?

20 Q We might as well get to that email then.
21 Look at tab 15, it's JEA-00123. Have you seen
22 this email before? It's an email from Lynne
23 Rhode to you, CC Jon Kendrick, September 13,
24 2019.

25 A Yes.

1 Q And who is that, Lynne Rhode?

2 A She was our General Counsel for JEA at
3 the time.

4 Q I'm going to ask you a question that
5 should be completely self-evident and it sounds
6 really stupid, but it's sometimes really good
7 just to make it clear. It says here: It is
8 important to note that this plan has been fully
9 vetted, including through four subject matter
10 expert attorneys, prior to the presentation to
11 the JEA Board for approval in July.

12 When you received that email, and as you
13 read it now, what do you think Ms. Rhode meant?

14 A Stay out of it, it's already been
15 approved by somebody and fully vetted. There is
16 nothing I really can provide input on at this
17 point.

18 Q Did you walk away with the feeling that
19 lawyers had looked at this?

20 A I didn't know who looked at it.

21 Q Do you know who created the performance
22 unit plan documents?

23 A I heard after the fact. I thought it
24 was -- it escapes me, the name of the company.

25 Q If I said Pillsbury Winthrop, would that

1 sound right?

2 A What is it?

3 Q Pillsbury Winthrop.

4 A Pillsbury, uh-huh.

5 Q Okay. Again, I'm really glad this isn't
6 a court of law, because I'm not allowed to do
7 that. I can do it here.

8 You respond to her, said that: The
9 documents read very legalized. Typically, there
10 is a plan document that is very legal and formal
11 in nature; however, the employee letter and
12 exhibit would be highlights of interest with
13 references.

14 What were you telling her about this
15 plan that you were given?

16 A I was having a hard time understanding
17 it. And one thing I've learned in compensation
18 is, if you're going to communicate something to a
19 group of employees, you need to understand it
20 yourself. It wasn't in plain English.

21 Q Yeah. I read it like 50 times. I don't
22 think I understand it yet.

23 What was your impression of how JEA
24 employees would review the performance unit plan
25 and the kind of offerings from JEA?

1 A I don't think they would have understood
2 it completely to be informed. So I didn't think
3 that they would necessarily jump to participate.

4 Q After you -- let me just try and capture
5 this. 2018 they start asking you to look at
6 long-term incentive plan; you hire Willis Towers
7 Watson; get the scope of work; they start to do
8 the analysis; then they start to put the straw
9 man together; then you're cut out of the process;
10 then the PUP is dropped on you in September.

11 What happened after that?

12 A So they were looking at communicating it
13 to the employee population, and they wanted us to
14 communicate it in open enrollment.

15 Q Help me out, when would that have been?
16 You're in September. When would open enrollment
17 have been?

18 A October 18th.

19 Q So one month?

20 A Uh-huh.

21 Q Was it typical to have a new employee
22 incentive plan introduced from the moment you got
23 it to one month open enrollment?

24 A My recommendation was not to do it
25 during open enrollment. This was a brand new

1 plan, and it needed to be treated separately than
2 open enrollment. So my answer would be no it
3 would not be common to do that.

4 In addition, they wanted us to take the
5 documents that were produced, the plan document,
6 and all the enrollment forms and include that in
7 the already planned and soon-to-be printed open
8 enrollment documentation. So it was creating a
9 little bit of an administrative burden to even do
10 that. And it was just too much information to
11 put into an open enrollment packet.

12 Q Okay. So what happened then?

13 A So eventually, they decided not to do
14 it. We moved open enrollment, but they decided
15 not to do it. We would not be the ones to
16 communicate it. So then at that point I was
17 asking, Well, who is going to communicate it?
18 And I became aware that most likely it would be
19 communicated by the law firm. And I was assuming
20 that Pillsbury would be the ones to send out the
21 information to the individuals. We weren't even
22 going to be sending out information to the
23 employees.

24 Q Let me just pause you there. Who told
25 you, do you remember, that a law firm was going

1 to be communicating to the employees about
2 performance unit plans?

3 A It would have been Jon Kendrick.

4 Q Okay. In your meetings with
5 Mr. Kendrick, did you ever discuss the cost of
6 the performance unit plan?

7 A No.

8 Q Did you ever -- do you feel like you
9 understood how the performance unit plans worked
10 when you discussed it with him or --

11 A No.

12 Q Do you think he was completely ignorant
13 to how --

14 A Oh, did he understand it?

15 Q Yeah.

16 A I don't know if he understood it or not.

17 Q Did you ever discuss with him the costs
18 of the plan --

19 A No.

20 Q -- to JEA?

21 Did you ever express to him any
22 reservations you had with the plan?

23 A Yes.

24 Q What did you tell him?

25 A Again, I thought it was very -- it was

1 odd that employees were purchasing units. I had
2 not -- again, I worked with private sector where,
3 if you purchase something in stock, it was pretty
4 straight forward. If you were in a unit plan, it
5 was given to you. You weren't purchasing a unit
6 plan. So it had shifted, and now the employees
7 were purchasing it, which was rather odd to me.

8 And then just the fact that all the
9 documentation was so detailed and technical. I
10 just did not think it was employee friendly in
11 any way, shape, or form.

12 Q What was his response, do you remember?

13 A He agreed.

14 Q Did he say, we shouldn't do it, or --

15 A He was being given direction from
16 someone else.

17 Q Do you know who?

18 A I believe it was Aaron.

19 Q What do you base that on?

20 A This is what we're going to do, would be
21 the comment; this is what we've been told to do.

22 Q Well, maybe a better question: Was it
23 typical for Mr. Kendrick to tell you, Hey, we've
24 been told on high this is how something is going
25 to happen?

1 A Yes.

2 Q Okay. All right. Did you ever express
3 reservations to anybody else in the senior
4 leadership team, any problems you had with the
5 performance unit plan besides Ms. Rhode and
6 Mr. Kendrick?

7 A I don't recall expressing to anybody
8 other than Kendrick.

9 Q I have just one more series of
10 questions, which I -- is the strangest thing I've
11 read so far. And I want to take you to your
12 transcript. It's at tab 19 -- pardon me, I lied,
13 tab 22. And on page 88 of that transcript, or if
14 you look at the bottom, it's -- yeah, page 88.
15 Sorry, I have my numbers wrong here. Do you see
16 those little numbers on there?

17 A Yes.

18 Q I'll get you the number here. Here we
19 go, yeah, 267. Help me out, your relationship
20 with Willis Towers Watson, is it fair to say you
21 were the only kind of go-between between JEA and
22 Willis Towers Watson?

23 A Yes. I was the main contact, but I
24 would bring other people in as needed.

25 Q Okay. And they would send you their

1 documents?

2 A Yes.

3 Q And you would kind of distribute them?

4 A Yes.

5 Q Okay. In your experience, had Aaron
6 Zahn had any direct connection with Willis Towers
7 Watson as far as document transfers, do you
8 remember?

9 A I don't recall whether he sent anything
10 to them directly. Usually, if there was
11 feedback, I'd get it and then I'd send it. But
12 in May he had actually asked for the Adobe file
13 to be in PowerPoint. And he was looking at that.

14 Q Let's go through this slowly, because I
15 think this is worth getting right. What document
16 are you talking about?

17 A I'm talking about the presentation that
18 would have been provided to the compensation
19 committee, so that would have been the study in
20 its entirety.

21 Q If you look at tab 19, does that look
22 like the document we're talking about, tab 19,
23 JEA-00147.

24 COUNCIL MEMBER FERRARO: What number?

25 CHAIRMAN DIAMOND: Tab 19.

1 A So are you on 192, JEA-0192?

2 Q Yes. Is that the one we're talking
3 about?

4 A I believe, yes.

5 Q Okay. So you've got this -- pardon me,
6 for everyone, it's JEA-00192 is where it starts.

7 What is this document?

8 A This would have been the final document
9 that would have gone to the compensation
10 committee or the board, as far as I know, because
11 of the date.

12 Q And then this was what Willis Towers
13 Watson had originally pieced together?

14 A The -- if there were changes, Willis
15 Towers Watson should have received those changes
16 in writing from myself, or Aaron, or Jon, or
17 anybody that was on the team. Everybody was
18 contributing to any edits that might be needed
19 till we came to the final document.

20 Q So maybe this is worth just stepping
21 back for, this document, what was draft one, who
22 provided draft one?

23 A That was back in March of 2019 was the
24 first draft, and then we received a couple of
25 other drafts.

1 Q Was that 100 percent from Willis Towers
2 Watson, the first draft?

3 A Yes.

4 Q And then they provided only them,
5 separate kind of subsequent drafts based on
6 input?

7 A Yes.

8 Q And then at some point, something was
9 presented to the board that's here. What
10 happened in that gap?

11 A All I remember is that there were some
12 revisions provided around April, maybe early May
13 and --

14 Q Who provided those revisions, do you
15 remember?

16 A I provided some of those revisions
17 because some of the language just needed to be
18 modified a little bit.

19 Q Let me pause you there. Do you remember
20 which ones you did?

21 A No.

22 Q Or what kinds of revisions?

23 A They were -- it's in an email. It was
24 real general in terms of maybe this needs to be
25 expanded upon, you know, make this a total

1 versus -- so it really was nothing substantial,
2 it was just to make it easier to read.

3 And then if there were any changes after
4 that that weren't documented in that email. I'm
5 not aware of any changes if it's different from
6 one version to the next. As I mentioned, after
7 May, I started to step out because I wasn't sure
8 what was going on.

9 Q Okay. And let me ask you this: Aaron
10 Zahn asked you directly for a PowerPoint version
11 of this presentation?

12 A He emailed me and asked me for the
13 PowerPoint.

14 Q Do you know why he asked?

15 A His assistant, I think, asked.

16 Q His assistant asked?

17 A Yes.

18 Q The original one was in PDF?

19 A Yes.

20 Q Do you know why he wanted a PowerPoint
21 instead of a PDF?

22 A He did not say explicitly what he wanted
23 it for.

24 Q Do you have an opinion?

25 A I assumed he wanted to make some edits

1 himself.

2 Q And then if you look at page 209,
3 JEA-209 under that tab, it says Long-Term
4 Incentive Plan Design. I promise you these are
5 my last couple questions. Do you recognize this
6 document?

7 A Yes.

8 Q Can you tell me what it is?

9 A It's a summary of practices, it was
10 included in the total package that would have
11 been part of the study.

12 Q And this is the version that was
13 presented to the board; correct?

14 A I believe. I never was the one who
15 actually gave it to the board. So if it's in the
16 board package, it would be the one that was
17 presented to the board.

18 Q Councilman Salem and I had a hearing
19 where we asked Aaron Zahn and other executives at
20 JEA a lot of different questions. One of the
21 questions we asked them was about this document
22 in particular. If I represented to you that the
23 original document says: Under public power
24 utilities cross-section prevalence, it said LTI
25 plans are used selectively, does that sound right

1 to you from what Willis Towers Watson was telling
2 you all earlier?

3 A It does not.

4 Q Why not?

5 A Because we already knew that they were
6 not using long-term incentives. So public
7 utilities were not using them readily.

8 Q And then the original version of this
9 said something else and then it was changed by
10 someone to say LTI plans are used not rarely but
11 selectively. And I asked Aaron Zahn if he
12 changed that. And his response to me was, Willis
13 Towers Watson prepared these reports. The
14 implication I came away with was he did not have
15 access to change this and that this report was
16 100 percent Willis Towers Watson's work. Is that
17 accurate?

18 A JEA provided input on edits. So to say
19 100 percent Willis Towers Watson would be
20 inaccurate. It was a project between their
21 company and our company.

22 Q Do you know who changed this section of,
23 LTI plans are used selectively from rarely?

24 A No.

25 Q Would Aaron Zahn have had access to do

1 it?

2 A I don't know that for sure.

3 Q That's fine. I'm not trying to box you
4 in, I promise. I'm just trying to understand.

5 And then last one, just so we can kind
6 of validate this. If you go to JEA-000118, so
7 118, it's an email --

8 A Which tab?

9 Q 13, 118 under tab 13.

10 A What was the number again, please.

11 Q 118. Just let me know when you're
12 there.

13 A Okay.

14 Q Okay. And you see in the middle of the
15 page there is an email from Aaron Zahn dated
16 April 24th to you. Do you see that?

17 A Yes.

18 Q Is this the email where he says, Can you
19 get this presentation in PowerPoint?

20 A Yes.

21 Q And you had already given it to him in
22 PDF; is that correct?

23 A Yes.

24 CHAIRMAN DIAMOND: That's it from me,
25 but, yeah, I'll open it up to Committee

1 Members first and then non-Committee
2 Members.

3 Councilwoman DeFoor.

4 COUNCIL MEMBER DeFOOR: Thank you,
5 Mr. Chair.

6 Just going back on one of the things you
7 touched on, actually. On tab one, when we
8 were discussing -- if you go to tab one --
9 this is not easy to move around -- which is
10 the JEA compensation committee minutes,
11 January 15, 2019, it's actually JEA number
12 one. Down under agenda item number two,
13 paragraph D, Executive Contracts, it states
14 that Aaron Zahn, managing director and
15 interim committee chair, discussed the
16 executive contract and discussed extending
17 the current contract until July 31st, 2019,
18 to allow time for total compensation plan.

19 Were you aware that there was this
20 July 31st, 2019, time frame in which the LTI
21 and the compensation was going to be
22 formalized.

23 THE WITNESS: I did not.

24 COUNCIL MEMBER DeFOOR: So again, you,
25 as employee benefits, you were not aware of

1 that.

2 Did you have any involvement with the
3 employment contracts for the senior
4 leadership team?

5 THE WITNESS: No.

6 COUNCIL MEMBER DeFOOR: Was that
7 unusual?

8 THE WITNESS: No.

9 COUNCIL MEMBER DeFOOR: Okay. To your
10 knowledge, was it unusual for the entire
11 senior leadership team to have contracts?

12 THE WITNESS: Since I started in 2013,
13 we were under the understanding that the
14 senior -- the only person on the senior
15 leadership team that would have a contract
16 would be the CEO. And so again, on
17 July 23rd, when we received the contracts,
18 we saw that they were approved, I was
19 perplexed.

20 COUNCIL MEMBER DeFOOR: How about
21 severance? Were you familiar with
22 severance? Was it typical for senior
23 management to have a severance package of
24 the likes that were passed on July 23rd?

25 THE WITNESS: No. They did not have

1 severance packages if they were not the CEO.
2 And if they did get anything, it would be
3 based on Florida's law.

4 COUNCIL MEMBER DeFOOR: Okay. That's
5 all I've got.

6 BY CHAIRMAN DIAMOND:

7 Q One quick question and then I'll go to
8 Councilwoman Priestly Jackson. At any point did
9 you have a discussion with Melissa Dykes about
10 the performance unit plan?

11 A No.

12 Q And can you tell us who MassMutual was
13 in kind of the grand scheme of things? What were
14 they supposed to be doing?

15 A Sure. So if the performance unit plan
16 had been executed and we went through an
17 enrollment process, you would need a company, a
18 third party, to help administrate those units.
19 MassMutual is currently our vendor for our 457
20 and our 4018 plan.

21 And I was having discussions with them
22 on whether they had ever administered a plan of
23 this nature and would they be able to capture the
24 units so employees could see their units and how
25 they grow or decline or whatever. So it would be

1 a portal for the employees to see whatever units
2 they purchased.

3 Q Gotcha. And then just -- I don't want
4 to put words in your mouth, but at some point you
5 found out the PUP was canceled; right?

6 A Yes.

7 Q How did you find out?

8 A I can't remember if it was Currents. I
9 think it was Currents.

10 Q So you found out in the employee
11 newsletter?

12 A Uh-huh.

13 Q That this plan that you were supposed to
14 put together was being canceled?

15 A Yes.

16 COUNCIL MEMBER DeFOOR: Can I follow up
17 with that?

18 CHAIRMAN DIAMOND: Yeah. Then I need to
19 go to -- if you don't mind, let me go to
20 Ms. Priestly Jackson.

21 COUNCIL MEMBER PRIESTLY JACKSON: Thank
22 you. Through the Chair to Ms. Maillis.

23 Thank you for taking the time today to
24 speak with us. You said you usually didn't
25 draft the CEO's contract or agreement. Who

1 usually drafts that agreement for JEA's CEO.

2 THE WITNESS: So my understanding, it
3 would be the chief human resources officer
4 in conjunction with maybe an attorney, OGC
5 would help with drafting that contract.

6 COUNCIL MEMBER PRIESTLY JACKSON: Okay.
7 And you said an attorney would be someone in
8 OGC's office, you thought, drafted the CEO's
9 agreement with -- give me the position at
10 JEA, what position did you state the
11 individual has at JEA that works on it?

12 THE WITNESS: I'm sorry?

13 COUNCIL MEMBER PRIESTLY JACKSON: The
14 individual, you said you didn't usually
15 draft the CEO's, you said the two
16 individuals. Just restate who you said are
17 the two individuals usually involved.

18 THE WITNESS: It would be the chief
19 human resources officer, which would be
20 Angie Hiers or Jon Kendrick.

21 COUNCIL MEMBER PRIESTLY JACKSON: You
22 said then you believe it was someone at
23 General Counsel's Office, okay. Would it
24 usually be whoever the member of General
25 Counsel staff that was assigned to work with

1 JEA that worked on that as well?

2 THE WITNESS: Yes.

3 COUNCIL MEMBER PRIESTLY JACKSON: The
4 follow-up for that one: What was your
5 role -- since we all know this was the first
6 time that members of the senior leadership
7 team received employment contracts, what was
8 your role prior to July 23rd, in determining
9 the compensation agreements for members of
10 the senior leadership team?

11 THE WITNESS: So the contracts were
12 provided to myself and the payroll
13 department and our human resources
14 information systems department. And we had
15 to take the components that were in the
16 contract and determine how to administrate
17 those components.

18 COUNCIL MEMBER PRIESTLY JACKSON: And
19 that was for July 23rd; correct?

20 THE WITNESS: That was post 23rd.

21 COUNCIL MEMBER PRIESTLY JACKSON: My
22 concern is what was the standard procedure
23 before July 23rd when they received these
24 contracts, the senior leadership team
25 members, what was your involvement with the

1 compensation and arrangements for employment
2 with the members of the team outside of
3 Mr. Zahn before July 23rd?

4 THE WITNESS: Those individuals, we
5 would determine their compensation, we would
6 provide input on that compensation, but they
7 were provided a letter. They were not
8 provided a contract. And it was just a
9 year-to-year or, you know, whatever the
10 period of time would have been. So my job
11 is to -- and my team's job was to determine
12 what's the rate for that particular type of
13 job. And we would make that recommendation.

14 COUNCIL MEMBER PRIESTLY JACKSON: Okay.
15 So can you identify specifically what
16 positions would usually create that? You
17 said your team. So who would that be that
18 would usually be involved with that?

19 THE WITNESS: So it would be all the
20 senior leadership positions, including CEO,
21 we would provide some input, that would be
22 the COO, the chief public affairs officer,
23 the chief human resources officer. Do you
24 want me to name all --

25 COUNCIL MEMBER PRIESTLY JACKSON: No. I

1 wanted your team's name. I know the members
2 of the senior leadership team. I'm trying
3 to establish what your role was with the
4 compensation and benefits for members of the
5 senior leadership team before the infamous
6 July 23rd day. So I want to know what role
7 you had and who worked with you all to
8 establish compensation for the senior
9 leadership team.

10 THE WITNESS: So I had one member. His
11 name was Scott Strackbine. And he would be
12 responsible for compiling market data,
13 providing it to me. And I would review it
14 and provide it to the CHRO.

15 COUNCIL MEMBER PRIESTLY JACKSON: Thank
16 you.

17 CHAIRMAN DIAMOND: Councilwoman DeFoor
18 had a question, then we'll go to Councilman
19 Salem. We'll have about five minutes.

20 COUNCIL MEMBER DeFOOR: Thank you,
21 Mr. Chair.

22 So if we could go to tab 18, and that's
23 JEA-141. You mentioned that you were
24 talking to MassMutual to administer this PUP
25 plan. And my question to you, if you see in

1 your -- there is an email from Michael
2 Scheetz, and he is with MassMutual, to you.
3 And he describes that he's working on the
4 plan, based on that extraction, we arrived
5 at 37 participants for pricing purposes.

6 So walk me through why it would only
7 have been for 37 participants.

8 THE WITNESS: I don't know why he came
9 up with that number. And actually, I think
10 it was just a guess, because I think what he
11 did was he and a team looked at the nature
12 of the plan and were estimating what they
13 thought the number of people might actually
14 even express an interest in that type of
15 plan. So that's what they were -- they were
16 trying to provide us some construct of what
17 the cost would be.

18 COUNCIL MEMBER DeFOOR: Let me just stop
19 you there. My understanding is this plan
20 was supposed to be for the entire population
21 of JEA; is that correct?

22 THE WITNESS: Yes.

23 COUNCIL MEMBER DeFOOR: How many
24 employees are there with the JEA?

25 THE WITNESS: 1,953 or so.

1 COUNCIL MEMBER DeFOOR: Did you have any
2 concerns about the number of shares
3 available to the general employee? I'm
4 actually referencing your deposition, page
5 276. But did you ever have any concerns
6 about the fact that the employees may not
7 receive shares?

8 THE WITNESS: I got the impression
9 employees would not participate. And I did
10 not know where those shares would go.

11 COUNCIL MEMBER DeFOOR: Thank you.

12 BY CHAIRMAN DIAMOND:

13 Q Let me just ask the obvious follow-up:
14 Do you have a hunch where those shares might go
15 if you know your run-of-the-mill employee who is
16 making, say, \$45,000 a year doesn't understand
17 this incredibly legal document explaining this
18 whole thing, where that person's shares might end
19 up going?

20 A If they were available for other
21 individuals to then purchase them, it would
22 probably go to senior leadership.

23 Q Gotcha.

24 CHAIRMAN DIAMOND: Okay. Councilman
25 Salem.

1 COUNCIL MEMBER SALEM: Thank you,
2 Mr. Chair.

3 CHAIRMAN DIAMOND: And just for
4 everyone, we're running short on time. The
5 next one starts at 11:00.

6 I will get to you, Mr. Dennis, but if we
7 can be quick here.

8 COUNCIL MEMBER SALEM: Several of my
9 questions have already been answered.

10 Ms. Maillis, the plan provided for
11 non-JEA employees to participate in this
12 plan. It's been well documented that the
13 two OGC attorneys were considered. Have
14 you -- did you participate in any discussion
15 or see any documents to suggest that other
16 non-OGC employees and who they might be that
17 could purchase these PUP units?

18 THE WITNESS: No.

19 COUNCIL MEMBER SALEM: Never saw
20 anything or participated in any discussion?

21 THE WITNESS: No.

22 COUNCIL MEMBER SALEM: Okay. Thank you.
23 To follow up on Councilman DeFoor's comment,
24 JEA page 276, pages 123 and 124.

25 THE WITNESS: Which section?

1 COUNCIL MEMBER SALEM: JEA page 276. I
2 want to follow up on the comment about what
3 would happen to the units that were not
4 purchased in -- I don't want to put words in
5 your mouth, but you felt like they would
6 probably revert back to the senior staff; is
7 that correct?

8 THE WITNESS: Let me catch up with you.
9 Where are you at on 276?

10 COUNCIL MEMBER SALEM: I don't have it
11 exactly marked, but it's pages 123 and 124.

12 Well, just let me ask you: You stated a
13 minute ago that you believe any units left
14 over would have been purchased by the senior
15 leadership team?

16 THE WITNESS: Yes.

17 COUNCIL MEMBER SALEM: Okay. That's
18 really what I was getting to.

19 Now, your plan year starts October 1,
20 your --

21 CHAIRMAN DIAMOND: Hold on, Mr. Salem.

22 Let me just clarify for the record, so
23 that would be page 124 of the transcript
24 found at JEA-276, and you can kind of get it
25 1 through 17 lines for the witness'

1 deposition transcript.

2 COUNCIL MEMBER SALEM: Thank you.

3 Your physical (sic) year starts October
4 1; correct?

5 THE WITNESS: Yes.

6 COUNCIL MEMBER SALEM: So you were being
7 asked to implement a plan, an incentive
8 plan, for a year that already had started?

9 THE WITNESS: Yes.

10 COUNCIL MEMBER SALEM: Have you ever
11 been asked to do something like that in the
12 past?

13 THE WITNESS: No. We've always had
14 plans already in place and they had -- the
15 metrics might change as of October 1, but
16 not a brand new incentive plan.

17 COUNCIL MEMBER SALEM: So you were being
18 asked October, November to implement a plan
19 that really -- where the plan year has
20 started October 1?

21 THE WITNESS: Yes.

22 COUNCIL MEMBER SALEM: And there was a
23 sense of urgency to get this plan started;
24 correct?

25 THE WITNESS: Seemed to be.

1 COUNCIL MEMBER SALEM: Okay. Thank you.
2 In the hearing that Councilman Diamond and I
3 held when we asked Aaron Zahn who developed
4 the plan, his comment was it was a group
5 process that developed this plan. You
6 stated a little while ago that Pillsbury was
7 the outside firm that developed it.

8 THE WITNESS: I believe so.

9 COUNCIL MEMBER SALEM: Do you have a
10 feel for how much input Aaron Zahn had with
11 Pillsbury to develop that plan?

12 THE WITNESS: I do not know.

13 COUNCIL MEMBER SALEM: Okay. The \$10
14 price of these plans, do you know where that
15 came from?

16 THE WITNESS: No.

17 COUNCIL MEMBER SALEM: You don't know
18 whether it came from Pillsbury or Aaron
19 himself?

20 THE WITNESS: No.

21 COUNCIL MEMBER SALEM: I mean, it's my
22 feeling that was a disincentive from the
23 rank and file to purchase the plans, but
24 that's my own opinion.

25 That will conclude my questions. Thank

1 you, Mr. Chair.

2 CHAIRMAN DIAMOND: Mr. Dennis.

3 COUNCIL MEMBER DENNIS: Thank you.

4 Through the Chair.

5 I just have one question, who was
6 designated to be the administer of the PUP
7 plan?

8 THE WITNESS: I don't know. It wasn't
9 from my group. We were exploring MassMutual
10 but they -- you know, when it got canceled,
11 we were just exploring that.

12 COUNCIL MEMBER DENNIS: Through the
13 Chair, do you recall one of the board
14 members being the administer of the PUP
15 plan?

16 THE WITNESS: No, I don't recall that.

17 COUNCIL MEMBER DENNIS: Okay. That's my
18 question, because it was reported that one
19 of the board members, Camille Johnson, was
20 supposed to be the administer of the PUP
21 plan. And, you know, just a follow-up
22 question on that: Is it customary that a
23 nonpaid employee would be the administer of
24 a performance unit plan or any kind of stock
25 option plan from your professional opinion?

1 THE WITNESS: A board member being the
2 administrator is very atypical. It would be
3 a third-party company that's qualified to
4 administer plans, so insurance plans,
5 investment plans, it's not unusual to have a
6 third company, like even a JP Morgan, a
7 Merrill Lynch contracted to help you
8 administer it. But a board member is rather
9 different.

10 COUNCIL MEMBER DENNIS: Okay. Thank
11 you.

12 CHAIRMAN DIAMOND: Okay. I think that's
13 the end of this. So first of all, thank you
14 for coming. I know this was not pleasant.
15 But I have an important message I want you
16 to take to heart, and it's very important
17 that you believe me. The City Council has
18 an oversight function over JEA. We will
19 approve members of the JEA Board that the
20 Mayor has -- or we'll go through a process,
21 I assume, to appoint them.

22 At the end of the day, though, you come
23 here and you've testified, and I believe you
24 told the truth. If you feel like you're
25 being harassed, if you feel like your job is

1 in jeopardy or something happens after this,
2 we would like to know, because we do have an
3 oversight authority in this regard. You
4 also have other protections that lawyers at
5 JEA and outside counsel can tell you about,
6 protections, et cetera, but I'm just talking
7 about what we can do. I would like to know
8 if you have any problems, and we will take
9 care of it. That much I assure you.

10 And I want every other JEA employee to
11 know, whoever sits in that Chair, former or
12 current, they will get the same benefit of
13 our whole effort to ensure that there is no
14 retribution. So again, thank you, have a
15 good morning.

16 THE WITNESS: Thank you, Council Member
17 Diamond. I appreciate it.

18 CHAIRMAN DIAMOND: Okay. So we do have
19 quite a bit of other business. We'll start
20 with OGC and where we are with document
21 production. Who is going to take the helm
22 on that? Is it Sean?

23 Folks who have filled out the cards, I'm
24 going to do my very best. There is an
25 11 o'clock hearing. So if we don't finish,

1 I'm not going to get to public comment. I
2 promise you I'm going to try, though. It's
3 not intentional. We're going to try and
4 finish in time. And it may be that we just
5 split up whatever we have left. So you
6 might just have a minute.

7 MR. GRANAT: Okay. Thank you. Through
8 the Chair.

9 OGCs had significant conversations with
10 JEA, specifically their IT department, Shawn
11 Eads and Melissa Dykes, both Chris Garrett
12 of OGC and I have been working with them. I
13 do believe JEA has made it known that they
14 are completely cooperative, they intend to
15 be completely cooperative with the records
16 request.

17 It is a massive request that was
18 produced to them. I know that they have
19 already divided up internally a number of
20 the requests and they've already started
21 work on it. Internally, City IT and JEA IT
22 have met and talked, and we have a system in
23 place now where information -- or documents
24 can be transferred through a network very
25 easily without having to load things on a

1 hard drive and walk them across the street.
2 So that was just put in place late last
3 week.

4 Because the request is so massive, there
5 is a need for a third-party vendor to come
6 in. There is a -- the main concern is
7 protecting information and documents that
8 pertain to pending litigation that has
9 nothing to do with the request that you've
10 made. So there needs to be a screening of
11 that information to make sure that it
12 remains confidential to protect JEA's
13 interest in those lawsuits.

14 And so we have discussed that
15 third-party vendor. I expect within the
16 next few days -- certainly, this week that
17 vendor will be in place and things will
18 begin. Also discussed with JEA that there
19 are a number of, I guess you call, low
20 hanging fruit documents that should be
21 readily accessible, and we expect that to
22 start the flow very soon as well, I would
23 expect this week.

24 JEA has a link and I notified the
25 committee members of that, as well as

1 Mr. Busey. There are many, many documents
2 already available regarding the ITN that I
3 think would be of great interest to the
4 committee that are accessible right now as
5 well. So that is in the works, and I expect
6 the information to start flowing very soon.

7 CHAIRMAN DIAMOND: Okay. And then for
8 the Council who don't know and the public's
9 understanding, obviously, we issued an
10 84-point document request. I assume that
11 the responsive documents are in the millions
12 for that, in addition to the one and a half
13 million pages you already have.

14 So what will happen is JEA will hire a
15 vendor to have a repository of these
16 documents. Then a review will be done to
17 make sure there are no exempt documents.
18 The only ones that I personally consider
19 exempt are the ones related to collective
20 bargaining or active litigation. And then
21 we will be utilizing OGC and our outside
22 counsel to do searches of those millions of
23 documents that are not exempt so that we can
24 get on with the City's business and this
25 investigation. Is that fair?

1 MR. GRANAT: That's correct.

2 CHAIRMAN DIAMOND: Do the Committee
3 Members have questions or concerns, thoughts
4 on that process?

5 Okay. So Councilwoman DeFoor, she'll
6 need access. But without question, every
7 member of the City Council and public will
8 have access, yeah, no question.

9 All right. Councilman Salem.

10 COUNCIL MEMBER SALEM: Thank you,
11 Mr. Chair. You may have just answered it.
12 So once all that review is completed, not
13 being an attorney, there will be some number
14 of documents, we don't know how many, that
15 will be provided that we feel like are
16 relevant to this investigation that were the
17 legal types that had been excluded?

18 CHAIRMAN DIAMOND: Yeah. And if you
19 think about this as a funnel, we're starting
20 with a huge number, then a very small number
21 should be taken out, a very small number
22 related to active litigation and collective
23 bargaining, and then searches done of the
24 remainder. And then the ones that are most
25 relevant will be this much smaller number

1 that the Committee will be operating and
2 going through.

3 COUNCIL MEMBER SALEM: Thank you,
4 Mr. Chair.

5 CHAIRMAN DIAMOND: That's the best way I
6 can think of to deal with a massive amount
7 of information in a practical way that also
8 doesn't cost the taxpayers tens of millions
9 of dollars.

10 Yes, ma'am, Councilwoman Priestly
11 Jackson.

12 COUNCIL MEMBER PRIESTLY JACKSON: This
13 is related, I think, but it may be off. I
14 know you're talking about generalized
15 document production that you all are going
16 to give us. Is this the proper time to say
17 that we as a Committee, additional documents
18 or information that we might need, do you
19 want us to do that now or at other business?

20 CHAIRMAN DIAMOND: So I'm easy going
21 either way. I have other information I want
22 too. So maybe it makes sense for us to
23 simply send those requests to OGC.

24 COUNCIL MEMBER PRIESTLY JACKSON: Well,
25 no. I want to kind of establish them,

1 because I think if we talk about them here,
2 it may make other colleagues think about it.

3 CHAIRMAN DIAMOND: Sure. Have at it.

4 COUNCIL MEMBER PRIESTLY JACKSON: One of
5 them is I want the 17 respondents to the ITN
6 identified. I also want to know those who
7 own shares, i.e., who is behind the
8 corporate veil for all 17. So originally
9 there were 17, 1 was disqualified, you went
10 to 16, down to 9. So with that information,
11 we want the entities identified, those who
12 own shares of stocks in the entities behind
13 the veil and where that incorporates any
14 other information.

15 CHAIRMAN DIAMOND: So if we're talking
16 about a big, publicly traded company, it
17 could be like millions of shareholders.

18 COUNCIL MEMBER PRIESTLY JACKSON: No.
19 They basically -- I think that they can give
20 us the information, and I trust them to use
21 their discretion. I am looking for any
22 inherent conflicts with anybody in city
23 government or involvement around with it, so
24 I trust that they will be good enough to let
25 us know if there was any of those bundled

1 up.

2 CHAIRMAN DIAMOND: I'm for it, okay.

3 All right. So let's move on to
4 validation of transcripts. So for the
5 public and for the Council, Office of
6 General Counsel did a very large, long
7 investigation related to firing Aaron Zahn
8 for cause. During the course of that I
9 think they interviewed over 30 people. And
10 they have transcripts.

11 What we would like to do is,
12 essentially, take all the work they did and
13 put it under the purview of the Committee so
14 we can start to build out our report and
15 start to make conclusions, because it was
16 very informative and very interesting
17 reading, and should also make the work of
18 this Committee more efficient.

19 So who is going to talk about that?
20 Sean, again, thank you, sir. You're popular
21 today.

22 MR. GRANAT: Sure. So I'll give you a
23 list of the individuals at JEA that we
24 interviewed under oath with a court reporter
25 present, and so there are transcripts

1 available of these. You want me to give the
2 name and the title?

3 CHAIRMAN DIAMOND: Sure. That would be
4 great.

5 MR. GRANAT: Okay. And the topics that
6 were covered in all but one of these
7 interviews were the same. And those -- I'll
8 just say the topics now, the ITN, the PUP,
9 Aaron Zahn's conduct in general, his
10 interaction with employees, and the
11 strategic planning, the principle, all of
12 the scenarios and how that came about and
13 how it started.

14 I do want to point out that these
15 interviews were done with a singular focus
16 of investigating Mr. Zahn's conduct. So
17 there may have been other trails, other
18 things that certainly could have been asked
19 about, but we didn't at the time. We were
20 under a very short time to get this
21 interview done.

22 So we -- these are the -- there are 16
23 interviews that we conducted under oath of
24 which there are transcripts: Caren Anders,
25 who is the VP and GM of energy; Deryle

1 Calhoun, who is the VP and GM of
2 water/wastewater systems; Shawn Eads, the VP
3 and chief information officer; Sherry Hall,
4 who is the former VP and chief government
5 affairs; Ted Hobson, I believe he just
6 retired, was the VP and chief compliance
7 officer; Jon Kendrick, the VP and chief
8 human resources officer; Pat Maillis,
9 director of employee services; John
10 McCarthy, VP and chief supply chain officer;
11 Steve McInall, VP chief energy and water
12 planning; Jordan Pope, who is the director
13 of economic development and real estate;
14 Walette Stanford, who is the ethics officer.
15 Her topics were the only one that were
16 different, and we discussed secondary
17 employment and forms relating to that, and
18 property ownership and conflicts of
19 interest. That is what we discussed with
20 Ms. Stanford.

21 Paul Steinbrecher is the VP and chief
22 environmental services officer; Kerri
23 Stewart, the VP and chief customer officer;
24 Herschel Vinyard, the chief administrative
25 officer; Ryan Wannemacher is the former CFO;

1 and then, of course, we interviewed Aaron
2 Zahn, the former CEO.

3 CHAIRMAN DIAMOND: Okay. If we can make
4 sure that our website for this Committee has
5 all those transcripts available, because I
6 suspect we will be repeatedly referring to
7 them. So that will be helpful to make sure
8 they're in our Bate's range.

9 Thank you, Ms. Makenzi. And thank you
10 to Makenzi for all your hard work on these
11 binders.

12 Anyone who has one of these binders,
13 please hold on to it, as we will simply just
14 be adding on to them. I know, it's going to
15 get bigger and bigger.

16 Okay. So other business, quickly,
17 because I do want to get to public comment.
18 The next hearing at 11:00 a.m., right
19 here in public chambers -- not a hearing,
20 but a meeting with Council Member Boylan's
21 committee is going to have Jerry Hartman and
22 Tom Cloud, so people should save their
23 questions on that stuff for them.

24 I just spoke about the binders.

25 We need to talk about when our next

1 meeting date is, March 2nd at 5:00 p.m. or
2 March 9th at 8:00 a.m. I can do either.

3 You want to do that now, then we can get
4 to calendar.

5 COUNCIL MEMBER DeFOOR: I just wanted to
6 make sure that, as discussed last time, that
7 we were moving forward with trying to get
8 the depositions under oath of Jodi Brooks,
9 Mike Brost, Paul McElroy, and I noticed that
10 you did not say Melissa Dykes. Is Melissa
11 Dykes going to be interviewed?

12 MR. GRANAT: Although it was our
13 intention during the investigation,
14 logistically and time-wise we were not able
15 to interview Melissa Dykes. She was
16 scheduled and had a family emergency during
17 that period of time. We are -- our
18 investigation of Mr. Zahn, as far as
19 obtaining new evidence, is complete. And so
20 we do not plan on interviewing --

21 COUNCIL MEMBER DeFOOR: Well, moving
22 forward, though, we do need to get, as
23 requested last time, based on the special
24 committee, Paul McElroy, Jody Brooks, Mike
25 Brost, there is one other that I'm trying to

1 remember. One was water, one was energy.
2 Roche.

3 CHAIRMAN DIAMOND: And I would add
4 Ms. Dykes to that list.

5 COUNCIL MEMBER DeFOOR: And we can add
6 Ms. Dykes to that list, thank you, Chair.

7 CHAIRMAN DIAMOND: So I guess the
8 direction, if you don't mind, the direction
9 from the Committee, unless anyone disagrees,
10 is that I do think it was extremely helpful
11 to have deposition transcripts as we're
12 looking at witnesses with these ones in
13 particular, if you all would take it upon
14 yourselves, divvy it up, whether it's with
15 outside counsel or with OGC, to have them
16 interviewed under oath to the extent they're
17 willing to be interviewed under oath. And
18 if they're not, then let us know, and we can
19 talk about other mechanisms to make sure we
20 get that testimony. Does that sound okay?

21 COUNCIL MEMBER DeFOOR: And then I
22 think, based on those interviews, we can
23 come up with who we want to have before us
24 at our next meeting. There is only one of
25 the ones that you interviewed previously

1 that I thought was actually -- Steve, is it
2 McInall? He had a lot of good information.

3 And I'm just going to read this to you
4 because I received it, so I feel like I need
5 to read it: CM DeFoor, something else
6 you -- it's hard to read. Something else we
7 thought of, the request for documents on the
8 JEA Investigative Committee. It might be
9 helpful to have all communications from the
10 General Counsel and any of the attorneys or
11 staff members that related to the ITN, PUPs,
12 et cetera, this should include emails,
13 memos, memos to file, text, and any other
14 correspondence on the subject matter that is
15 not considered privilege. Also, you may
16 want to add Mike Weinstein in as an
17 additional person to request all
18 communications, emails, et cetera.

19 Finally, you may want to add at some
20 point the executive assistants for the
21 senior leadership team, the Mayor, Brian
22 Hughes, Sam Mousa and Mike Weinstein, they
23 would likely have scheduling calendars,
24 memos, correspondence, appointments,
25 et cetera.

1 CHAIRMAN DIAMOND: So as direction for
2 the Chair, can we put on our committee
3 website all those OGC documents as just
4 described, you know, any memos, texts,
5 whatever it is that you all have related to
6 these matters as described? And if you need
7 this document, please do, but I think the
8 idea is that people want to know that they
9 can read OGC's communications regarding this
10 to the extent they're not privileged.

11 And I think that's entirely appropriate.
12 And I'm sure you guys will comply. If there
13 is some issue, let us know in a public
14 meeting, but I'm sure we'll get this. And
15 these other two, I think, we'll simply have
16 to add to a document request.

17 Councilman Salem.

18 COUNCIL MEMBER SALEM: Just two points:
19 I think it's extremely important that we get
20 Melissa Dykes. I understand she had a
21 family situation, but as a member of the
22 senior leadership team at the highest level
23 and not to have her testimony, I just think
24 we need to have it.

25 And my second comment is board members,

1 should board members be interviewed as a
2 part of this process, particularly -- and I
3 think you guys, your team, tried to
4 interview the compensation chair who
5 happened to be, I think, out of the country
6 at the time. I think of all the board
7 members, she had probably as much knowledge
8 of any of the board members on the PUP in
9 particular and how it was moving through the
10 process. And I think her testimony would be
11 very helpful.

12 CHAIRMAN DIAMOND: So unless the
13 Committee disagrees, I think we should reach
14 out to former board members back to at least
15 2017 and see if they're willing to come and
16 sit down and talk with you. If they're
17 unwilling, make us a list, and we'll talk
18 about what authority we have to compel
19 testimony.

20 Yeah, of course.

21 COUNCIL MEMBER PRIESTLY JACKSON: It was
22 my understanding that the Office of General
23 Counsel did some informal interviews with
24 some of them, and you all were just going to
25 write that information up for us. Because I

1 had asked the question before about the
2 prior board, and I think you said you talked
3 with them, but there were no transcripts.
4 And we just requested that the notes were
5 written up from that, and that would lead us
6 to know what additional information do we
7 need. Is that still possible? That's it.

8 CHAIRMAN DIAMOND: Okay. And then so
9 let's just talk about this, March 2nd or
10 March 9th, the next meeting, one would be at
11 5:00, one would be at 8:00. How about this,
12 if you don't mind, I'll get back with you to
13 nail this.

14 COUNCIL MEMBER DeFOOR: I just was
15 reminded, Ms. Sidman had a very good idea,
16 and I think we should act upon it, is that
17 after the next -- at the agenda meeting
18 or --

19 CHAIRMAN DIAMOND: Rules.

20 COUNCIL MEMBER DeFOOR: Rules agenda
21 meeting, we'll go through and figure out
22 who -- yeah.

23 CHAIRMAN DIAMOND: So how about this,
24 this Committee will have a meeting 30
25 minutes before Rules, is that okay, to

1 discuss those matters. That gives us a
2 chance. And then the public can listen and
3 ask questions about where we're going next.

4 COUNCIL PRESIDENT WILSON: That meeting
5 was?

6 COUNCIL MEMBER PRIESTLY JACKSON: Before
7 Rules.

8 COUNCIL MEMBER SALEM: So when is the
9 next meeting?

10 CHAIRMAN DIAMOND: The next meeting we
11 have is 30 minutes before Rules next week
12 and then two weeks from today for the next
13 official meeting, unless we kind of disagree
14 with that at the Rules.

15 COUNCIL MEMBER SALEM: What's that date,
16 March?

17 CHAIRMAN DIAMOND: Second -- 9th.

18 COUNCIL MEMBER PRIESTLY JACKSON: Ninth.

19 COUNCIL MEMBER SALEM: March 9th at what
20 time?

21 CHAIRMAN DIAMOND: Okay. Do we have the
22 email for people who wanted forum public?
23 Okay. So if you want updates from this
24 Committee sent to you, we have sign-up
25 sheets out here. In a couple days those

1 will start to roll out.

2 In addition to that, we've been working
3 with IT department to figure out how you can
4 send in tips. We don't have it set up yet,
5 but we will have it soon. I promise by the
6 next meeting we'll have something to present
7 to everyone.

8 Then we do have time for public comment.
9 What I'm going to do is, if you don't mind,
10 limit it to one minute because I have four
11 and we have about ten minutes left. So if
12 you want to come down, first I have Valerie
13 Gutierrez. Next is Eunice Barnum, Tim Wing,
14 and John Nooney. So come on down. Let's
15 roll.

16 MS. GUTIERREZ: Good morning. I want to
17 thank you again.

18 COUNCIL MEMBER FERRARO: Press the
19 button.

20 MS. GUTIERREZ: Again, thanks again.
21 What I wanted to bring to your attention is
22 where or if the general employees really
23 knew anything about the PUP. And I'm here
24 to tell you not no, but heck no.

25 I wanted to recollect, I think it was in

1 May -- wait, yeah, May or June, because all
2 the union leaders would meet with Zahn and
3 Melissa on a monthly basis. He kind of
4 threw out there, What would you think about
5 paying for a \$10, you know, unit price?
6 With nothing -- no definitions, nothing
7 concrete about what that meant, where it was
8 going to go or anything like that.

9 Even in January -- July 23rd, we were
10 clueless on any material that was going to
11 be brought to us until even when they did
12 away with the PUP plan via the Currents,
13 that's when we became aware that there was
14 even a plan that was even thought of.

15 So I just wanted to let you know we were
16 in no way, shape, or form informed of any of
17 the details that were presented. We were
18 just in shock every time the PUP comes up,
19 the details that comes with it. So I just
20 wanted to share that with you. Thank you.

21 CHAIRMAN DIAMOND: Thank you.

22 Eunice Barnum.

23 MS. BARNUM: Good evening. Eunice
24 Barnum. My main concern is this mess
25 breached the public trust. This happened

1 with JEA. I wonder where else, what other
2 departments, where else under our
3 government, our city central government, are
4 we having these same kind of problems.
5 Because the City is ran the same way.
6 Whoever is running it, they run all the
7 departments the same format. So I'm just
8 wondering where else are we having these
9 same kind of problems that has gone
10 unnoticed the same way JEA had gone
11 unnoticed.

12 I thank you because that was my concern,
13 where were the other key components, the key
14 players, how did we get here. And thank you
15 for bringing all the others onboard.
16 Thanks.

17 CHAIRMAN DIAMOND: Thank you,
18 Ms. Barnum.

19 Mr. Wing.

20 MR. WING: Good morning. Like
21 Ms. Gutierrez said, the employees -- I can
22 fill this room with employees that had no
23 idea about that PUP, didn't understand it,
24 didn't even know about it. So I can tell
25 you that right now.

1 One of the things to keep in mind is the
2 forethought that went into all this, how far
3 ahead they had to start this process, and
4 we're working for those people. That same
5 SLT that you're talking about right now, let
6 me reiterate, we do not trust them. That
7 same SLT -- the rules that would have me
8 fired, if I was working on a piece of wire,
9 and I said, Hey, I could use that wire at
10 home, and I put it in my truck and took it
11 home, I could be fired -- they had no
12 problem going to the Ponte Vedra club, to
13 wherever to have meetings on our dime. So
14 to me, that's a big conflict, but yet, like
15 I say, we are still working for those same
16 people that we do not trust. Please keep
17 that in mind as we go forward. Thank you.

18 CHAIRMAN DIAMOND: Thank you, Mr. Wing.
19 Mr. Nooney. John Nooney? I saw him.
20 All right. With that, we are adjourned.
21 (Meeting adjourned at 10:57 a.m.)

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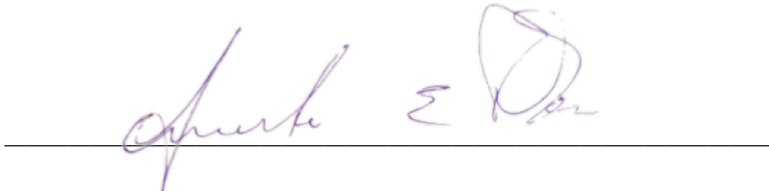
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CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF DUVAL

I, Amanda E. Robinson, Registered Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings; and that the transcript, pages 1 through 160, is a true record of my stenographic notes.

DATED this 5th day of March, 2020.



Amanda E. Robinson,
Registered Professional Reporter