

IN RE: AARON ZAHN-TERMINATION OF EMPLOYMENT AGREEMENT WITH JEA

SWORN STATEMENT OF AARON ZAHN

(Volume 1) Pages 1 - 276

DATE TAKEN: Tuesday, January 21, 2020
TIME: 9:35 a.m. - 5:00 p.m.
PLACE: 301 West Bay Street, Suite 1400 Jacksonville, Florida

REPORTED BY: Heather M. Thomas, Court Reporter

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WITNESS: AARON ZAHN

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15 ALSO PRESENT: JOHN MULLEN, ESQUIRE
J. JACOB R. PEEK, ESQUIRE

1 MR. NINS: This recorded interview is being
2 conducted at 301 West Bay Street, Suite 1400,
3 Jacksonville, Florida. Today's date by my phone is
4 January 21st, 2020, and the time by my cell phone
5 is 9:36 a.m.

6 I am Investigator Derronne Nins. I'm employed
7 by the Office of Inspector General with the
8 City of Jacksonville. The Office of Inspector
9 General is assisting the Office of General Counsel
10 with its investigation regarding Aaron Zahn, former
11 CEO of JEA.

12 Mr. Zahn, you're being interviewed as a
13 subject in this investigation. The attorneys who
14 will be interviewing you are Stephen Powell, Sean
15 Granat, Chris Garrett, Sonya Harrell, Adina ...

16 MS. TEODORESCU: Teodorescu.

17 MR. NINS: -- and Jon Phillips.

18 As a commissioned notary public in the state
19 of Florida, I am authorized to administer oaths.
20 Please be advised any false statements made during
21 your interview or attempts to obstruct the Office
22 of General Counsel's investigation may be used in a
23 subsequent prosecution against you.

24 Please raise your right hand.

25 Do you, Aaron Zahn, swear to tell the truth,

1 the whole truth, and nothing but the truth?

2 THE WITNESS: I will.

3 MR. NINS: Thank you, sir.

4 Have any promises, threats, or inducements of
5 any nature whatsoever been made by me in order to
6 obtain your consent to this statement?

7 THE WITNESS: No.

8 MR. NINS: Do you understand this recorded
9 interview will be subject to public disclosure
10 pursuant to Public Record Law and other laws of the
11 State of Florida?

12 THE WITNESS: Yes.

13 MR. NINS: Thank you very much, sir.

14 AARON ZAHN,
15 having been produced and first duly sworn as a witness,
16 testified as follows:

17 EXAMINATION

18 BY MR. GRANAT:

19 Q Morning, Mr. Zahn. My name is Sean Granat.
20 I'm an attorney with Office of General Counsel. I know
21 we have a big team here. I'm just going to ask them to
22 just do some introductions so you know who everybody is.

23 MR. POWELL: I'm Steve Powell. Good morning.

24 MR. GARRETT: Chris Garrett.

25 MS. TEODORESCU: Adina Teodorescu.

1 MR. MULLEN: Thank you.

2 BY MR. GRANAT:

3 Q And because we're making a formal record here,
4 will you state your name?

5 A Aaron Zahn.

6 Q Okay.

7 MR. MULLEN: And for the sake of the record,
8 with Aaron is John Mullen as counsel, and also to
9 my left, Jacob Peek as counsel.

10 BY MR. GRANAT:

11 Q Okay. I'm going to be asking you about some
12 documents and other things, and so I have copies. I
13 have one copy for counsel of my documents. Okay? I
14 didn't know that there would be two, but I'll just use
15 these --

16 My intention is to label the copy I give to
17 Mr. Zahn that will be attached to the record, and then
18 counsel can keep the copy. So I'll just use these
19 exhibit stickers.

20 So we'll start with Exhibit 1. We'll just
21 call this -- Exhibit 1 and 2 are going to be Mr. Zahn's
22 employment contract and employment separation -- Form of
23 Separation and Transition Agreement. Okay?

24 (Exhibit Numbers 1 and 2 were marked for
25 identification.)

1 MS. HARRELL: Sonya Harrell.

2 MR. PHILLIPS: Jon Phillips. We've met
3 before.

4 BY MR. GRANAT:

5 Q And these are all attorneys with OGC.

6 Before we get started, I had a discussion with
7 your attorney, John Mullen. We sent you a Garrity
8 Rights form that we don't have printed yet, but we will
9 at one of the breaks and have you sign, but it's, I
10 think, everyone's understanding that this is a compelled
11 interview at the request of the JEA board and Melissa
12 Dykes, and so full Garrity protections are in effect
13 regarding this interview.

14 MR. MULLEN: That's understood, Sean. Thank
15 you.

16 BY MR. GRANAT:

17 Q And also, before we get started, I do think
18 we'll be here most of the day. We want everybody to be
19 comfortable, so if you need to take a break, let us
20 know. We can do that. It's not an endurance test.

21 If you need to confer with your counsel, as
22 long as there's not a question pending, let me know and
23 we can do that and break whenever you'd like, any
24 comfort breaks. And that's for your attorneys as well.
25 Okay?

1 BY MR. GRANAT:

2 Q And another --

3 MR. MULLEN: Thank you.

4 Q -- thing, if I hand you a document, please
5 take your time to review it. Take all the time you want
6 and let me know when you've done that. Okay?

7 A Uh-huh.

8 Q Have you reviewed the documents, Exhibit 1 and
9 2?

10 A Yes. They appear to be the -- my contract.
11 Well, this one appears to be the formal contract and
12 this one appears to be the separation.

13 Q And is Exhibit 1 the contract that you entered
14 into on July 23rd, 2019?

15 A That's how it would appear by the signature
16 page.

17 Q Any reason to doubt this is --

18 A No.

19 Q -- your contract?

20 Okay. So I just want to go over some of the
21 terms of your contract.

22 On the second page, on Paragraph 1.2, it talks
23 about Terms and Duties. And really this contract, would
24 you agree, has no ending term? It would extend in
25 perpetuity until it was terminated through either cause

1 or without cause? Or there's a death or disability
 2 provision as well.
 3 A Yes.
 4 Q Mr. Zahn, when you entered into this contract,
 5 were you aware that there was no end date?
 6 A Actually, I thought it had a six-year -- my
 7 thought -- not specifically in terms of -- I thought
 8 3.1.6 kind of broadened the six-year effective date,
 9 but --
 10 Q Well, doesn't 3.1.6 say that if you're
 11 terminated without cause or for good reason within six
 12 years, then you would get a 12-month consultation
 13 agreement?
 14 A Yeah, you're correct. Yeah, so ...
 15 Q But would you agree as it stands, this
 16 contract makes you the permanent CEO of JEA forever
 17 until you're terminated --
 18 A Or resigned.
 19 Q -- with or without cause or you resign or the
 20 death or disability clause kicks in?
 21 A Or resign, yeah.
 22 Q Okay. Also on Page 2 it talks about an annual
 23 salary. Do you see that?
 24 A Uh-huh.
 25 Q Your annual salary as of July 23rd, 2019, was

1 \$520,392 per year?
 2 A Correct.
 3 Q And that was actually made retroactive to some
 4 period in the past; is that right?
 5 A Per the board's request.
 6 Q But it was made retroactive?
 7 A Per the board's request.
 8 Q So did you receive a lump-sum payment of back
 9 pay?
 10 A I do not recall, but I do know that the board,
 11 in discussing this contract, requested that it be made
 12 retroactive to the date of when I was first appointed
 13 the permanent CEO.
 14 Q Do you recall what that date was?
 15 A November 27th, 2018.
 16 Q 2018, okay.
 17 And also in Paragraph 2.1 of your contract, it
 18 also says that every 12 months there's going to be a
 19 review and perhaps an adjustment of your salary with the
 20 market --
 21 A Correct.
 22 Q -- is that right?
 23 On the third page of your contract in
 24 Section 2.2, it says you're qualified for a pay for
 25 performance --

1 A Uh-huh.
 2 Q -- plan?
 3 That's basically -- is that's what -- is that
 4 what is considered the short-term incentive plan at JEA?
 5 A It is the short-term, yeah, annual pay for
 6 performance plan.
 7 Q And did you ever receive a bonus through that
 8 plan?
 9 A Yes, I did. In conjunction with all 2,000
 10 employees, I received it either in November, I believe,
 11 or -- of this -- of the past year.
 12 Q Of 2019?
 13 A Correct.
 14 Q And what was the amount of your bonus?
 15 A I don't recall specifically, but my guess
 16 would be somewhere between 25- and \$30,000.
 17 Q And did your senior leadership team also
 18 receive bonuses under this pay for performance plan?
 19 A All 2,000 employees received bonuses. So yes,
 20 senior leadership and all 2,000.
 21 Q And did your senior leadership team receive
 22 bonuses in the five figures?
 23 A I am not aware of their specific figures.
 24 Q Okay. And Paragraph 2.3 of your contract, it
 25 provides you with an automobile allowance of \$850 a

1 month; is that right?
 2 A Correct.
 3 Q And so monthly that would be a little over
 4 \$10,000 a year?
 5 A Correct. This was directly from the prior
 6 CEO's employment agreement.
 7 Q I understand that. But it's in your contract;
 8 right?
 9 A It is.
 10 Q And then the next paragraph grants you, it
 11 says, business allowances, and it provides you with
 12 \$2,200 monthly for general business expenses --
 13 A Correct.
 14 Q -- is that right?
 15 And so annualized, that's over \$26,000 a year;
 16 is that right?
 17 A Approximately, yes.
 18 Q Okay. And then in Paragraph 2.5, there's \$50
 19 for parking, so that's roughly \$600 a year.
 20 Paragraph 2.7 grants you 280 hours of leave
 21 annually; right?
 22 A Yes.
 23 Q And then the next page, Paragraph 2.8, says
 24 you get all the fringe benefits, healthcare, general
 25 employee benefits that other employees at JEA get;

1 correct?
 2 A Yes.
 3 Q It also includes a half-a-million-dollar
 4 insurance policy that's paid for by JEA; is that
 5 correct?
 6 A Yes. I believe JEA's policy around life
 7 insurance is one times the base salary, so that would be
 8 approximate. It's in here as 500, but the policy for
 9 all employees is to provide that.
 10 Q And it's in your contract as well?
 11 A Correct.
 12 Q And then it also says in Paragraph 2.9 you
 13 participate in either the pension program or a 401(a),
 14 defined contribution plan; correct?
 15 A Correct.
 16 Q Then in Section 3.1, there's a -- it explains
 17 four different ways the contract can be terminated; for
 18 cause, for good reason, upon the employee's death or by
 19 either party without cause; is that correct?
 20 A Correct.
 21 Q In Paragraph 3.1.1, cause is specifically
 22 defined. Would you agree with that?
 23 A Yes.
 24 Q Are you aware of who drafted the for-cause
 25 terms in your contract?

1 A So it would be a collaboration of counsel
 2 Shane Muñoz that was engaged by myself and three other
 3 senior leadership team members, and then a draft -- in
 4 order to produce a draft that was then produced for
 5 Pillsbury, Foley, and OGC to finalize and complete.
 6 Q Do you have a copy of the -- and say the name
 7 of the lawyer again. Shane who?
 8 A Shane Muñoz.
 9 Q Muñoz. And what law firm is he with? Is it
 10 Ford & Harrison?
 11 A Yeah, Ford Harrison.
 12 Q Do you have a copy of the draft that you
 13 received from Shane Muñoz that you provided to one of
 14 the JEA's attorneys?
 15 A I think we provided that as part of the
 16 production --
 17 MR. MULLEN: We produced --
 18 A -- request.
 19 MR. MULLEN: That prior to today.
 20 MR. GRANAT: You did? Okay.
 21 BY MR. GRANAT:
 22 Q In Paragraph 3.1.5 of your contract, it
 23 provides that if you're terminated without cause or for
 24 good reason, you receive 20 weeks of severance,
 25 basically; is that right?

1 A Yes.
 2 Q And also you get -- you'll receive 20 weeks'
 3 worth COBRA payments paid by JEA; correct?
 4 A Yes.
 5 Q And then, as we discussed earlier, 3.1.6 of
 6 your contract says if you're terminated without cause or
 7 for good reason within six years, you would get a
 8 12-month consulting agreement that is the subject of
 9 Exhibit 2, the Form of Separation and Transition
 10 Agreement; correct?
 11 A Correct.
 12 Q And part of that Form of Separation and
 13 Transition Agreement also includes a mutual release?
 14 A That's correct.
 15 Q So that's all part of your contract; right?
 16 A Correct.
 17 Q All right. I want to back up and ask you
 18 about 2.4, Business Allowance provision, the \$2,200 a
 19 month that you're provided.
 20 What's your understanding of what that's for?
 21 A So as a government employee, oftentimes I
 22 would take my team to lunch or I would take, you know --
 23 and it was previously in the prior CEO's contract as his
 24 business allowance. And it allows for me to spend money
 25 on coffees, dinners, where I'm paying for myself in

1 order to, you know, make sure I'm complying with all,
 2 you know, laws and ethics codes.
 3 Q But is this money that's put into your
 4 paycheck that you receive every month --
 5 A Yes.
 6 Q -- whether you spend it or not?
 7 A Yes.
 8 Q Okay. So was it your understanding that this
 9 business allowance, this \$2,200 a month, was to be used
 10 by you for business expenses, or was this just another
 11 way for you to increase your salary?
 12 MR. MULLEN: Object to the form of the
 13 question.
 14 You can answer.
 15 A It was, again, a -- this was a paragraph that
 16 typically was in the prior CEO's contract and was --
 17 came out of the OGC's approved form contract, and it was
 18 intended to use business expenses.
 19 And if I recall, I'm pretty sure almost every
 20 month I either met or exceeded that relative to paying
 21 for myself on doing things, you know.
 22 Q When you're referring to the prior CEO's
 23 contract, are you talking about Paul McElroy?
 24 A Yes.
 25 Q Do you know -- so you believe Paul McElroy's

1 contract included a business allowance provision as
 2 well?
 3 A Yes.
 4 Q Do you know how much per month he received?
 5 A I don't.
 6 Q Okay. Did you keep receipts or records of
 7 your expenses that you used your business allowance to
 8 pay for?
 9 A No, not specifically.
 10 Q It wasn't required?
 11 A No.
 12 Q So if there was money left over from your
 13 business allowance, the \$2,200 a month, that you didn't
 14 spend, is that just money that you kept for yourself?
 15 A In that hypothetical situation, sure.
 16 Q You don't think that ever occurred?
 17 A I know I paid for a lot of things out of my
 18 own pocket just as a standard matter of course in order
 19 to make sure I was always paying for my own way.
 20 Q Okay. You've been on paid administrative
 21 leave for, I think it's been over a month now; is that
 22 right?
 23 A Yes.
 24 Q And in your paycheck that you received, did
 25 you receive the business allowance pay for this past

1 month?
 2 A I did.
 3 Q Did you return that to JEA?
 4 A Am I required to?
 5 Q I'm just asking if you returned it.
 6 A I used well in excess of that to pay for my
 7 attorneys, you know, to -- which I don't know if that's
 8 a business allowance -- or business expense or not, but
 9 it's certainly -- I've applied substantially multiples
 10 of that paying for attorneys to deal with JEA matters.
 11 Q For your personal matters?
 12 MR. MURPHY: Object to the form of the
 13 question.
 14 You can answer.
 15 A I don't -- some might be JEA matters, some
 16 might be personal matters.
 17 Q And what attorneys are you referring to?
 18 A Phelps Dunbar and Peck & Associates.
 19 Q Any others?
 20 A No.
 21 Q So you told me that the first -- well, let me
 22 ask you this.
 23 The first draft of your contract was done by
 24 Ford & Harrison?
 25 A No. The first draft of the contract was the

1 interim CEO contract drafted by OGC. That was the form
 2 contract that -- that was provided to Shane Muñoz to
 3 update with a -- with more normal employment terms.
 4 And then that -- and that actually did not
 5 include a form of separation, transition or a mutual
 6 waiver of release. Actually, that was just a simple
 7 employment agreement with far less. And then that
 8 version was provided to OGC and their special counsel to
 9 complete and review with, you know, compensation
 10 committee members as well as the Chair.
 11 Q So Ford & Harrison took your interim contract,
 12 modified it, and it was presented to OGC; is that --
 13 A Uh-huh.
 14 Q -- right?
 15 Was it presented to OGC by Ford & Harrison or
 16 by you?
 17 A I don't recall.
 18 Q And you said that there were some others of
 19 the senior leadership team that had retained
 20 Ford & Harrison. Who were those?
 21 A Melissa Dykes, Herschel Vinyard, and
 22 Ryan Wannemacher.
 23 Q Do you know when you hired Ford & Harrison?
 24 A It would have been, I believe, late May.
 25 Q Of?

1 A Of 2019.
 2 Q 2019.
 3 A And I had discussed it with the Chair of the
 4 board that, you know, we were doing strategic planning,
 5 and we needed to contemplate giving senior leadership
 6 protections because of -- well, all of the political
 7 sensitivities around all the strategic planning that we
 8 were doing.
 9 And so -- and so I said, well, you know, I can
 10 certainly serve up a draft and then give it to JEA's
 11 counsel, and you guys can work through it.
 12 Q So why did you feel the need to hire outside
 13 counsel?
 14 A Well, in employment matters, my understanding
 15 is I needed my own attorney, and OGC and Pillsbury and
 16 Foley would be representing the interests of JEA. And
 17 so I needed my own counsel.
 18 Q Okay. Do you know who at OGC received the
 19 contract from either you or Ford & Harrison?
 20 A My understanding was Lynne Rhode received it,
 21 and then I believe you reviewed it. At least that was
 22 my understanding. And then Pillsbury and Jessica Lutrin
 23 and then Kevin Hyde of Foley.
 24 Q What makes you think I reviewed your
 25 employment contract?

1 A My understanding was that Lynne would meet
2 frequently on matters with OGC, with special counsel at
3 OGC around -- and you're the specialty employment
4 attorney.

5 I've seen memos on other employment-related
6 matters between you and her that have been produced
7 recently. So I ...

8 Q So did Lynne Rhode receive the contract from
9 Ford & Harrison or you?

10 A Yes.

11 Q Do you know whether she did or not?

12 A Yes. I mean -- no. I cannot confirm who
13 exactly received it, whether it was Lynne or special
14 counsel.

15 But, you know, what I do know is that once it
16 was delivered to the right party -- and you would have
17 an email of that, I would imagine -- all the remaining
18 development of this contract was developed by JEA's
19 counsel.

20 Q And so was your understanding that the CEO's
21 contract is something that should be negotiated between
22 the CEO and JEA through counsel?

23 MR. MULLEN: Object to the form of the
24 question.

25 You can answer.

1 A I negotiated it with April Green and Camille
2 Lee-Johnson, the compensation Chair and the Chair of the
3 board, and presumably they were consulting with OGC
4 and ...

5 Q Did you ever direct JEA's attorneys as to what
6 your contract should include?

7 MR. MULLEN: Object to the form of the
8 question.

9 You can answer.

10 A I'm not clear on the question. Did I direct
11 on what my contract should include?

12 Q Did you ever tell one of the OGC -- I'm
13 sorry -- one of JEA's attorneys, whether it was OGC or
14 Foley or Pillsbury, what should be contained in your
15 contract?

16 MR. MULLEN: Object to the form of the
17 question.

18 You can answer.

19 A I was given drafts from OGC and Pillsbury to
20 provide comment on. In terms of directing what should
21 be contained in it? Certainly we gave the first draft.
22 I don't know what your --

23 Q Was there a back-and-forth negotiation of your
24 contract at all that you know of?

25 A Yes.

1 Q And who was that negotiation between?

2 A I spoke at length with April Green about it,
3 about the -- all the -- about all the terms and
4 conditions. I know she reviewed a copy of it, and
5 Camille Lee-Johnson reviewed a copy of it.

6 In fact, actually, I talked about it with
7 Reverend Newbill. Actually, many of the board members,
8 because it had a substantial pay increase from my
9 interim from 330 to 520. We talked about where the 520
10 came from. That was the prior CEO's salary.

11 The 20 -- the 850 remained the same as what
12 was in my interim CEO contract, because -- you know, the
13 business allowances in my interim CEO contract. Pay for
14 performance was part of -- so we went through this --
15 and I went through this with most of the board members
16 in terms of reviewing my contract, correct.

17 Q Do you know how Pillsbury became involved with
18 your contract?

19 A I would imagine at the direction of OGC. They
20 brought in special employment ...

21 Q Your understanding is that OGC brought in
22 Pillsbury to work on your employment contract?

23 A Well, Pillsbury was engaged by OGC, and
24 Pillsbury was brought in for a number of -- and Foley,
25 by the way, were brought in for a number of -- I haven't

1 seen their engagement letters, but as I understand it,
2 Pillsbury and Foley were brought in for a whole myriad
3 of engagements.

4 Q When you say Pillsbury and Foley were brought
5 in by OGC, you understand that any of the independent
6 agencies or departments of consolidated government must
7 go through OGC to retain outside counsel, don't you?

8 A I do.

9 Q And so was it at your request or your
10 direction that Pillsbury was retained by OGC?

11 A So when we were getting ready for the July
12 board meeting, I spoke with Jason Gabriel, and we talked
13 about the potential of issuing the ITN. We were also
14 going through collective bargaining, or at least getting
15 ready for collective bargaining.

16 And my understanding is that OGC, through
17 Jason Gabriel and Lawsikia Hodges, had interviewed --
18 back when Paul McElroy was the CEO and you -- and this
19 whole privatization thing kicked up with them, my
20 understanding was OGC interviewed Pillsbury and Skadden
21 and Latham Watkins and Kirkland Ellis.

22 And so in the discussion with Jason, he said,
23 do you have a preference? And I said, all things
24 considered, Pillsbury is a great firm.

25 Q Do you have any connections with Pillsbury --

1 A Yeah.
 2 Q -- or anyone who works there?
 3 A Uh-huh.
 4 Q What's the connection?
 5 A I know Stephen Amdur, the managing partner,
 6 very well for a number of years.
 7 Q And how do you know him?
 8 A Through college, actually.
 9 Q You were friends at college?
 10 A Yeah, we were friends.
 11 I know a lot of the other partners at the
 12 other law firms, too, though, so ...
 13 Q Right.
 14 So your understanding was that Pillsbury and
 15 Foley and OGC were representing the board regarding your
 16 contract, and then on the other side was you and
 17 Ford & Harrison; is that right?
 18 A Yes.
 19 Q Do you know if Ford & Harrison ever had any
 20 communication with Pillsbury or Foley or OGC regarding
 21 your employment contract?
 22 A I am not aware of that.
 23 I'm not sure I need -- required them to
 24 provide, you know, other services in terms of ...
 25 Q So did your contract, your permanent contract,

1 Exhibit 1, differ from Paul McElroy's prior contract?
 2 A Yes.
 3 Q How did it differ?
 4 A I don't have Paul McElroy's contract in front
 5 of me to go line by line.
 6 Q Did your contract contain benefits that Paul's
 7 didn't?
 8 A Maybe.
 9 Q As we sit here today, you don't know?
 10 A It certainly had -- you know, his had benefits
 11 I remember that mine didn't include.
 12 Q What were those?
 13 A I think he had like an executive pension
 14 program that we didn't have. And then I know that the
 15 difference between the interim CEO, which was really
 16 predominantly the mirror image of his, and that mine
 17 incorporated standard employment terms that we just
 18 discussed.
 19 Q You told me earlier that you met with board
 20 members to discuss your permanent contract?
 21 A And other senior leadership contracts.
 22 Q Did you discuss with those board members what
 23 the differences were between your current contract and
 24 Paul McElroy's contract?
 25 A Did I compare my contract to Paul McElroy's

1 contract? No. What I did do is we had a Willis Towers
 2 Watson report that had total compensation analysis. It
 3 also had a whole bunch of, you know, market information.
 4 I did go through each of the terms and say, here's where
 5 we are.
 6 We specifically discussed a lot of the -- you
 7 know, for example, one substantial discussion point with
 8 a lot of the board members was the salary. It's
 9 certainly a hot button issue within the media. But when
 10 you look at the market comps, that salary is not close
 11 to the 50th percentile, which was the board policy.
 12 Q Earlier, though, you told me that the salary,
 13 the 520, came from the prior CEO.
 14 A I did, and I chose that specifically because I
 15 was sensitive to the public relations issues of it.
 16 Q Did you tell the board that's where you got
 17 that figure from?
 18 A Yes.
 19 Q Okay. So you did, at least for salary,
 20 compare your contract to Paul McElroy's contract; right?
 21 A I didn't compare it. What I did was I was
 22 trying to find a number that would not create a media
 23 storm. And so the idea was very simply just go back and
 24 look at whatever his salary was, and that's why I think
 25 520,239, and ...

1 Q Did you tell the board that's where you got
 2 the number from?
 3 A Again, yes.
 4 Q Did you not think it was important to let the
 5 board know how your contract differed from the prior
 6 CEO's contract?
 7 A I would imagine that would be the duty of OGC,
 8 Pillsbury, and Foley as counsel, if the board members so
 9 chose to investigate that.
 10 And I'm not sure comparing myself to the prior
 11 CEO's contract is relevant to a negotiation where I'm
 12 talking about my own contract.
 13 Q So as the interim CEO who's going to be the
 14 permanent CEO, you didn't feel that it was appropriate
 15 for you to let the board know how your contract was
 16 going to differ from the prior CEO's contract?
 17 MR. MULLEN: Object to the form of the
 18 question.
 19 You can answer.
 20 A So I was the permanent CEO when this contract
 21 got signed, and I had been for six months. I actually
 22 discussed with the board and compensation committee
 23 members, living underneath the interim, kind of -- we
 24 re-signed, I believe, in January of -- the same contract
 25 that just removed the term "interim."

1 And the rationale was that we were going
2 through a full analysis of compensation for the entire
3 company for all 2,000 employees, and I had made a
4 promise to the board and to the union leaders that I
5 would not ask for a, you know, employment agreement with
6 the board until such time as all 2,000 employees total
7 compensation -- the total compensation strategy was
8 completed and until such time as all 2,000 employees
9 were taken care of.

10 Q I've heard you say that before. But you said
11 you wouldn't take -- you wouldn't worry about your
12 contract until the total compensation plan was passed by
13 the board; is that right?

14 A Correct.

15 Q And that total compensation plan included a
16 long-term incentive plan as well; right?

17 A Correct.

18 Q So you didn't want to enter into your
19 permanent CEO contract until the board approved the
20 long-term incentive plan as well; correct?

21 A I didn't want to enter into the contract until
22 all total compensation for the whole company had been
23 established.

24 Q And that would also include the long-term
25 incentive plan; right?

1 A It would include benefits. It would include,
2 you know, the terms for collective bargaining. It would
3 include everything, so -- taking care of all 2,000 --
4 and yes, it would include the long-term as well.

5 Q Your contract contains a Form of Separation
6 and Transition Agreement that we discussed, right, if
7 you're terminated within the first six years?

8 A Correct.

9 Q It's a pretty substantial agreement with some
10 pretty substantial benefits; would you agree?

11 MR. MULLEN: Object to the form of the
12 question.

13 You can answer.

14 A I don't agree.

15 Q You don't agree that a 12-month --

16 A I've seen -- no. I've seen far more
17 substantial employment agreements through my career as a
18 CEO and as a private equity.

19 Q Okay. Let me rephrase the question.

20 Your Form of Separation and Transition
21 Agreement contains pretty substantial benefits for a
22 public sector job, doesn't it?

23 MR. MULLEN: Object to the form of the
24 question.

25 You can answer.

1 A I can't opine on that. I'm not a public
2 sector expert -- employment expert.

3 Q Are you aware of any other public sector job
4 where you've seen a CEO with a Form of Separation and
5 Transition Agreement like yours?

6 MR. MULLEN: Object to the form of the
7 question.

8 You can answer.

9 A Paul McElroy got a Form of Separation and
10 Transition Agreement. I don't have -- we asked for a
11 copy of it, and we haven't received it. But he had a, I
12 want to say, nine month or six month or something like
13 that.

14 Q Have you seen his form of separation
15 agreement?

16 A I was on the board when it was approved, and
17 it had a whole bunch of indemnifications, and it paid
18 his salary for that period of time.

19 Q And do you think that your form of separation
20 agreement mirrors his? Does yours have increased
21 benefits over his?

22 A We've asked for that and have not received
23 that.

24 Q Don't know?

25 A I can -- is it going to mirror his? Probably

1 not, because, you know, these documents were drafted by
2 different attorneys.

3 (Exhibit Number 3 was marked for
4 identification.)

5 BY MR. GRANAT:

6 Q Show you Exhibit 3. Give you a minute to take
7 a look at that. Give your attorney a copy of it as
8 well.

9 A Okay.

10 Q And this Exhibit 3 is a series of emails
11 discussing Paul McElroy's Transition Services Agreement;
12 correct?

13 A Yep.

14 Q And his transition services agreement, the
15 two-page document is attached?

16 A Yes.

17 Q And through the email, Jon Kendrick, who's the
18 VP of HR -- is that right --

19 A Correct.

20 Q -- is discussing the agreement with you?

21 A Correct.

22 Q And then at the top, there's an email from you
23 to Jessica Lutrin.

24 A Uh-huh.

25 Q Who is Jessica Lutrin?

1 A She's special counsel to OGC at Pillsbury for
2 employment-related matters.
3 Q And you say special counsel to OGC. She was
4 working on JEA matters; correct?
5 A Yes.
6 Q Did you have a lot of contact over the last
7 year with Jessica Lutrin?
8 MR. MULLEN: Object to the form of the
9 question.
10 You can answer.
11 A Define "a lot."
12 Q You don't know what "a lot" means?
13 MR. MULLEN: Object to the form of the
14 question.
15 A She worked a lot with JEA employees on a
16 number of employment-related matters, including
17 Kevin Hyde. I talked to her more around the time of,
18 you know, the employment agreement and that kind of
19 stuff.
20 Q Have you met with Jessica Lutrin in person?
21 A Yes.
22 Q Over a number of matters; right?
23 A Yes. But with -- not -- not one-on-one. Just
24 I met with her on --
25 Q You met with her regarding the PUP, regarding

1 the ITN; right?
2 A Yeah, in a collective meeting with 40 or 50
3 people.
4 Q And you had emails or at least were copied on
5 emails to and from Jessica Lutrin; correct?
6 A I have this one. I'm not sure I was copied
7 on -- if I was copied on others.
8 Q So your email to Jessica Lutrin says, "FYI.
9 Here is it" -- and I'll represent what's attached to
10 that email is this Paul McElroy contract.
11 "Looks like we will need to add some
12 additional provisions."
13 A Okay.
14 Q Right?
15 A Yeah.
16 Q So tell me about what you were telling
17 Jessica Lutrin, the Pillsbury attorney, and why.
18 A Well, I don't recall this email, but
19 clearly --
20 MR. MULLEN: And, Sean, I'll note for the
21 record I don't think this was one of the documents
22 you provided to us ahead of time. I'm trying to --
23 you made some effort to provide me with some
24 documents before today, but Mr. Zahn may need time
25 to review a document like this that he hasn't seen

1 before or hasn't seen recently.
2 MR. GRANAT: Sure.
3 BY MR. GRANAT:
4 Q And if you want to take a minute to review
5 this further, I told you at the beginning, I want you to
6 take all the time you need --
7 A Sure.
8 Q -- to review documents.
9 A It looks like I'm providing that form of
10 separation, transition to her, again, as a starting
11 point for what I guess ultimately became the separation,
12 transition agreement.
13 Q And what provisions did you suggest be added
14 to your separation agreement? What did you mean?
15 A My recollection -- I'm going to hold these up
16 and look at them side by side.
17 Q Sure.
18 A For example, there's a lot of severability,
19 survivability, notices, waivers, typical paragraphs that
20 just are in normal contracts, employment agreements.
21 Compliance with tax issues, you know, execution, entire
22 agreement authority. None of those typical legal
23 provisions exist within this transition services
24 agreement.
25 Q Did you see that Paul McElroy had a mutual

1 release included in his?
2 A Does he?
3 His has the pension and supplemental pension
4 plan. But it did have -- this does not look like the
5 final one.
6 If it is -- and the reason I recall that is
7 there was a motion at the board meeting to include
8 indemnification for Paul McElroy and I believe a
9 release, but -- and that would be on television, from my
10 recollection of that board meeting.
11 Q You think Paul McElroy's had a mutual release
12 as well?
13 A Yeah. And the reason I know that is he was
14 hotly debating that on his -- during his resignation.
15 And actually, I asked the question in the board meeting,
16 Paul, is there anything in your -- not in this agreement
17 that you wanted in this agreement?
18 And his statement was indemnification, whether
19 it was, you know, fulsome and robust as a release as
20 well. But -- and I believe -- and there was a motion at
21 that board meeting to include that type of language as
22 part of his protections. And that would be on -- well,
23 whatever the board, you know, meeting was that -- where
24 he resigned.
25 Q Now, you said that there were standard

1 contract terms that -- when I asked you what the
 2 additional provisions were, you said standard contract
 3 terms like severability and things like that.
 4 A Yeah.
 5 Q How were you aware of what standard contract
 6 terms should be included in a separation and transition
 7 agreement?
 8 A Again, from my experience of having reviewed
 9 thousands of legal documents in my career, I know what
 10 looks like a short-term contract and what actually has
 11 appropriate contractual legal provisions. I mean ...
 12 Q You were on the board when this Paul McElroy
 13 Transition Services Agreement was entered into?
 14 A I was.
 15 Q Why didn't you insist on those standard
 16 appropriate contract terms being put into Paul McElroy's
 17 Transition Services Agreement as a board member?
 18 A He was willing to accept it.
 19 Q The email, Exhibit 3, your message to Jessica
 20 is, "FYI. Here is it. Looks like we need to add some
 21 additional provisions."
 22 Would you agree that this is evidence that
 23 there had been a prior conversation with Jessica Lutrin
 24 and you regarding your transition and services
 25 agreement?

1 MR. MULLEN: Object to the form of the
 2 question.
 3 You can answer.
 4 A Certainly at least a request for a -- for Paul
 5 McElroy's separation, transition agreement.
 6 Q Do you recall any other prior conversation or
 7 what that request was from Jessica?
 8 A So the form of separation, transition
 9 agreement and mutual labor and release as well as the
 10 form employment agreements for both myself and the
 11 senior leadership, Jessica was working with Lynne and
 12 Kevin Hyde, and they were trying to complete a lot of
 13 the -- you know, finish all of the forms for
 14 presentation, you know, and discussion with the board.
 15 And I remember, you know, Melissa Dykes and
 16 Herschel and Ryan and Kerri and a whole bunch of people,
 17 you know, it was provided to them because it was --
 18 again, it was a form for the senior leadership.
 19 And I think the question was from -- and the
 20 impetus of this email was the draft prepared by Shane
 21 Muñoz, our attorney, and provided to you, did not
 22 actually have a form document.
 23 And so, you know, my understanding was that
 24 OGC and Pillsbury and Foley were trying to -- instead of
 25 have a Section 3.1.6 that just left a, hey, you'll have

1 a contract, but it's not defined, that they said, well,
 2 we should actually define it. And so then this was me
 3 providing the prior form of the CEO's separation,
 4 transition agreement.
 5 Q Okay. So what I was asking you is, do you
 6 recall a prior conversation or request from
 7 Jessica Lutrin?
 8 A Request for?
 9 Q For the transition services agreement or
 10 information about provisions that may be required?
 11 A I'm not sure I understand --
 12 MR. MULLEN: Object to the form of the
 13 question.
 14 A -- the question.
 15 Q Okay. Let's back up.
 16 Exhibit 3 is an email from you to Jessica, it
 17 says "Here it is."
 18 A Yeah. And so like I said, this would appear
 19 to be a response to her request for that document.
 20 Q What I'm asking you is, do you recall her
 21 request or do you recall prior conversations with
 22 Jessica regarding this email or her request?
 23 A I don't recall prior conversations -- this is
 24 July 9th?
 25 Q Because would you agree you didn't copy anyone

1 else; you sent this directly to Jessica; right?
 2 A Correct.
 3 Q And so just so I'm clear, you were the
 4 permanent CEO at the time; is that right?
 5 A Correct.
 6 Q And you believed it was appropriate for the
 7 permanent CEO to be telling Pillsbury, an attorney who
 8 is representing JEA, that additional provisions needed
 9 to be included in your employment contract?
 10 MR. MULLEN: Object to the form of the
 11 question.
 12 You can answer.
 13 A I was being responsive to a request. And to
 14 remind you, April Green and Camille Johnson were part of
 15 the negotiations for these and reviewed all these
 16 documents. As to whether or not they interfaced -- how
 17 much they interfaced, I don't know the answer to that.
 18 Q Do you know whether April Green had
 19 conversations with Pillsbury or Foley & Lardner
 20 regarding your contract?
 21 A No idea.
 22 Q Do you know whether April Green or
 23 Camille Lee-Johnson had conversations with Lynne Rhode
 24 regarding your employment contract?
 25 A Part of a standard process for getting ready

1 for board meetings was oftentimes for April Green to
2 talk to Lynne Rhode about substantive resolutions and/or
3 documents that were going to be contained in the board
4 packages. So do I know? I don't have specific evidence
5 of that.

6 Q Okay.

7 A But it would seem logical to me that they
8 would.

9 Q So I think you've told me this before, but did
10 you specifically discuss the terms of your contract,
11 Exhibit 1 and 2, with April Green?

12 A Yes.

13 Q You discussed all the terms that were
14 contained in there?

15 A I would review -- in board packages, I would
16 review all documents and prepare them and make sure that
17 they had them to review ahead of time and then answer
18 any questions that they may have.

19 Q So I think there's a difference, would you
20 agree, between handing someone a stack of documents and
21 saying, here they are, look through it, and let me know
22 if you have any questions. There's that, and then
23 there's going through something with someone page by
24 page, line by line. Agreed, that those are two separate
25 things?

1 A Yes, I would agree.

2 Q Okay. Did you go through your employment
3 contract provision by provision with April Green?

4 MR. MULLEN: Object to the form of the
5 question.

6 A From my recollection, yes. I went through --
7 now, did I go, you know, every single little line?
8 That's not how April Green reviewed documents. That's
9 not how a lot of my board members reviewed documents.

10 A lot of times you'd get -- we'd give it to
11 them, give them an opportunity to review, say call me,
12 you know, let's talk about this. Here are the major
13 terms that you need to be aware of. So I would have
14 definitely reviewed the major terms.

15 Q With April Green?

16 A Yes. And I actually reviewed major terms
17 with, I want to say, Alan Howard, Reverend Newbill,
18 Camille, because, again, the standard procedure for
19 getting ready for a board meeting would be to schedule
20 meetings with each one of the board members and review
21 the major documents.

22 Q I understand your standard procedure, but I'm
23 asking you, did you go over -- did you sit down with
24 April Green and have the contract in front of both of
25 you and talk about it?

1 A Yes.

2 Q Okay. Did you sit down with
3 Camille Lee-Johnson and have your contract in front of
4 you and talk about your contract with her?

5 A I don't know if we sat down, but we -- or did
6 it over the phone, but we talked about it.

7 Q Do you know if she had your contract in front
8 of her when you had that conversation?

9 A Again, I don't recall if it was in person or
10 over the phone. And if it was over the phone, I can't
11 prove what she had in front of her.

12 Q Did you have a sit-down with Reverend Newbill
13 to discuss your contract?

14 A I did.

15 Q Did you have a sit-down with Andy Allen to
16 discuss your contract?

17 A He would have been just coming on the board.
18 I don't recall.

19 Q Think it might have been most important to
20 have a sit-down conversation with a new board member to
21 discuss your contract that he would be voting on?

22 MR. MULLEN: Object to the form of the
23 question.

24 You can answer.

25 A My view is board members are sophisticated

1 individuals that have the ability to review documents,
2 and they're on a -- they're on a very sophisticated
3 board and have the ability to review documents and ask
4 appropriate questions as board members. I certainly
5 would, as a board member.

6 Q So your position is that it's on the board
7 members to review the documents and either understand
8 them or let you know that they don't?

9 MR. MULLEN: Object to the form of the
10 question.

11 You can answer.

12 A I'm telling you what I would do as a board
13 member. And what I normally -- the normal -- what is
14 normal process for any board member that's going to vote
15 on something is to thoroughly review, analyze, and
16 understand all the provisions.

17 In fact, I believe the resolution that
18 April Green signed approving all of these documents
19 specifically says that she reviewed, analyzed, and had
20 an opportunity.

21 Q So back to my question. You didn't feel the
22 need to have a special sit-down with Andy Allen to go
23 over your contract?

24 A That's not what I said. I said I don't recall
25 specifically reviewing this with him. But that's just a

1 recollection issue. I don't -- I don't recall.
 2 Q Okay. And --
 3 A I did -- Alan Howard, I did.
 4 Q You had a sit-down with Alan Howard?
 5 A Uh-huh.
 6 Q What about Kelly Flanagan, did you sit down
 7 with her to discuss your contract?
 8 A Kelly Flanagan at the time was flying back and
 9 forth between London and San Francisco, so my guess
 10 would be that would be a phone call.
 11 Q Why do the rest of the senior leadership teams
 12 have contracts?
 13 A Great question. So in discussing with
 14 April Green and the board members the, as we all know,
 15 politically charged strategic planning process, one of
 16 the scenarios that was being contemplated for voting on
 17 in July was Scenario Number 2 that would have
 18 necessitated a substantial reduction in the force,
 19 including a number of the senior leadership team
 20 members, including myself.
 21 And so we talked about -- or we talked about
 22 the need to make sure that you had senior leadership
 23 team members that could effectively manage through that
 24 type of transition in the event that Scenario 2 was
 25 effectuated or voted on and approved by the board in

1 July, because that was one of the things under
 2 consideration.
 3 In addition, you know, I had expressed to the
 4 board that it was my belief that, you know, senior
 5 leadership team members -- and it's very normal in the
 6 industry for vice presidents and above to have
 7 employment agreements that give them protection, because
 8 they're in high turnover roles and they have a lot of
 9 exposure.
 10 Q Are you aware of any other public sector
 11 utilities where senior leadership teams have employment
 12 contracts?
 13 A I know it's very normal for the CEO. As to
 14 whether the large public power entities go another layer
 15 down, I don't have specific knowledge of it, but it
 16 wouldn't surprise me.
 17 Q Within the consolidated City of Jacksonville,
 18 are you aware of anyone other than CEOs of independent
 19 agencies who have employment contracts?
 20 A I have not reviewed all the other independent
 21 agencies.
 22 Q And so if I understand correctly, Scenario 2
 23 contemplated reduction in force of many senior
 24 leadership team members, including yourself?
 25 A It did.

1 Q And that's because Scenario 2 would require
 2 JEA to cut costs, including payroll, as a major cost
 3 cut; is that right?
 4 A Yeah. In the next year or two, 200 -- the
 5 EBITDA will probably drop from 750 million to about
 6 550 million, so that's about \$200 million of
 7 profitability that will be lost.
 8 And so either you have to raise rates
 9 substantially in order to cover that cost, that
 10 additional expense of Vogtle, as well as the additional
 11 expense of increasing costs -- throughout the
 12 organization, or you need to cut costs, and that could
 13 be done through paying off debt, reducing cutbacks, as
 14 well as -- one of the initiatives was to do a reduction
 15 in force, yeah.
 16 Q And so if Scenario 2 proceeded, JEA would be
 17 in a dire situation that would require reduction in
 18 force; would you agree with that?
 19 A No. I think that's a perspective that media
 20 has painted. I don't -- all the scenarios we've
 21 produced are viable business scenarios. It's just a
 22 matter of a policy decision as to whether or not you
 23 want the customer to have to pay for all the additional
 24 expenses increasing or you want to, you know, take cost
 25 out of the business and thereby not increase rates on

1 your customers substantially. I don't consider that
 2 dire. That's just normal business.
 3 Q All right. But under Scenario 2, you
 4 negotiated for yourself that if you were part of the
 5 reduction in force, you would receive 12 months of
 6 continued pay?
 7 A So part of that discussion, number one, was we
 8 have a very complicated lawsuit around Vogtle, which is,
 9 you know, our nuclear contract that I'm a key party in,
 10 that don't know the period of time that that would take
 11 to resolve, if ever. So there was a discussion about
 12 how long would that take.
 13 There was a discussion about you don't just do
 14 a reduction in force overnight. You have to manage
 15 through it and establish new processes and protocols and
 16 make sure that the organization structure was in place.
 17 There was we have -- there were a number of,
 18 call it major tail issues that that 12 months was
 19 intended for me to provide those services. And again,
 20 the idea for it really came from Paul McElroy, because
 21 one of the reasons we -- the board asked him to stick
 22 around was to provide guidance on Vogtle, because there
 23 was substantial changes in the cost of that project at
 24 the time of his departure.
 25 Q You're aware now that privatization is off the

1 table; right?
 2 A As I understand it.
 3 Q And the situation JEA finds itself in now is
 4 with a senior leadership team that all has contracts,
 5 employment contracts; correct?
 6 A Yes.
 7 Q Do you think that it's appropriate for the
 8 senior leadership team of a municipal utility under
 9 today's circumstances to have the benefits of the
 10 contracts that they currently have?
 11 MR. MULLEN: Object to the form of the
 12 question.
 13 You can answer.
 14 A Define "appropriate."
 15 Do I -- yes. So did the board of directors,
 16 clearly, because they put them in place, and that was
 17 part of the discussion in June and July. So it would
 18 seem that not only I, but several board members thought
 19 it was appropriate.
 20 (Exhibit Number 4 was marked for
 21 identification.)
 22 BY MR. GRANAT:
 23 Q All right. Let's look at Exhibit 4. Take a
 24 minute to look through that, please.
 25 A Yep.

1 Q All right. So are you familiar with
 2 Exhibit 4?
 3 A I am.
 4 Q And it's -- the first thing is a check to you
 5 for \$4,316.04?
 6 A Correct.
 7 Q And then there's some payment requests
 8 relating to some hotel rooms in Charleston,
 9 South Carolina?
 10 A Correct. For Ryan, Melissa, and Julio.
 11 Q So what was this for? What happened here?
 12 A So I took -- well, Julio, Ryan, myself,
 13 Melissa, and Herschel all went to Charleston to sit down
 14 and talk about, you know, where strategic planning was
 15 going and talk about the different permutations of it.
 16 I paid for my own room, and I believe Herschel
 17 paid for his own room. And I paid for -- well, I
 18 expensed Ryan and Julio and Melissa's rooms.
 19 Q And who approved this trip? You?
 20 A Normally when we would travel, my EA would ask
 21 for an approval. That would be handled by my EA.
 22 Q Ask for an approval from who?
 23 A From the Chair.
 24 Q Do you know if the Chair approved this trip?
 25 A So the Chair would only have to approve it if

1 I actually expensed my own expenses. So perhaps because
 2 these aren't -- these are expenses for my direct reports
 3 and I did not expense my own expenses, that may be why
 4 the Chair didn't, you know -- I don't know if she was
 5 asked or not, but she --
 6 Q You spent two nights in Charleston; is that
 7 right?
 8 A Correct.
 9 Q And it was with Ryan Wannemacher, Julio,
 10 Melissa Dykes, and Herschel Vinyard and yourself?
 11 A And our wives -- or spouses.
 12 Q And what was discussed at this meeting?
 13 A So we went through a whole bunch of strategic
 14 planning options. We went through status quo -- because
 15 we started strategic planning in January.
 16 We went through traditional response. We went
 17 through the legal constraints that -- you know, because
 18 what was starting to get framed up was that there were
 19 these constraints as a government entity around how do
 20 you -- you know, whether it's lending of credit,
 21 constitutional limitations, those kinds of things.
 22 We had a full day and a half of talking
 23 about -- so this was in April. Then we had May was our
 24 presentation to the board of directors around the status
 25 quo and talking about, well -- all that.

1 We did talk about whether or not
 2 recapitalization would potentially be an alternative,
 3 but we touched upon it. Certainly, you know, didn't do
 4 much in the way of work on that. We did talk about
 5 timeline of working with McKinsey. We talked about a
 6 lot of things.
 7 Q Why did that take place in Charleston?
 8 A Team building. I mean, Herschel was new.
 9 Julio was new. I wanted the spouses to meet each other.
 10 Q Mr. Zahn, these were over \$700-a-night hotels;
 11 right?
 12 MR. MULLEN: Object to the form of the
 13 question.
 14 A Okay.
 15 Q I mean, take a look at the invoices and you
 16 tell me. \$629 and \$88 in tax per night.
 17 A Okay.
 18 Q Yes?
 19 A Yes.
 20 Q Why did you stay at \$700-a-night hotel rooms
 21 to discuss JEA business?
 22 A That's where the team decided to stay.
 23 Q And you expensed these 700-a-night hotel rooms
 24 and JEA paid for them; right?
 25 A For Melissa, Ryan, and Julio.

1 Q Two nights each; right?

2 A Correct.

3 Q Do you think that's good stewardship of JEA's
4 money?

5 MR. MULLEN: Object to the form of the
6 question.

7 You can answer.

8 A In my experience as an executive, team
9 building with your team is normal course. I can
10 certainly appreciate different people's perspectives,
11 but ...

12 Q You said that that's where the team decided to
13 stay.

14 A Uh-huh.

15 Q So everyone took a vote and decided, or -- is
16 that what happened?

17 A I don't know if we did ballots.

18 Q Wasn't it your ultimate decision on where you
19 would stay, as the CEO?

20 A My ultimate decision? Certainly I -- my
21 managerial style with my team was one of -- I didn't
22 give directives. I think we researched a number of
23 places to stay and, you know, wanted to get out of town
24 over, you know, a few nights together so that we could
25 spend time together, so the spouses could spend time

1 together.

2 Q Well --

3 A Because we were working 100-hour workweeks.

4 Q You understand that JEA is a public municipal
5 business --

6 A Yes.

7 Q -- right?

8 And as CEO, you were in charge; right?

9 A Correct.

10 Q And you were in charge of every dollar of
11 JEA's money ultimately, weren't you?

12 A Which is why I cut substantial costs.

13 By the way, you know, large public power, if
14 you -- I mean, if you go look at the other 25 large
15 public power, they -- there's an LPPC, which is a large
16 public power conference group. They travel around to
17 Ritz Carltons, Montauk, Asheville.

18 I actually went to the first one and decided
19 that it was not a good use of funds and so actually
20 stopped going to the CEO summits because I was trying to
21 be a good steward of public dollars.

22 So to use this as a -- an item in isolation,
23 you know -- I also cut \$180,000 a year from -- of --
24 well, actually, more than 180,000. Over \$180,000 of
25 excess, call it memberships in organizations where JEA

1 derived no value. So, you know, we also cut almost
2 \$30 million in interest expense, which was \$100 million
3 for the taxpayers.

4 So, you know, when I look at being a good
5 steward, yes, I think I've been a very good steward of
6 JEA's money.

7 Q Well, regardless -- and in Exhibit 4 -- you
8 were the CEO, and you could have decided to have this
9 team building in Jacksonville rather than Charleston;
10 correct?

11 A Yes.

12 Q And as the CEO, you could have decided that
13 you could go to Charleston and stay at a \$150-a-night
14 hotel rather than a \$700-a-night hotel; correct?

15 A The whole team could have decided that, yes.

16 Q And you could have overridden the team as the
17 CEO; right?

18 A You know, again, my management style isn't to
19 sit and be a dictator. It's to build consensus and be a
20 team.

21 Q So are you telling me that if your senior
22 leadership team told you that they wanted to go have a
23 week retreat at a Ritz Carlton that that's what would
24 happen and you, as CEO, wouldn't stop it?

25 MR. MULLEN: Object to the form of the

1 question.

2 You can answer.

3 A That's an interesting hypothetical. I think I
4 would have a pretty strong debate with them about
5 whether or not that -- you know, we needed to have a
6 week retreat at a Ritz Carlton. But I always respected
7 their opinions.

8 Q And so at the end of the day, under that
9 hypothetical, if the team still said no, we'd like to do
10 this, you would go along with it?

11 A I am the CEO, so I have the ability to make
12 that decision.

13 Q Are travel expenses accounted for differently
14 at JEA than other types of business expenses?

15 MR. MULLEN: Object to the form of the
16 question.

17 A I don't know how travel expenses are accounted
18 for.

19 Q You don't know whether travel expenses are
20 kept and maintained separately?

21 A I do not.

22 My -- what I would do is submit receipts to my
23 EAs, and my EAs would then submit receipts to -- I don't
24 even know how the expenses get processed.

25 Q Let's talk about the scenarios, Scenario 1, 2,

1 and 3. You know what I'm referring to?
 2 A Yes, sir.
 3 Q We're going to get into those in detail, but
 4 tell me in general, when did you first start -- I
 5 guess -- and Scenarios 1, 2, and 3 are what you consider
 6 to be part of the strategic planning; is that right?
 7 A Yeah. And 3 has 3(A) to 3(F), right. Yeah,
 8 and 2 has 2(A) and 2(B), correct.
 9 Q But that's all part of the strategic planning?
 10 A Process.
 11 Q Okay. When did you first start working on
 12 that strategic planning and come up with those
 13 scenarios?
 14 A So I believe the RFP for McKinsey was issued
 15 in December.
 16 Q Of '18?
 17 A Of '18.
 18 We gave a presentation -- I believe McKinsey
 19 came in in January and gave a presentation to the board.
 20 If you have a board package from the January board
 21 meeting. That's one.
 22 We did certainly in the transition when I
 23 became -- and now that I can go back further.
 24 In the interim -- as the interim CEO, one of
 25 the things that I did was put together a transition plan

1 that was reviewed with the board at every meeting from
 2 May through -- well, October. And it talked about, you
 3 know, migrating to different -- taking care of the
 4 balance sheet, taking care of expenses, hiring a
 5 permanent CEO, agreeing on the different ways we measure
 6 value, which was done in August of '18.
 7 And then we got to really doing full-blown
 8 strategic planning starting in January.
 9 Q Of '19?
 10 A Yeah.
 11 Now, we did -- and I did have off-sites with
 12 senior leadership where we would talk about the
 13 struggles of JEA. A lot of that would be -- we talked
 14 about morale. We talked about constraints.
 15 You know, one of the things that pushed the
 16 senior leadership team on while I was the interim was,
 17 hey, what are the things you'd like to do that you can't
 18 do? And so there was a whole lot of just getting a
 19 groundwork of how do you measure value, what does
 20 success look like, what have been the challenges in the
 21 past.
 22 There's a strategic planning document from
 23 2013 that had a whole bunch of new revenue businesses
 24 that never had been implemented. There was the vision
 25 and the mission. And so if you want to think about

1 strategic planning, I guess it started -- you know, I'm
 2 going to revise the question. The actual strategic
 3 planning started in May or June of 2018 --
 4 Q Okay. I'm just asking you to focus really on
 5 the scenarios. When did the different scenarios and
 6 options come to light and work started on those?
 7 A I would imagine, you know, as with all
 8 scenarios, that you get framed up, right? So you just
 9 don't come in one day and go, here's this, but --
 10 Q All right.
 11 (Exhibit Number 5 was marked for
 12 identification.)
 13 BY MR. GRANAT:
 14 Q Let me give you Exhibit 5. Exhibit 5 is the
 15 minutes from the May 2019 board meeting --
 16 A Okay.
 17 Q -- is that correct?
 18 A Yes.
 19 Q And if you look on the second page under
 20 Agenda Item IV, it says, Strategy?
 21 A Uh-huh.
 22 Q And JEA's last ten years and the status quo
 23 baseline were presented?
 24 A Yep.
 25 Q And then in bold at the bottom it says, "Board

1 Chair Green requested a motion that management come back
 2 with strategic plans and options."
 3 A Uh-huh.
 4 Q Right?
 5 Is that, to your knowledge, the first
 6 direction from the board that you got to begin working
 7 on strategic plans and options and bringing them
 8 something?
 9 A That's the first time they asked us to bring
 10 them something for consideration.
 11 Q Okay.
 12 A The -- you know, as a management team, it
 13 would be wholly appropriate for us to be able to
 14 whiteboard and say, what does the world look like? If
 15 you recall, and still to this day, many people didn't
 16 even have a thorough understanding of what the last ten
 17 years of JEA looked like.
 18 And so one of the things we were trying to do
 19 is to be very transparent and kind of pull the curtain
 20 back so that you could you say, well, here's what Vogtle
 21 is, here's what employee morale is -- that's why we did
 22 the OHI in February -- here's what the last ten years of
 23 financial performance looked like, here's -- so, you
 24 know, there would be a myriad -- I think it would be
 25 normal course for a management team to be thinking about

1 all the different permutations of a business in order to
2 try and solve business issues.

3 Q Prior to this May 2019 direction from the
4 board to come back with strategic plans, did you have
5 authority to conduct any activities tied to
6 privatization of JEA?

7 A There was a May 2018 that said, you know,
8 don't conduct activities, but -- define activities. We
9 didn't engage any consultants. We -- in terms of
10 privatization. We didn't engage any banks. We didn't
11 engage law firms.

12 We didn't -- now, it is perfectly reasonable
13 for a management team to be talking about a whole bunch
14 of other -- you know, what are the options. And
15 privatization was not a new concept, as -- you know,
16 because it was actually heated when -- it was a heated
17 debate when I became the CEO, actually.

18 Q Sure. Let me show you that May '18 -- May
19 2018 board --

20 A Sure.

21 Q -- minutes package.

22 (Exhibit Number 6 was marked for
23 identification.)

24 BY MR. GRANAT:

25 Q And so Exhibit 6 is the board minutes from

1 May of 2018. And on Page 5 of Exhibit 6, top part of
2 the page, it says, "Board members held discussions
3 regarding privatization. On motion by Vice Chair Cumber
4 and second by Secretary Newbill, the board unanimously
5 approved, absent a future board decision, any activities
6 tied to privatization efforts would be put on hold."

7 A And they were.

8 Q And you were aware of that, correct?

9 A And we complied. And the reason I know we
10 complied is because when the board Chair passed this
11 motion in May was we -- when we, as a management team,
12 in earnest started looking at all the different other
13 real options.

14 Now, we talked about a lot of things, you
15 know, but we didn't actually go pursue privatization.

16 Q And so in May of 2018, did you understand what
17 the board meant when they said any activities tied to
18 privatization efforts would be put on hold?

19 A My understanding would be -- and the reason I
20 know -- I'm very cognizant of this issue is because I
21 was aware of this issue, consulted with OGC, Lynne Rhode
22 and Herschel Vinyard. And the advice I received from --
23 as a CEO was, look, talking about things and kind of
24 doing hypotheticals, that's not an activity. Actually
25 pursuing in earnest and engaging and -- you know, that's

1 an activity.

2 Q Okay. And so --

3 A And so we literally, because of this motion
4 and then April Green further clarified the motion in the
5 June board meeting -- and actually, I spoke with her
6 numerous times about this -- this was really the time
7 where we, as a management team, said, okay, we now have
8 flexibility to go look at any and all options.

9 Q And when saw "now", are you referring to
10 May 28th of 2019?

11 A Correct.

12 Q Okay.

13 A In terms of really earnestly developing the
14 plans.

15 Q So --

16 A So after this we developed the ITN. We
17 developed -- you know, we went through all of those
18 things.

19 Q I just want to understand what you're saying,
20 then. You understand that on May 15, 2018, the
21 direction was take no activities regarding
22 privatization?

23 A And as I got counsel from OGC as well as
24 from --

25 Q Counsel from OGC meaning Lynne Rhode?

1 A Yes. And then from -- and also from Herschel
2 Vinyard, who was my CAO.

3 We specifically were aware of this, and while
4 as a management -- and the advice I received was that,
5 hey, look, you can talk about things, you can -- you
6 know, you can think about kind of what are all the
7 options in the future, and -- but there was a line that
8 we didn't want to go past until the board approved it.

9 Q And then so your understanding is on
10 May 28, 2019, that's when the board gave you the
11 authority to then take action and really pursue or seek
12 what's out there regarding privatization?

13 A In terms of truly pursuing it, yes.

14 MR. GRANAT: Let's go ahead and take a short
15 break.

16 (Recess taken from 11:07 a.m. to 11:21 a.m.)

17 THE WITNESS: One of your earlier questions
18 was kind of around the appropriateness of senior
19 leadership and all the employment agreement stuff.
20 And the reason -- one of the main reasons why I
21 thought OGC had completed its thorough review is
22 because of this July 22nd document that was --
23 because I refused to go forward with any of the
24 things in the July meeting until Jason Gabriel,
25 Lawsikia, and Lynne had signed off on it.

1 Now, to me, this -- what I read this was as
2 OGC saying that it was appropriate and that it had
3 done its review all the way to the top.

4 I just wanted to -- I was thinking about that,
5 because that was a really critical point where I
6 know that, from my understanding, OGC was doing a
7 lot of work with JEA and special counsel in the
8 periods of June and July, and I wanted to make sure
9 that that was memorialized before we ever moved
10 forward.

11 And I just wanted to help you -- in my frame
12 of mind in terms of why I thought, you know, some
13 additional checks and measures on kind of why I
14 didn't question the appropriateness, because I felt
15 as a broader consolidated government, we had
16 reviewed a lot of that.

17 MR. MULLEN: Sean, would you mind if we had
18 this July 22, 2019, memo marked as an exhibit?

19 MR. GRANAT: If you'll just hold on. Give me
20 one minute on that, please.

21 BY MR. GRANAT:

22 Q Okay. Yeah, Mr. Zahn, I was definitely going
23 to get to that memo, so --

24 A Yeah.

25 Q -- we just take things a little out of order.

1 A I apologize. It dawned on me that --

2 MR. GRANAT: No, that's fine. Thank you.
3 Are we up to 6?

4 MR. POWELL: Number 7.
5 (Exhibit Number 7 was marked for
6 identification.)

7 BY MR. GRANAT:

8 Q What I'm going to do is mark as Exhibit 7 a
9 binder that is actually the documents from
10 Councilmen Rory Diamond and Ron Salem's --

11 A Okay.

12 Q -- meeting of -- is it December 16th?
13 Although it says a different date on the front. And I
14 have a copy for you and your counsel that we'll mark.

15 MR. MULLEN: Thank you. I'll --

16 MR. GRANAT: And --

17 MR. MULLEN: This is the officially marked
18 exhibit.

19 MR. GRANAT: Yeah. One of those is for you
20 and one is for the record.

21 THE WITNESS: Thank you.

22 MR. GRANAT: And -- yeah, okay.

23 So these are all Bates stamped as presented at
24 the meeting.

25 MR. MULLEN: Understood. Thank you.

1 BY MR. GRANAT:

2 Q And if you look at Bates stamp JEA 344.

3 MR. MULLEN: What's the tab number, please?

4 MR. GRANAT: Tab 5, but they're all just
5 sequentially Bates stamped.

6 THE WITNESS: Yes, sir.

7 BY MR. GRANAT:

8 Q Okay. So is the document in Exhibit 7,
9 JEA 344, is this the July 22nd memo that you were
10 talking about?

11 A This is -- yeah. So I talked to Jason Gabriel
12 and said, look, you know, there's a lot of, you know --
13 there's a lot of legal documents that I want to make
14 sure OGC had reviewed.

15 And then Herschel, I believe, and Lynne Rhode,
16 to my understanding, were working with all of OGC to
17 make sure that, you know, the retention -- all the
18 different things that were -- the legal documents were
19 thoroughly reviewed.

20 I know, you know, since then they pointed to
21 the, you know -- the footnotes, right, of relying on
22 special counsel, but that doesn't seem abnormal.

23 Q So you were aware of this July 22nd memo and
24 the contents of it?

25 A Yes.

1 Q On July 23rd at that big board meeting; right?

2 A My understanding is that's the reason why
3 Lynne Rhode was able to represent to the board that OGC
4 had reviewed everything.

5 Q Well, isn't it true that you actually sent
6 Lynne Rhode and Herschel to talk to Jason Gabriel and
7 sort this out before the July 23rd, 2019, meeting?

8 A I absolutely --

9 MR. MULLEN: Object to the form of the
10 question.

11 You can answer.

12 A I absolutely wanted to make sure OGC was fully
13 signed off on everything we were doing.

14 Q Okay. So I want to just point you to and read
15 of some of this memo, JEA 344. And I'm reading from the
16 third paragraph, second sentence. It says, "The Office
17 of General Counsel, in consultation with outside
18 counsel" -- Footnote 2 -- "has reviewed the proposed
19 resolutions associated with each option, Resolutions
20 19-06 through 19-10, and we believe the board is
21 authorized under its charter provisions, subject to
22 applicable laws, to proceed with implementing through
23 formal action one of the options as presented."

24 A And it references Resolutions 2019-06 to
25 2019-10.

1 Q Okay. Right.

2 And then let's look at Footnote 2. It says,
3 "Office of General Counsel engaged and relied on various
4 outside specialized counsel to assist JEA in the
5 preparation of the resolutions and underlying documents
6 required for each option presented by SLT. Accordingly,
7 the scope of this memorandum does not address the
8 legality of the underlying documents drafted to
9 implement such resolutions, as such legality has been
10 confirmed and will continue to be developed and approved
11 by special counsel to JEA appointed and supervised by
12 the Office of General Counsel pursuant to the course of
13 action approved by the JEA board."

14 Right?

15 A Yeah. I would imagine that it -- OGC does
16 rely on special counsel a lot.

17 Q And so --

18 A Tax counsel, bond counsel.

19 Q -- what Jason Gabriel was saying is the
20 board's authorized to proceed subject to legal review
21 and that OGC was still going to review these things for
22 legality; isn't that right?

23 MR. MULLEN: Object to the form of the
24 question.

25 A That's not how I read -- that's not how I read

1 resolutions"?

2 A So this document references a lot of
3 resolutions, 06 -- 2019-06 to 20-10. And if you'll
4 recall, there's a lot of work that we did in good
5 business judgment after even these resolutions passed to
6 ensure that all the -- you know, all of the materials
7 incorporated were reviewed by special counsel. We asked
8 for, you know, a whole bunch of -- a slew of opinions.

9 So, I mean, to me this is a -- this is a --
10 says, hey, I've reviewed it. We think that they're
11 appropriate. We think we've done our initial review,
12 but we have further diligence and review to complete in
13 order to finalize and implement. And that's normal
14 business.

15 Q And actually, let me back up, Mr. Zahn,
16 because you brought up this memo in reference to my
17 question to you of whether you thought the senior
18 leadership employment agreements were appropriate.

19 A Well, because one of the resolutions in here
20 actually is the employment agreements, and that -- so it
21 just dawned on me when you -- and I'm not, you know,
22 trying to parse words. I just wanted to say, hey, look,
23 you know -- I always tried to be very inclusive of
24 consultants and OGC and board members and -- to make
25 sure that they reviewed these things and --

1 it. I read it -- you know, I would imagine, as with any
2 legal opinion, you always have to say, you know, subject
3 to all applicable laws. I don't see how that's
4 abnormal.

5 And I did not talk to Jason Gabriel about this
6 specific memo. It was provided to me. I mean, it seems
7 rational to say everything has to be subject to all laws
8 and ethics codes and ordinances --

9 Q Right.

10 A -- I would imagine.

11 Q And you were never told, were you, that OGC
12 specifically had reviewed those resolutions for
13 legality?

14 MR. MULLEN: Object to the form of the
15 question.

16 A I would -- the way I read this memo is that
17 OGC has reviewed them, and I don't know why OGC would
18 review anything other than for legality. It's general
19 counsel's office.

20 So, you know, I wouldn't expect them to review
21 it for brokerage issues or, you know -- I would expect
22 them to review it for legal issues.

23 Q So even though in Footnote 2 it says, "The
24 scope of this memorandum does not address the legality
25 of the underlying documents drafted to implement such

1 Q Wouldn't you agree that OGC's job is to make
2 sure that what the consolidated government is doing is
3 within the bounds of the law?

4 MR. MULLEN: Object to the form of the
5 question.

6 You can answer.

7 A And provide broad ranges of legal services and
8 policy advice, which often happened.

9 Q OGC doesn't set policy?

10 A They don't, but they do provide a lot of
11 policy advice, you know, what's -- you know, what's
12 appropriate, what -- you know.

13 Q You, as the CEO, were the ultimate policy
14 setter.

15 A No, the board is.

16 MR. MULLEN: Object to form.

17 Q The board is.

18 A The board is ultimate --

19 Q You, as CEO, ultimately provide a suggestion
20 for the board to approve; isn't that right?

21 MR. MULLEN: Object to the form of the
22 question.

23 You can answer.

24 A Or I implement what they tell me to do.

25 Q You, as CEO of JEA, are the one who made the

1 policy decision to produce these SLT contracts to the
2 board for passage?

3 MR. MULLEN: Object to the form of the
4 question.

5 A In consultation with individual board members
6 around needing to protect the senior leadership team.
7 It wasn't an -- it wasn't as though I made the policy
8 decision unilaterally without consulting with, you know,
9 board members.

10 Q But as the CEO of JEA, you were in agreement
11 that those SLT contracts should be passed? That was
12 your position?

13 A I agreed with the board's position as well.

14 Q As well as --

15 A Yeah.

16 MR. GRANAT: All right. Thank you.

17 Here's the -- John, here's the Garrity Rights
18 form --

19 MR. MULLEN: Thank you.

20 MR. GRANAT: -- that Mr. Zahn can sign.

21 BY MR. GRANAT:

22 Q Okay. So before we took a break, we were
23 discussing that in May of '18, the board directed that
24 no action tied to privatization be taken, and then
25 basically in May of 2019 that restriction was lifted;

1 about I'd like to go to Alaska on a trip and actually
2 sitting down and planning it and buying the tickets and
3 doing all that kind of stuff.

4 Q So my question is, between May of 2018 and
5 May of 2019, were there internal discussions regarding
6 privatization?

7 A Internal discussions. There were discussions
8 that a nongovernment entity did not have the constraints
9 that a government entity had. But we -- from -- we made
10 sure to comply with the May 2018's directive.

11 Q Okay.

12 A And -- and we made sure to -- and I did that
13 by consulting with who I thought were my appropriate
14 advisers on making sure we complied with that directive.

15 Q So between May 2018 and May 2019, did JEA
16 expend any funds, research -- on any research regarding
17 privatization?

18 MR. MULLEN: Object to the form of the
19 question.

20 You can answer.

21 A If you have a document, you know --

22 Q I don't. I'm asking you.

23 A I don't -- to my knowledge, JEA did not expend
24 funds -- well, we engaged the banks after the July board
25 meeting. We engaged special counsel after the June

1 correct?

2 A That's the advice that I received from OGC as
3 well as my chief administrative officer, correct.

4 Q Now, between May of 2018 and May of 2019, you
5 told me that you had internal discussions about
6 privatization with your team; right?

7 A No, we did not have internal discussions about
8 privatization. We had internal discussions about growth
9 strategies, expense initiatives, CapEx reductions, the
10 integrated resource planning for the water that
11 integrated water resource planning.

12 We talked about the constraints of -- you
13 know, when you're talking -- when we're talking about
14 those types of things, you start to talk about the
15 restraints of capital and access to capital.

16 One of the main reasons why new revenue lines
17 had not been pursued was they kept finding that they
18 could not compete as a government entity in solar. So
19 we talked about unionized labor and the restrictions of
20 that.

21 You know, the concept of privatization well
22 predated me, so to think that it -- that no conversation
23 ever came up and said, well, you know -- one way to
24 solve these constraints would do that, but, you know,
25 that's like the difference between planning -- talking

1 board meeting where the motion was passed to allow for
2 us to actually explore all scenarios. We did not talk
3 to McKinsey about the concepts of privatization until
4 after those motions passed as well.

5 Q And when?

6 A I believe in May.

7 Now, again, the difference between
8 privatization and thinking about where do you get the
9 capital to grow businesses and how do you think about
10 funding distributed energy resource business, how do you
11 think about funding, you know, purified water
12 facilities, and what are the constraints given the
13 current balance sheet that we have -- yeah, we
14 absolutely would talk about where does capital come from
15 and how do you -- you know, do you get it out of expense
16 cutting, do you get it out of borrowing more money? You
17 know -- yeah. That would be normal course of business.

18 Q Let's talk about the scenarios --

19 A Sure.

20 Q -- the strategic scenarios.

21 What was Scenario 1? Was that status quo?

22 A Yes. So Scenario 1 was -- and this was really
23 interesting, actually. Before me, JEA had not created
24 consolidated and consolidating financial statements or
25 management forecasts. They created IRP forecasts for

1 engineering planning and PSC. And so one of the things
2 that we started doing in strategic planning was -- and
3 what took us from January to, really, May was
4 integrating the trends of the industry around solar,
5 storage, energy efficiency, water efficiency, and doing
6 a real management revenue forecast, and then obviously
7 it's easy to then extrapolate our current expense
8 structure, especially because we have long-term
9 employment -- you know, collective bargaining.

10 And so the status quo effectively was looking
11 out ten years and solving for a cash flow of zero by
12 raising rates and -- but not cutting service quality,
13 not doing expense cutting, not cutting the CapEx budget,
14 not -- and that was effectively intended to establish a
15 baseline upon which then you could measure the
16 performance of everything else. You could do better or
17 worse financially or even operationally in customer
18 service perspective.

19 Q So that was an option, Scenario 1, status quo?

20 A It's absolutely an option, yeah.

21 Q Okay. So Number 2 was the traditional utility
22 response; is that right?

23 A Correct. And that -- that's effectively the
24 strategy that was implemented by JEA over the last ten
25 years.

1 Q And so the policies that Melissa Dykes and
2 Ryan Wannemacher are explaining are your policies;
3 correct?

4 MR. MULLEN: Object to the form of the
5 question.

6 You can answer.

7 A No. They are -- they were actually -- the
8 scenarios that were being developed were developed with
9 probably 100 JEA employees giving input; senior
10 leadership developing all the cost-cutting initiatives
11 for their specific area's interests; McKinsey providing
12 backup data around the trends in energy efficiency,
13 solar, storage, water efficiency, and providing all of
14 that data.

15 The financial forecasts actually were not
16 developed by me. They were developed by teams of -- you
17 had rate -- you had our financial planning and rate
18 group. We had a number of -- it was a highly
19 collaborative build of both the status quo and the
20 traditional response.

21 Now, in the traditional response, one of the
22 things that was -- that we did talk about as a team was
23 that we were -- we would not be able to implement those
24 things that as a government we legally could not
25 implement.

1 Q So just, if you can in just a few sentences,
2 summarize what the traditional utility response is.

3 A Accelerate debt as fast as possible in the
4 face of declining sales, decrease expenses while
5 maintaining a reasonable service quality for your
6 customer, and deferring CapEx and, you know -- and
7 trying to find the most efficient way to run the
8 business to generate the cash necessary to pay all off
9 all the long-term liabilities of the business.

10 Q And what did you explain to the board would be
11 the traditional utility response by JEA if that was
12 selected?

13 A Do you have the board package? So I didn't
14 explain. I believe Melissa and Ryan actually made that
15 presentation.

16 Q Well, let me just -- that's a good point.

17 You may not have personally explained it,
18 but -- and we're talking about now the July 23rd board
19 meeting; is that right?

20 A No. I think the traditional response was
21 actually in June.

22 Q Okay. You were certainly there?

23 A Oh, absolutely, yeah.

24 Q And you're the CEO?

25 A Absolutely.

1 And so what I -- what we did explain to the
2 board was that the traditional response over the next
3 ten years between 2020 and 2030 was very similar to the
4 last ten years, because in the last ten years JEA had
5 cut 20 percent of its workforce, 407 jobs. It had
6 decommissioned a major asset to save 400 million, SJRPP.

7 It had done a number of cost-cutting
8 initiatives and efficiency measures around procurement
9 and supply chain, and that was all effectively to
10 generate -- and also under Paul they deferred over a
11 billion dollars of CapEx in terms of reinvesting in the
12 system in order to pay off the debt, because in '07 or
13 '08 debt was -- debt to capital was 115 percent debt to
14 assets.

15 And so you had this very poorly managed
16 balance sheet when Paul took over, and they took over
17 doing all of those -- what I just articulated as
18 expense -- you know, efficiency measures. And so the
19 traditional response for going forward was effectively
20 continuing a very similar strategic approach in the next
21 ten years.

22 Q Okay. As the CEO, you had a senior leadership
23 team; correct?

24 A Yes.

25 Q And at these board meetings where these

1 scenarios were presented, you presented some information
2 and your senior leadership team members presented other
3 information to the board; correct?

4 A Yes.

5 Q But as the CEO, do you take responsibility for
6 all of the information that was presented to the board?

7 MR. MULLEN: Object to the form of the
8 question.

9 You can answer.

10 A I certainly take responsibility as the CEO, if
11 that's what you're asking. Do I --

12 Q I thought you were to suggest that Melissa
13 told the board something --

14 A That's not what I said.

15 Q -- and Ryan told the board something, and it
16 wasn't you.

17 I just want to see whether you, as the CEO,
18 take the position that the information provided by the
19 senior leadership team to the board is known by you and
20 approved by you and accepted by you?

21 MR. MULLEN: Object to the form of the
22 question.

23 A So yes, it is known by me and approved by me,
24 but not before it being known by a number of teams. So
25 the typical board package approval process, which we've

1 measures that had nothing to do with overhead. And part
2 of the overhead layoff was my recommendation to the
3 board that they don't need a senior leadership team as
4 robust as you have if you're not going to be pursuing
5 growth and other, you know, objectives, so -- including
6 myself, which we covered earlier.

7 Q So what's the nontraditional utility response?
8 Is that Scenario 3?

9 A Yes, that's how we labeled it.

10 Q Now, I know that there was a Scenario 4 and 5,
11 but I think that over time, Scenario 3 was the name of
12 everything else of the nontraditional response.

13 Do you agree with that?

14 A So there was also -- and I want to take you --
15 so between June and July -- so June was when we
16 presented the initial traditional response, and that was
17 the first kind of public discussion about how would you
18 manage the business in the face of market trends.

19 Alan Howard asked for variances on that, which
20 we presented in the beginning of July. Because
21 obviously every scenario -- every forecast, you would
22 look at different variances. So we ran variance
23 analysis between June and July.

24 And then the board also asked for an
25 implementation plan of the traditional response between

1 asked for, because I know it exists, has an approval
2 process that starts at director level --

3 And by the way, the ADRs, our disclosures,
4 work very similarly. They start with managers and
5 directors developing the draft information. Then they
6 go to review of the -- from the director to the senior
7 leadership, and then they go from the senior leadership
8 to the president CO, CFO CAO, and chief legal officer,
9 and then they go to me.

10 So yes, at the end of the day, I absolutely
11 approve it, but not before getting sign-off and buy-in
12 from the entire organization.

13 Q So --

14 A Not -- it's not myopically just me.

15 Q But the buck stops with you as CEO; right?

16 A I think I've said that publicly.

17 Q Okay. Now, the traditional utility response,
18 okay, you've told me about that. Let me just ask you
19 what I want to get at.

20 When you explained the traditional utility
21 response to JEA, is this the scenario that would include
22 a large number of layoffs and rate increases?

23 A So it was a large number of layoffs. It was
24 cutting the CapEx budget. It was continuing to
25 implement operational efficiencies which were cost

1 June and July. That was part of -- do you have the
2 motion?

3 One of the motions from the June board meeting
4 specifically instructed management to develop an
5 implementation plan for overhead reductions, expense
6 cutting, all that stuff, which we did.

7 Q Yeah.

8 A And then Scenario 3, you're right, in July had
9 3(A) to (F), and what ended up happening is we carved
10 out 3(A), which was the co-op, as an Option 4, and we
11 carved out 3(B) as an Option 5, because that was the
12 IPO. And then the balance, 3(C) to (F), remained
13 Option 5.

14 Q ITN?

15 A It remained -- anything that was -- yeah. It
16 effectively then got embodied into the ITN document.

17 Q So is the nontraditional response -- well, I
18 need you to tell me, if you can, a summary in a few
19 sentences. What is the nontraditional response?

20 A The nontraditional response is a change in the
21 governance structure of JEA such that it would eliminate
22 the legal constraints that the government entity had,
23 which was what we presented in -- which was the analysis
24 that OGC and the team had conducted between May and June
25 identifying statute of limitations and charter

1 limitations and constitutional limitations.

2 And by the way, before I get -- 2 -- Scenario
3 2, which was the traditional response, we actually had
4 2(A) and 2(B). 2(A) was just, you know, do cost-cutting
5 and defer CapEx and pay off debt.

6 2(B) we presented in July as well, which was
7 take measures of cost-cutting and overhead reduction
8 while also pursuing charter changes, constitutional and
9 statute changes. And so that one got broken into two as
10 well.

11 Q So the nontraditional utility response, did
12 that include elements of privatization with the
13 different options?

14 A Yes.

15 Q And tell me briefly -- and I don't need you to
16 go into detail about what everything is. But please
17 tell me briefly what were the various privatization
18 options that were considered in the nontraditional
19 utility response.

20 A A co-op or a community ownership where you
21 transferred ownership to the customers directly. An
22 IPO, where you would do a float of the equity in a
23 publicly traded market. And the one structure of IPO
24 that we contemplated was giving priority to customers as
25 well as having a portion of it retained by the City.

1 And then the balance of it would be a
2 strategic partnership -- you know, strategic
3 relationship. So whether that's infra-funds or private
4 equity or call it, you know, the traditional utilities,
5 the IOU models that already exist.

6 And then the last was a concession, which
7 would be a public-private partnership, which actually we
8 got a bid on.

9 Q So what's an ITN? And how does that fit into
10 the nontraditional utility response?

11 A So the invitation to negotiate, as I
12 understand it, is a procurement method under the
13 statutes of Florida -- and I don't know the number --
14 that -- we, as a management team, with our bankers and
15 attorneys and OGC, we were able to analyze a co-op. We
16 could analyze that ourselves, because it doesn't involve
17 third parties.

18 Our bankers and our capital markets divisions
19 of banks can provide analytics and analysis around how
20 would you float and how would retail buyers buy public
21 shares in an IPO.

22 If you look at whether the -- in order to
23 understand what a strategic partnership with a private
24 equity fund, an infra-fund, an IOU utility -- we even
25 talked about technology companies like Apple and Google

1 and Facebook -- you have to actually go ask them.

2 And so the ITN was basically an invitation to
3 everybody and anybody to propose any structure that
4 might help solve a number of the business issues that
5 had been discussed publicly from -- you know, for a year
6 and a half.

7 Q And would the ITN, the invitation to
8 negotiate, involve a sale of some or all of JEA's
9 assets?

10 A Not necessarily, no. Actually, the concession
11 didn't have a sale. So the ITN did not specifically
12 dictate a sale of assets. It said, here are our issues,
13 here are the minimum requirements --

14 Q And how many bids were there?

15 A 16.

16 Q 16?

17 A 17. One came in late.

18 Q And one was a concession?

19 A Yes. I think -- well, I don't know -- I'd
20 have to -- I don't know if the -- one of the remaining 9
21 that did reply was a concession.

22 Q Were the rest of them other than that one
23 offers regarding the sale of some or all of JEA's
24 assets?

25 A Yes.

1 We found it interesting that public power
2 didn't bid. We thought they would have been an
3 interesting -- you know, a large public power entity to
4 create a co-op or something like that together.

5 MR. GRANAT: So then I think you were asking
6 for this a minute ago.

7 Are we up to 8, I believe?

8 (Exhibit Number 8 was marked for
9 identification.)

10 BY MR. GRANAT:

11 Q Exhibit 8 is the June 2019 board meeting, and
12 it's -- and in this meeting, if you look on Page 2,
13 there's a bold note at the bottom. It says, "April
14 Green noted at May board meeting SLT presented what was
15 considered status quo, which is what JEA would look like
16 if business continued as it is. The board challenged
17 SLT to come up with different scenarios of how to
18 respond to evidently changing trends in the industry."

19 Correct?

20 And then in the June -- the June board meeting
21 minutes reflect that then Scenario 2 was presented to
22 the board --

23 A Correct.

24 Q -- is that right?

25 A Yeah.

1 Q All right.
 2 A And then subsequently 2(A) and 2(B) were
 3 presented in July.
 4 Q Okay. And then if you look on Page 3 of the
 5 June board meeting, and it's under Compensation
 6 Committee, it says, "Committee Chair Johnson presented
 7 the committee report and highlighted the committee's
 8 been working with Towers Watson to put together a formal
 9 competition framework that aligns with the strategic
 10 plan."

11 And then on Page 4 there was a motion to
 12 approve the development of a framework and authorized
 13 staff to implement the plan and bring back to the board
 14 for final approval a compensation plan.

15 Is that right?

16 A Yeah, actually, that was around the long-term
 17 incentive compensation specifically, as -- the
 18 discussion in that board meeting was that our base
 19 compensation -- when you look at total comp, you have
 20 base, short-term, and long-term.

21 And the discussion in that board meeting and
 22 in prior compensation committee meetings was that base
 23 was already relatively at market. Short-term, we
 24 didn't -- there wasn't a real need to touch, and that
 25 from a long-term perspective -- and you got to remember

1 where the long-term incentive came from.

2 When I came to JEA, I went and interviewed
 3 almost all 2,000 employees, and 1,990 of them didn't
 4 even know how much profit the company made. And, you
 5 know, we made \$750 million in EBITDA. Actually, many of
 6 them didn't even know what EBITDA was.

7 So what we were trying to do was help
 8 employee -- all 2,000 employees understand the
 9 financial -- the impact of their work on financial
 10 results going forward.

11 Q Okay. I'm going to play you a clip from the
 12 June 2019 meeting, and it's going to be Camille Johnson
 13 discussing the committee report. I have several clips
 14 from different meetings that I'm going to play today,
 15 and I'm going to attach them to the transcript; however,
 16 I don't have clips yet. I can have them made, but I
 17 don't have them present in a form that I can attach them
 18 today from this June 19th -- I'm sorry, June of 2019
 19 board meeting.

20 But this is -- in reference, it's around the 1
 21 hour, 43 minutes, and 30 seconds mark of the June
 22 meeting.

23 So just listen, and I'm just going to ask you
 24 some questions about what was said.

25 (Playing of video.)

1 MR. MULLEN: Sean, can you put that where both
 2 you and Mr. Zahn can see the screen --

3 MR. GRANAT: There's really nothing to see.
 4 If you want to see that (indicates).

5 MR. MULLEN: You just have the very small
 6 version. That's fine.

7 MR. GRANAT: Yeah, there's nothing really to
 8 see.

9 BY MR. GRANAT:

10 Q And just to put it in reference, I think
 11 this -- this part of the meeting happened right after
 12 the discussion of Scenario 2 and the massive number of
 13 layoffs that were contemplated.

14 (Audio played.)

15 A SPEAKER: "All right. We have compensation
 16 committee report (unintelligible).

17 A SPEAKER: Thank you, Madam Chair.

18 Coming off of what we just discussed, but in
 19 the last several months, we, as a committee, have
 20 been working with Towers Watson to put together a
 21 formal compensation framework. Just as a
 22 reference, we want to make sure that the overall --
 23 the overall framework aligns with our compensation
 24 philosophy, core values, guiding principles, a lot
 25 of things that we've talked about over the last

1 several months, and putting in place the formal
 2 compensation policy primarily focusing on
 3 short-term and long-term incentives and making sure
 4 that aligns with creating JEA's financial value.

5 So we did go through all the specifics there,
 6 certainly, again, in contrast to what we just spoke
 7 about in Status Quo 2, but really making sure that
 8 we really have a go-forward approach in creating a
 9 framework for our team members and all 2,000
 10 employees.

11 In light of that, I do -- Madam Chair, I would
 12 like to entertain a motion. And if I don't do this
 13 right, but I -- but I'd like to entertain a motion,
 14 I hereby motion that the JEA board and board
 15 directors in direct engagement develop a
 16 market-based compensation program as recommended by
 17 the comp committee.

18 The program should consist of base salary,
 19 short-term/long-term incentives, use the framework
 20 as developed by a third-party consultant, and the
 21 program shall align with the total compensation
 22 philosophy and policy approved by the board."

23 (Audio stopped.)

24 (Exhibit Number 9 was marked for
 25 identification.)

1 BY MR. GRANAT:
 2 Q I just want to stop it there and just point
 3 out, did you hear her say that part of her motion was to
 4 use the framework developed by a third-party consultant?
 5 A I did.
 6 MR. GRANAT: Okay. We'll continue.
 7 (Audio played.)
 8 A SPEAKER: "-- for directors in January of
 9 2019 as further reviewed in March of 2019 as well
 10 as (unintelligible).
 11 A SPEAKER: So, in short, you want us to
 12 approve just the framework?
 13 A SPEAKER: Correct."
 14 (Audio stopped.)
 15 (Exhibit Number 10 was marked for
 16 identification.)
 17 BY MR. GRANAT:
 18 Q And that's all -- that motion passed
 19 unanimously; correct?
 20 It doesn't matter. For these purposes, it
 21 doesn't matter. It did, but --
 22 A Yes, it says here in the minutes, Page 4.
 23 Q So let me ask you, so at this June meeting,
 24 you're given the direction move forward, bring us
 25 something -- bring the board back something that shows

1 this long-term incentive plan and your total
 2 compensation plan; is that right?
 3 A So if you go to the presentation for long --
 4 for total compensation, and not the Willis Towers
 5 Watson, but the one that had been reviewed by the board
 6 in the January comp committee meeting, the January board
 7 meeting, what it did was it looked at -- really, the
 8 only thing that needed to change was long-term.
 9 Q Okay.
 10 A And so -- and then -- is this the June -- and
 11 then there is a discussion of -- in the comp committee
 12 meeting, I believe, about whether you did units that
 13 were tied to time or units that were tied to financial
 14 value, and obviously her direction was to tie it to
 15 financial value.
 16 Q All right. And I stopped it and I asked you
 17 about the third-party consultant. Did you have a
 18 third-party consultant?
 19 A Yes. Willis Towers Watson.
 20 Q Okay. And what is Willis Towers Watson?
 21 A They're an industry-leading compensation
 22 consulting firm.
 23 Q Did you work with Willis Towers Watson to
 24 develop a framework for the long-term incentive plan?
 25 A It was presented, and it's actually right

1 here.
 2 MR. MULLEN: Why don't you refer to the page
 3 number.
 4 THE WITNESS: Page 27 of their report talks
 5 about the framework of both the performance unit --
 6 Page 28 develops a time-based unit, and then they
 7 made a recommendation of how it would be allocated
 8 across. So the answer's yes.
 9 BY MR. GRANAT:
 10 Q Okay. Mr. Zahn, let me just -- let me just --
 11 let's just take a little break here and just have a
 12 talk.
 13 This is a very important interview for JEA as
 14 well as for yourself, and so I'm not -- I'm going to
 15 give you the opportunity to say whatever you'd like.
 16 I'm not going to cut you short. But it's already 12:00,
 17 and I -- for example, the question I just asked you, did
 18 you work with Willis Towers Watson on a long-term
 19 incentive plan, to me is a yes or no question --
 20 A I'm sorry.
 21 Q -- and not a reference. And I only say that
 22 to suggest that maybe, you know, some of the answers to
 23 my questions could be yes or no. If you feel that you
 24 need to dive in and explain, I'm certainly not going to
 25 cut you off.

1 I just want to point out that I think a lot of
 2 your answers are going into things that really aren't
 3 responsive to my questions.
 4 A I apologize. I was just trying to be --
 5 cooperate --
 6 Q I understand that.
 7 A -- and give you as much information as
 8 possible.
 9 Q I just wanted to point that out, because just
 10 for the sake of time, that's all I wanted to know is,
 11 did you work with Willis Towers Watson to develop a
 12 framework for the long-term incentive plan?
 13 A Yes. I and the entire team worked with them.
 14 Q Who were some of the people that you worked
 15 with with Willis Towers Watson?
 16 A I actually don't remember their names.
 17 Q Was David one of them? You don't remember?
 18 A I literally don't remember the names. I think
 19 I had -- I participated in maybe one or two meetings.
 20 Q And what did you understand that to mean, the
 21 direction to use the framework of the third-party
 22 consultant for the LTI? What does that mean?
 23 A To take the June -- the material provided to
 24 the board in June and come back with a formal plan
 25 documented -- reflecting that formal plan.

1 Q Okay.

2 A That was tied to financial value.

3 Q Earlier I asked you to just explain the

4 different scenarios, and one was status quo. Scenario

5 2, I know you talked about having to do some

6 cost-cutting, getting rid of debt, and then you had the

7 2(A) and 2(B), some charter changes.

8 Was there any element of Scenario 2 that

9 involved any type of privatization?

10 A No.

11 Q Okay. And so Scenario 3, the nontraditional

12 utility approach, is the one that contained elements of

13 privatization; is that right?

14 A Yes.

15 Q Okay. I'm going to play another clip from the

16 June 2019 board meeting, and again, this is around the 1

17 hour and 43 minute mark of the meeting.

18 (Audio played.)

19 A SPEAKER: "That was not fun.

20 A SPEAKER: At all.

21 A SPEAKER: We tried to end that on a bright

22 note, but --"

23 BY MR. GRANAT:

24 Q And let me just -- I've listened to this

25 several times. This was right after Scenario 2 was

1 presented, and someone, I think April Green, said, "that

2 was not fun." Mr. Howard said "at all," and then I

3 believe what you said is, "We tried to end that on a

4 bright note." So I'll play that again.

5 A What came before that?

6 Q Scenario 2.

7 A No, I know, but that -- that comment can't be

8 referencing Scenario 2. What came right before, you

9 know --

10 Q "That was not fun"?

11 A There had to be something that that comment of

12 that bright note was referencing.

13 Q Well, I was just stating. That's not what my

14 question is going to be about anyway.

15 A Oh, okay.

16 Q It's not insignificant, but I'm just setting

17 the context of this was after Scenario 2.

18 (Audio played.)

19 A SPEAKER: "Thank you.

20 A SPEAKER: Thank you.

21 A SPEAKER: Thank you.

22 A SPEAKER: That was not fun.

23 A SPEAKER: At all.

24 A SPEAKER: We tried to end that on a bright

25 note. But, you know, as I've told the employees, I

1 am not here to just implement the traditional

2 utility response. I believe it's -- there's a lot

3 of exciting opportunities if we just gain some

4 alignment with our entire community."

5 (Audio stopped.)

6 BY MR. GRANAT:

7 Q So you made the comment to the board in

8 June of 2019 that you're not there to implement the

9 traditional utility response. Why did you say that?

10 A To "just." So I don't know why I said it,

11 but, you know, we had been talking with all the

12 employees about all the exciting opportunities that are

13 in front of JEA. And, you know -- was that the June

14 board meeting?

15 Q Was the June board meeting.

16 A Yeah. And so, actually, we came back in July

17 and said, look, there's some other growth opportunities

18 as a government entity that if we can do charter changes

19 and things like that, we could do.

20 So I was -- I think the answer is I was there

21 to try and solve, you know, the major problems of JEA,

22 from Vogtle to debt limits to, you know, growth

23 initiatives. So when I say "just," I mean, there to do

24 a whole bunch of things, right? To try and really

25 deliver the best services for the community and be able

1 to maintain the financial position of the business.

2 Q Okay. And the exciting opportunities you were

3 talking about were Scenario 3, the privatization?

4 A No. The exciting opportunities were looking

5 at electrification of on and off road. The exciting

6 opportunities were distributed commercial, industrial,

7 and residential solar. The exciting opportunities were

8 purified water for alternative water sources for

9 Northeast Florida. The exciting opportunities were

10 septic tank phase-out, which we had initiated a research

11 and development program.

12 I mean, they were business initiatives that

13 you go off after and do.

14 Q They're not part of the traditional utility

15 response?

16 A Again, I said "I'm not here just to do that,"

17 which, you know, I guess as I -- that's really making a

18 comment about just cutting overhead. You know,

19 obviously you have to cut overhead in order to maintain

20 financial position, but it was a comment about, you

21 know, there are a lot of interesting opportunities ahead

22 of JEA, and we had been discussing with -- at leadership

23 meetings every month all of them.

24 Q All right. I'm going to take you back to the

25 January 15th, 2019, compensation committee meeting.

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1 A Which one?

2 Q The January 15th, 2019, compensation committee

3 meeting.

4 A Yes.

5 Q Okay. In January of '19. And you can find

6 the materials I'm going to ask you about in Exhibit 7 on

7 Page JEA 498.

8 MR. MULLEN: It's Tab 32.

9 BY MR. GRANAT:

10 Q And although the front page is 498, it's dated

11 January of 2018 on the front page.

12 A I guess it's a typo.

13 Q That was an error; right?

14 A Yeah.

15 Q Would you agree that this material -- it's

16 Pages JEA 498 through 518 -- was the material from the

17 January 2019 comp committee meeting?

18 A Yes.

19 Q Okay. And is this when you first brought up a

20 long-term incentive plan to the JEA board?

21 A In the board meeting, but not individually.

22 Q Sure. Okay. Excuse me.

23 On Page 509, JEA 509, we have a slide that's

24 JEA Policy 2.7 that was adopted by the board in 2014;

25 correct?

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1 A (No audible response.)

2 Then if we look --

3 (Reporter clarification.)

4 BY MR. GRANAT:

5 Q Is that correct?

6 A It is my understanding. I wasn't there in

7 2014, but yes, we pulled this out of the manual.

8 Q Well, that's what it says.

9 A Yeah.

10 Q Okay. Well, let me rephrase that, then.

11 509 shows --

12 A This is a policy from the board from the

13 manual.

14 Q The board manual as it was January of 2019?

15 A Correct.

16 Q All right. And then on Page 512, there's some

17 suggested changes?

18 A Yep.

19 Q And are these changes you were suggesting with

20 your management team?

21 A Actually, I worked on this with Alan Howard.

22 I worked on it with -- who was on the board at that

23 time? April. I solicited input on kind of how would

24 you change this total compensation policy to start to

25 incentivize employees -- number one, bc at market 50th,

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1 so be competitive and -- actually, to drive all the

2 behaviors that we were looking at on Page JEA 0500;

3 organization, culture, employee engagement and behavior,

4 retaining and attracting talent, aligning the company to

5 the employee goals, strategy in driving the business.

6 But one of the main things that we discovered

7 as the interim is that employees were disenfranchised.

8 No one felt aligned to the top. Everyone was just there

9 to kind of do their job and go home. There was no

10 long-term, you know, pursuit of a value. And so the

11 idea was to create an incentive plan -- or incentive

12 total comp plan.

13 Q I understand.

14 The changes that are reflected on Page 512,

15 are these changes that you advocated for and agreed

16 with?

17 A They are absolutely changes that I agreed with

18 individual board members, then put into -- and put in a

19 board package.

20 Q And one of the things, if we look on Page 509,

21 that was changed, the old policy says, "The CEO will not

22 promote a compensation philosophy that is contradictory

23 to JEA's philosophy of providing a total rewards package

24 that encompasses salary, wages, retirement benefits,

25 incentives, and a health and welfare benefits."

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1 Right?

2 A Where are you?

3 Q It says, "Accordingly, the CEO will not."

4 A Yes.

5 Q And that language is changed in your proposal

6 on 512 --

7 A Again, collective -- or a collaboratively

8 developed proposal.

9 Q -- to the, "CEO shall promote compensation

10 philosophy."

11 Correct?

12 A Correct.

13 Q So my question is, why that specific change?

14 How were you constrained by the old policy that required

15 that new change?

16 A So interestingly, I don't recall which board

17 member, but one of the board members actually said what

18 we ought to have is a policy that tells you what to do,

19 not what not to do.

20 And so I think it was viewed as kind of --

21 Q That was a board member's idea?

22 A From my recollection, I remember it -- they

23 were having a conversation that they were trying to make

24 the language more concise and they were trying to make

25 it a "we will do this" and "we will go forward" as

1 opposed to "we will do this and not do this" and trying
2 to make it a --

3 Q Well, can you tell me what, in the changes
4 made on Page 512, allows you to implement a long-term
5 incentive plan that you couldn't have done under the old
6 language of the policy?

7 MR. MULLEN: Object to the form of the
8 question.

9 You can answer.

10 A I'm not sure I have an answer to that
11 question. One of the things that I discussed at length
12 during my interview as the CEO was the need to have
13 total compensation philosophy of the business for all
14 2,000 employees aligned.

15 And so the board had this policy, and we
16 worked to create a new policy that reflected the guiding
17 principles and the strategic framework that was approved
18 by the board in 2018, because they approved those four
19 measures of value.

20 And so we were trying to design -- and this
21 was -- you know, we were trying to design a total comp
22 that basically lined up with the new strategic framework
23 and measures of value and guiding principles of the
24 business. Because at the same board meeting, the
25 guiding principles, which was the vision, mission, and

1 A I did not put this slide together.

2 Q Do we know if that -- is it municipal
3 utilities? Is it just in general businesses over --
4 around the country?

5 A I did not put this slide together.

6 Q So you don't know?

7 A This would have been put together by the VP of
8 HR.

9 Q Okay. So you don't know what --

10 A Yeah.

11 Q -- the 50th percentile was?

12 A Because JEA maintains its own internal comps,
13 you know, for all of the employees, or market comps.

14 Q Out of the 50th percentile that was referenced
15 here that spent about 5.5 million on average on an LTI
16 plan, do you know who within those companies
17 participates in the LTI?

18 A Mostly executives.

19 Q Okay.

20 A And that came from the Willis Towers Watson
21 report.

22 Q Do you know out of this 50th percentile that's
23 referenced here whether any of the companies in this
24 50th percentile had an LTI where all employees
25 participated?

1 all that was approved.

2 Q Okay. But under the old language on Page 509,
3 would a long-term incentive plan have been prohibited?

4 A I don't know. It's not specifically called
5 out.

6 Q It is specifically put into the new -- the new
7 language on Page 512; right?

8 A Yeah.

9 Q Okay. On Page -- if you look at Page 510, do
10 I read this chart correctly to say that JEA does not
11 have a long-term incentive? The pink boxes there under
12 long-term incentive, there's a zero for JEA --

13 A Correct.

14 Q -- is that right?

15 And then underneath that, under 50th
16 percentile, it's 5.5. I'm assuming that's million; is
17 that right?

18 A Yes.

19 Q So does that mean that the 50th percentile has
20 long-term incentives that value \$5.5 million on average?

21 A Correct.

22 Q Per year?

23 A I believe this would be annually, yes.

24 Q Okay. The 50th percentile of what? Do you
25 know what the slide is referring to?

1 A I am not a market compensation specialist, but
2 when I reviewed the Willis Towers Watson report, it
3 clearly showed that front line was not included.

4 Q And you've stated, I think, throughout all
5 your meetings that your goal was to bring JEA to the
6 50th percentile in total compensation package; is that
7 fair?

8 A That was the board's goal, and I shared it.

9 Q Okay. And so was your goal in creating a
10 long-term incentive plan to bring JEA to the 50th
11 percentile of LTI, about \$5 and a half million a year?

12 A At this point in time -- this is January --
13 this isn't intended to say what is a target. This is
14 intended to say how do we stack up relative to the
15 market. From here, the board then finalized the total
16 comp philosophy and then directed us to go hire a
17 compensation to actually figure out --

18 Q Okay.

19 A -- one -- because that number, if you -- you
20 know, isn't -- yeah, I don't know where it came from.
21 But --

22 Q Okay.

23 A -- it was an internally generated number, as I
24 understand it, and not one provided by an expert.

25 Q But was your goal to have a long-term

1 incentive plan that applied to all JEA employees?
 2 A Always.
 3 Q Not just the executives?
 4 A Correct. My belief is -- and I did that
 5 numerous times on other matters, like the retention
 6 agreements, the pension issue. Always tried to -- you
 7 know, my belief is you need 2,000 people all running in
 8 the same direction in order to have --
 9 Q Okay.
 10 A -- true financial success.
 11 Q All right. I'm going to ask you now some
 12 questions about some law firms, some outside counsel,
 13 and -- first Pillsbury.
 14 Pillsbury did some work on the Vogtle
 15 situation; is that correct?
 16 A On the Vogtle situation?
 17 MR. GRANAT: Has Pillsbury been doing any --
 18 THE WITNESS: They did analysis around
 19 regulatory and other kind of structural issues,
 20 yeah.
 21 BY MR. GRANAT:
 22 Q Let me ask you this. Do you know when
 23 Pillsbury was first retained by JEA?
 24 A Yeah, we were looking at delegations of
 25 authority, if I believe.

1 Q Time frame?
 2 A 2018.
 3 Q Do you know when -- and -- well, let me ask it
 4 this way.
 5 Did Pillsbury ever do any work regarding a
 6 long-term incentive plan?
 7 A Yes, after the June board meeting when the
 8 board directed us to come back with a plan.
 9 Q Okay. So Pillsbury didn't work on an LTI
 10 until after that June --
 11 A Not to my knowledge.
 12 Q Okay. Did Pillsbury work on anything having
 13 to do with Scenario 3, any of the privatization efforts?
 14 A Not to my knowledge.
 15 Q To your knowledge --
 16 A Not till after the --
 17 Q Sure.
 18 A -- June board meeting.
 19 Q Any at all?
 20 A Yeah, I mean, they were the lead counsel for
 21 the ITN.
 22 Q For ITN. Okay.
 23 Did Pillsbury -- so you're saying that
 24 Pillsbury started their focus on the ITN after the June
 25 board meeting?

1 A Correct.
 2 Q And not before?
 3 A Correct.
 4 Q Did Pillsbury work on anything else regarding
 5 Scenario 3 other than the ITN, to your knowledge?
 6 A Law firms were managed by my CAO and the CLO,
 7 so --
 8 Q CAO?
 9 A Herschel Vinyard.
 10 Q Herschel Vinyard and Lynne Rhode?
 11 A Yeah.
 12 Q Okay.
 13 A And presumably -- I know Jason Gabriel and
 14 Lawsikia Hodges were oftentimes included in those
 15 conversations too.
 16 Q Okay. So are you not sure whether Pillsbury
 17 worked on --
 18 A Not to my knowledge.
 19 Q -- an IPO?
 20 A Oh, on the IPO? Yes --
 21 Q They did?
 22 A -- they did.
 23 Yeah.
 24 Q When was that? Just general time frame.
 25 A After the July board meeting. We started

1 flushing out the IPO and the co-op and -- as well as in
 2 parallel running the ITN.
 3 Q Now, do you know if when Pillsbury was engaged
 4 for its work on the ITN whether a success fee was
 5 discussed?
 6 A Yes.
 7 Q And who had discussions regarding a success
 8 fee for Pillsbury?
 9 A Myself, Jason Gabriel, Lynne Rhode,
 10 Herschel Vinyard, Ryan Wannemacher, Melissa Dykes, and
 11 then Stephen Amdur, who was negotiating for Pillsbury.
 12 Q Was there ever a written agreement for a
 13 success fee?
 14 A There was a draft that was produced and --
 15 Q By who?
 16 A I believe Lynne and Steve produced -- you
 17 know, produced the draft, and then Lynne provided it to
 18 Lawsikia and Jason.
 19 Q What is a success fee?
 20 A So the -- it's a standard market -- when
 21 you're looking at deals like this, you're trying to
 22 minimize your legal expenses. And so the idea was that
 23 Pillsbury, who had a billing rate of \$800 or more an
 24 hour and, you know -- which, by the way, every single
 25 law firm that was interviewed by OGC -- Skadden and

1 Latham -- were similar. They were agreeing to have a
2 retainer of \$250,000 a month, and then in the event that
3 there was a recapitalization, they would have a success
4 fee that would be a -- you know, a larger number.

5 But in the event that where we are today,
6 where privatization is dead, they would take their bills
7 and discount it by 40 or 50 percent, thereby saving the
8 company money.

9 Q Was a success fee ultimately entered with
10 Pillsbury?

11 A No.

12 Q Why not?

13 A Because Jason Gabriel and Lawsikia Hodges
14 ended up not wanting to do it.

15 Q The law firm of Foley also did some work
16 regarding the PUP; is that right -- or the LTI?

17 A Yes. So Kevin Hyde was the specialty counsel
18 that worked with JEA a lot on collective bargaining, the
19 performance units, and they were Florida specialty
20 counsel.

21 Q And do you know when Foley started its work on
22 the LTI?

23 A It would have to be after the June board
24 meeting.

25 Q Okay. And did Foley work on the ITN as well?

1 A So they did the analysis around the co-op
2 structure as well as they're a broker dealer as well and
3 helped solicit interest in -- you know, from around the
4 world.

5 And what -- when the ITN was issued, Morgan
6 Stanley and J.P. Morgan divided -- actually, it was a
7 list of maybe hundreds of firms -- of entities that they
8 would reach out to to solicit -- to ensure that JEA got
9 the best and most varied responses to the ITN. That's
10 what they did on the ITN.

11 Q Was Willis Towers Watson involved with the ITN
12 at all?

13 A No.

14 Q They just provided consultation regarding the
15 long-term incentive plan and the comp plan?

16 A Running total market comp.

17 Q Okay. So the long-term incentive plan kind of
18 became what was known as the performance unit plan --

19 A Yeah.

20 Q -- which I'll reference as the PUP?

21 A Yeah.

22 Q So we know that Pillsbury and Foley law firms
23 both dedicated some time towards the PUP?

24 A And OGC.

25 Q And OGC. Who at OGC worked on the PUP?

1 A I believe that's when they actually were
2 engaged, but I don't have the engagement -- I think they
3 were engaged --

4 Q I don't have the engagement letter. Okay.

5 A I don't think they were even engaged until
6 after the June board meeting.

7 Q Okay. Morgan Stanley was involved with the
8 ITN; is that correct?

9 A Correct.

10 Q When was Morgan Stanley engaged?

11 A Not until after the July board meeting.

12 Q And what was their scope of work? What were
13 they supposed to do?

14 A They're a broker dealer. They, you know, help
15 solicit -- run and solicit interest from the market.

16 Q Were they exclusively working on the ITN
17 portion of Scenario 3?

18 A No. They also -- well, they also did a lot
19 of -- their capital markets group is one of the leading
20 IPO capital markets group, and so they did a vast
21 majority of the work on the IPO as well.

22 Q What about J.P. Morgan, were they involved
23 with the ITN?

24 A Yes.

25 Q What work did they do?

1 A You did.

2 Q I'm sorry. Tell me how I worked on the PUP.

3 A Well, there's a -- I had a letter from
4 June 17th from you to Lynne Rhode.

5 Q Sure. I can get you to that.

6 A At least -- I mean asking -- or answering
7 questions, I think.

8 Q Okay. Yeah, we'll actually get there.

9 A Okay.

10 Q Who else at OGC, to your knowledge, worked on
11 the PUP?

12 A I only know what I've seen in documents --

13 Q Okay.

14 A -- in terms -- it was Kort --

15 Q Kort Parde?

16 A She was on that memo.

17 Q Okay.

18 A I know Jason Gabriel worked on it.

19 Jon, you were in a number of meetings at JEA.
20 I walked in on the one meeting that you were having with
21 Herschel, Lynne, Lawsikia, Jason, and Jon was in that.

22 MR. MULLEN: Referring to Jon Phillips?

23 THE WITNESS: Yes.

24 MR. PHILLIPS: That was one meeting, and it
25 was in August, or it might have been October.

1 THE WITNESS: I'm just answering the question.
 2 My understanding was it was widely worked on.
 3 BY MR. GRANAT:
 4 Q Okay.
 5 A But I don't -- I can only point you to the,
 6 you know, meetings and documents I've seen.
 7 Q And who at OGC worked on the PUP before
 8 July 23rd, to your knowledge?
 9 A Well, the memo I saw from you and Kort was in
 10 June, so I would imagine you and Kort. And then I know
 11 Jason Gabriel was informed about it and Lawsikia Hodges.
 12 And that was because of -- well, my understanding is
 13 they all were part of it.
 14 (Discussion off the record.)
 15 (Recess taken from 12:22 p.m. to 1:25 p.m.)
 16 BY MR. GRANAT:
 17 Q Before we broke for lunch, we were talking
 18 about the PUP and contractors or attorneys who may have
 19 worked on it, and we were discussing OGC.
 20 And I just want to be clear, to your
 21 knowledge, which OGC attorneys worked on the PUP prior
 22 to July 23rd, 2019?
 23 A To my knowledge, you, Jon Phillips,
 24 Jason Gabriel, Lawsikia Hodges, Lynne Rhode. I don't
 25 know of any --

1 Q Prior to July 23rd, 2019 --
 2 A Oh, Kort Parde, because -- but I was -- I
 3 mean, I -- the only reason I can -- you know, maybe --
 4 oh, I'm sorry. Jon Phillips. He clarified that was in
 5 August, I guess.
 6 But I know Jason, Lawsikia. Well, and I saw
 7 that you guys were answering questions on long-term
 8 incentives and performance units, so that would be
 9 Kort Parde and you.
 10 Q Are you aware, Mr. Zahn, that --
 11 A I mean --
 12 Q -- Jason Gabriel and Lawsikia Hodges had a
 13 conversation with Herschel Vinyard and Lynne Rhode in
 14 which Jason and Lawsikia told him OGC had not vetted the
 15 PUP, we were not approving it, and we were going to look
 16 at it in the future before it was officially
 17 implemented? Did you know that?
 18 A I did not know that. I do know that once the
 19 board approved it that we, as an entire team and
 20 including myself, did not view that as go implement it.
 21 We viewed that as continue doing diligence and issue the
 22 formal opinion to the Attorney General and go issue the
 23 formal opinion request to the State Ethics office and
 24 make sure that we were doing everything appropriately.
 25 And doing all -- and checking every single legal and

1 ethical standard to make sure that the plan was in
 2 accordance with all codes and standards and --
 3 Q Sure.
 4 A -- laws.
 5 So I knew that we were going to continue doing
 6 that, but I didn't -- wasn't aware of that conversation.
 7 Q Were you aware, though, that after
 8 July 23rd, 2019, after all diligence was done, you, as
 9 the CEO, were authorized to implement the plan without
 10 going back to the board?
 11 A No, I was not.
 12 Q You're not aware of --
 13 A The way I read the plan is the plan
 14 administrators are authorized to implement the plan.
 15 Q All right. Let me rephrase it.
 16 Do you understand that after July 23rd, 2019,
 17 when the board passed the PUP-related resolution, that
 18 the PUP could start without going back to the board?
 19 MR. MULLEN: Object to the form of the
 20 question.
 21 A There are actually specific parameters in the
 22 resolution where if things changed, you had to come back
 23 to the board. It allowed for -- I believe the
 24 resolution allowed for, you know, working with OGC,
 25 making sure all the -- but I don't think at any time had

1 we gotten -- the Attorney General came back and said,
 2 this needs to change dramatically, or State Ethics came
 3 back and said, this needs to change, or OGC, for that
 4 matter, who you guys were reviewing or special counsel
 5 who was reviewing, if -- if it had gone through all of
 6 those checks and balances with all of those teams of,
 7 you know, 50-plus people and remained the same, then the
 8 plan administrator had the ability to allocate and
 9 administer the plan.
 10 But I don't -- we never got there, and it
 11 became pretty clear that we were -- you know, through
 12 OGC and all the different reviews that -- you know, my
 13 guess is we probably would have had to go back to the
 14 board.
 15 Q Had the OGC and the Attorney General and all
 16 the lawyers told you the plan's legal, the plan could
 17 have been implemented without returning to the JEA
 18 board; correct?
 19 A If it was legal and ethical, yes.
 20 Q Okay. Who else -- what other firms worked on
 21 the PUP besides Pillsbury, Foley, and what you --
 22 A And OGC.
 23 Q OGC to the extent that we've already
 24 discussed?
 25 A To my knowledge, I'm not aware of others.

1 Q What about Nixon Peabody? Do you know that
2 firm?
3 A Yeah. Our bond counsel.
4 Q Okay. Did they do any work on the PUP?
5 A I seem to recall Foley or -- at one point in
6 time, it was thought that the performance unit might be
7 some form of debt instrument. And so because they were
8 our bond counsel, I think Ryan and the team would have
9 asked them, you know, hey, do you have any opinion on
10 that? So I imagine they probably would have done some
11 work.
12 Q To your knowledge, did Nixon Peabody do any
13 work regarding any other kind of long-term incentive
14 plan?
15 A Not to my knowledge. Not that I recall.
16 Q So the PUP, the performance unit plan, when
17 was that idea first conceived?
18 A In the Willis Towers Watson report, they came
19 back with the performance units as one of the main ways
20 to have a long-term incentive plan.
21 Q Is that something Willis Towers Watson
22 recommended as a solution?
23 A I don't view -- I don't sit there -- yeah,
24 they did. They -- well, in their report on Page 0328,
25 they had performance units and time-based units.

1 And then on 0329, they outlined how
2 performance units would work over -- how performance
3 units would work over a three-year period of time.
4 Q Okay. So the Willis Towers Watson -- did they
5 come up with the idea?
6 A So performance units aren't a novelty.
7 They're -- you know, they gave us a myriad of options.
8 The board's directive from January was to find -- if you
9 go to Page -- they were trying to find a long-term unit
10 that ties to financial and value and profitability.
11 Willis Towers Watson made some recommendations
12 of, well, you can do it in all cash. You can do it in
13 debt -- and I don't have the more -- their first
14 version, but their first version, they gave seven
15 different options, of which the performance unit was
16 one, and then started narrowing down, I want to say,
17 May, June, maybe.
18 Q So how was the actual PUP plan decided as the
19 option that you would go with?
20 MR. MULLEN: Object to the form of the
21 question.
22 A From my understanding, the board. Because
23 they came back in the June -- the quote you -- the quote
24 you played me was Camille Johnson and the board talking
25 about, hey, this was the framework that was provided to

1 them in the June board meeting. And then they said,
2 well, you know, we want it to be tied to the financial
3 interest.
4 Q So did Camille Lee-Johnson decide that we
5 should use a PUP, or did you and your management team
6 decide that we should use a PUP?
7 MR. MULLEN: Object to the form of the
8 question.
9 A Neither.
10 Q Neither?
11 A Neither. The performance unit was part -- one
12 of the things that came out -- they had -- in the
13 long-term incentives, Willis Towers Watson said you
14 could do -- if you want to attract talent, you can do a
15 time-based unit where people just make money by being
16 there, or you could have -- and, you know, we did talk
17 about trying to tie a unit to the financial value of
18 JEA, which the financial value being the book value, the
19 contribution and distributions to customers, because
20 that's the financial value of JEA.
21 And that was a collaborative work product
22 over -- with Melissa and Ryan and Herschel and Jon and
23 Willis Towers Watson --
24 Q You're talking about Jon Kendrick?
25 A Yeah.

1 Q Okay. So at the June compensation meeting,
2 June 2019 --
3 A Yeah.
4 Q -- the compensation committee was who?
5 Camille Lee-Johnson and who else? April Green?
6 A April Green and Alan Howard.
7 Q Did you make a presentation to the
8 compensation committee or any suggestions?
9 A Do you have the minutes? I think -- I think
10 we -- the minutes would reflect what happened.
11 MR. GRANAT: I'm sure I do.
12 THE WITNESS: Do you have the minutes?
13 MR. MULLEN: Uh-huh. (tenders.)
14 THE WITNESS: Myself and Herschel Vinyard.
15 MR. MULLEN: Sean, the record will reflect
16 Mr. Zahn is referring to the minutes of the
17 compensation committee meeting on June 18, 2019,
18 unless you have --
19 MR. GRANAT: Let me give you a marked copy,
20 okay? Call it Exhibit 11.
21 (Exhibit Number 11 was marked for
22 identification.)
23 THE WITNESS: Agenda Item II, Jon Kendrick
24 presented the Willis Towers Watson report. And so
25 II(B), with the Willis Towers Watson report versus

1 industry compensation, which is the document I've
2 been referencing that has performance units and
3 time-based units and other things like that.

4 And then II(C) was Herschel and I talking
5 about, well, if -- you know, if the compensation
6 committee desires to continue moving forward on
7 this, then can you give us some instruction to move
8 forward and design a framework? And then that's
9 what then was brought to the June board meeting.

10 BY MR. GRANAT:

11 Q Right. And under C, it says, "Mr. Zahn
12 advised the committee that if they commissioned JEA
13 leadership to move forward, the team would work to
14 develop an appropriate plan."

15 Is that right?

16 A Sure, in accordance with the Willis Towers
17 Watson --

18 Q And then so between -- from that point,
19 June 18th, 2019, am I correct that you and JEA
20 leadership developed the PUP plan?

21 A And OGC and Pillsbury and Foley.

22 Q And when you say OGC, you're referring to me?

23 A So all I have -- I'm assume -- I have the
24 documents -- you and I didn't talk, but I have the
25 documents where you were being included as part of the

1 A So I think he's the one that actually had
2 the -- the -- ended up coming up with the formula that
3 would go into the exhibit.

4 Q What input did Melissa Dykes have regarding
5 formation of the PUP?

6 A So there was -- I remember there was a bunch
7 of collective meetings talking about, well, is it
8 deferred compensation? How do you make sure all
9 employees would want to participate?

10 So, you know -- and by the way, all --
11 everybody I just mentioned would have -- when I say
12 input, they would have reviewed all the documents. They
13 probably would have given Jessica lots of edits. It
14 was --

15 Q Yeah. My question was what input did Melissa
16 Dykes give on the PUP?

17 A Again, she would have dealt directly with
18 Jessica Lutrin, so ...

19 Q Do you know what input Herschel Vinyard gave
20 regarding the PUP?

21 A So he was spending more time with Foley on
22 making sure that you had compliance with all laws,
23 compliance with all ethics standards. I remember 215,
24 Florida Statute 215 being a big issue.

25 I know that Foley was talking about, well, do

1 long-term incentive compensation --

2 Q Sure.

3 A -- discussion.

4 So I don't know who all in OGC, other than
5 those people I've already witnessed to, that I've seen
6 and been a part of.

7 Q Okay. Who drafted the actual PUP plan?

8 A I believe it was Pillsbury.

9 Q Do you know who at Pillsbury?

10 A Jessica Lutrin.

11 Q And was Willis Towers Watson involved in the
12 drafting of the PUP plan document?

13 A I don't know.

14 Q Do you know if Foley was involved in the
15 drafting of the PUP plan?

16 A Yes.

17 Q And who at JEA within your management team
18 would you say was the lead person regarding the design
19 and drafting of the PUP internally?

20 A I wouldn't say anybody was the lead person. I
21 know Melissa gave input. I gave input. Ryan gave
22 input. Kerri Stewart gave input. Herschel Vinyard gave
23 input. I believe Jon Kendrick gave input.

24 Q What input did Ryan give regarding the PUP and
25 the design of it?

1 you make it just an award where people just get, you
2 know, basically a free unit or do they have to buy it?
3 So that would have been a lot of the discussion that I
4 think Herschel would have had.

5 Q Okay. Do you recall a meeting on
6 November 5th --

7 A Yes.

8 Q -- with Jason Gabriel?

9 A Uh-huh.

10 Q And did Jason Gabriel tell you that you
11 couldn't proceed with the PUP on that date?

12 A No.

13 Q He didn't tell you?

14 A No. Actually, the meeting was at Foley. It
15 had -- and I was asked to come to -- I was asked to come
16 to the meeting by Herschel Vinyard, because Herschel and
17 Lynne had been dealing with OGC and Foley and going
18 round and round, and the exasperation level was getting
19 pretty high between all the entities, as I understand
20 it.

21 And Herschel said I needed to come to that
22 meeting to be able to figure out whether we move forward
23 or not. I sat at one end of the table. Jason sat at
24 the other end. You had Kevin Hyde, Lynne, Herschel, and
25 Lawsikia.

1 Lawsikia and Lynne were going back and forth
2 pretty heavily about different arguments. And Kevin
3 Hyde was taking his -- stating his legal arguments.

4 It was about 30 minutes in or so that I kind
5 of came to the realization that the internal team that
6 had been working on all of these -- on the performance
7 units since the board's approval in July had a
8 substantial number of disagreements.

9 And so I pulled Jason out of the meeting and
10 said, Jason, if this -- if there's this many issues with
11 this unit, then let's kill this plan.

12 To which he said, well, you know, I'm not
13 saying -- I'm not saying we're there yet. I'm just
14 telling you that we have substantial concerns.

15 And I said, okay, if you have substantial
16 concerns, are they substantial enough where we need to
17 just kill it? Because, as I've been telling you before,
18 let's just be done with this if there's an issue.

19 To which then we went back in. I listened for
20 about five or ten minutes. I departed the meeting.
21 Apparently the meeting continued for about another hour
22 or two.

23 Then I came back to JEA and saw Herschel.
24 Herschel informed me at that point in time that there's
25 some substantial issues that OGC wasn't probably going

1 So I postponed it and then talked to the Chair
2 about killing it at the next available board meeting.

3 Q Well, if you look at Page 441, the second page
4 of Jason's letter, he recaps the November 5th meeting.
5 Do you see that?

6 A Okay.

7 Q And in the second paragraph [sic], he says,
8 "On that date, the following concerns were brought up by
9 OGC and discussed with JEA."

10 Then he goes on: "Upon our review, the PUP is
11 seemingly akin to an employee stock option plan, and for
12 size" -- "and for similar size private
13 multi-billion-dollar corporations, employees [sic] like
14 the PUP may be the norm. However, the PUP would be
15 unique to the public sector and founded on the
16 fundamental principle that a government entity, such as
17 JEA, may underwrite and offer for sale a portion of
18 JEA's value as an investment product pursuant to
19 Section 112.215 Florida Statutes. This fundamental PUP
20 principle is not only a novel concept to our
21 consolidated government but is also novel to government
22 concepts and principles in general. Further, in
23 addition to more fundamental issues associated with the
24 PUP, there were other issues cited, including allowing
25 non-JEA employees in the plan and various potential

1 to get around.

2 To which then I called Jason and said, hey,
3 let's sit down and talk, because if we need to kill this
4 plan, let's do it now. We had the Attorney General
5 opinion out. We were getting ready to issue the State
6 Ethics Commission opinion. So let's just be done with
7 this.

8 And that was the impetus between our letter
9 exchange on November 12th.

10 Q All right. Turn for me, please, to Page 440
11 and 441. And that's Jason Gabriel's letter --

12 A 440?

13 Q -- to memo.

14 440 of Exhibit 7.

15 A Tab?

16 MR. MULLEN: Tab 16.

17 THE WITNESS: I'm sorry.

18 Yep.

19 BY MR. GRANAT:

20 Q All right. You've read this memo before,
21 haven't you?

22 A Yeah, this is Jason's response to my letter
23 where I killed -- where I -- I asked whether or not I
24 could kill the plan, and I was informed by Lynne that I
25 could not because I didn't have the authority.

1 adverse tax consequences."

2 Were those issues brought up to you at this
3 meeting?

4 A So, again, I was only there for the beginning
5 of the meeting, to which then I departed to get on a
6 conference call. So if all of this was fully -- I --
7 there were a number of issues that were being debated
8 between Lynne and Lawsikia.

9 I departed. I didn't get a list of all these
10 issues until November 12th, but candidly, it didn't
11 really matter, because between November 5th and
12 November 12th, I had already told Jason, look, it seems
13 like this plan is more headache than it's worth. Let's
14 just be done with it.

15 And that was why I -- as this letter says, on
16 November 12th, the letter -- the CEO sent me a --
17 informing me -- a letter informing me that officially
18 JEA was going to postpone indefinitely the PUP. Because
19 he and I had a number of back-and-forths between the 5th
20 and the 12th.

21 Q The third paragraph, the second full paragraph
22 on this page of Jason Gabriel's letter, says,
23 "Accordingly, we advise that the current plan should be
24 officially dissolved."

25 Are you debating that?

1 A That's what the letter says on the 12th.
 2 Q No, it's not on the 12th. That's still part
 3 of the November 5th recap of the meeting.
 4 A Written on the 12th.
 5 Q Correct.
 6 A Yeah.
 7 Q Did Jason Gabriel advise you --
 8 A Not to my knowledge. Again, I wasn't in the
 9 whole meeting. I left. So if he did, then I wasn't
 10 part of that -- part of the meeting.
 11 Q I see.
 12 A That being said, after the November 5th --
 13 because of -- you know, I went and checked in with Lynne
 14 and Herschel, and their feedback was that, you know,
 15 Jason and Lawsikia and OGC still had a number of
 16 outstanding issues and that -- and so I said, well, then
 17 let's just be done with this.
 18 Q Was Lawsikia Hodges in that November 5th
 19 meeting?
 20 A Yeah.
 21 Q She was? Okay.
 22 And then under the paragraph "Accordingly" --
 23 and there's a list of six items that Jason says must be
 24 met as a minimum for sort of long-term investment
 25 incentive?

1 A Okay.
 2 Q Were those six items discussed with you and
 3 recommended by OGC?
 4 A So where I left the meeting would have been
 5 around, actually, where they were talking about issues
 6 with -- conflicting with charter. And then -- and then
 7 investment product, I do recall. I was not part of the
 8 meeting, I don't believe, on the IRS tax issues, Items
 9 3, 4, 5. Well, 6 is a catchall.
 10 Q Okay. At this November 5th meeting, do you
 11 recall Jason Gabriel asking what the projected value of
 12 the PUP units would be?
 13 A No.
 14 Q You don't remember him asking that?
 15 A No. That was asked in a board meeting.
 16 Q Well, I'm just talking about the November 5th
 17 meeting.
 18 A Okay.
 19 MR. GRANAT: And just for reference -- are we
 20 up to number --
 21 (Exhibit Number 12 was marked for
 22 identification.)
 23 BY MR. GRANAT:
 24 Q Exhibit 12 will be -- is this Exhibit 12 the
 25 letter that you were referring to that you sent to

1 Jason Gabriel on November 12th?
 2 A Yes.
 3 Q Okay. And in your letter -- would you read
 4 the last paragraph -- the first sentence of the last
 5 paragraph?
 6 A "The decision not to implement the plan is
 7 based on the incongruity of the plan's long-term nature
 8 of the very real potential structure and
 9 implications" --
 10 (Reporter clarification.)
 11 THE WITNESS: -- "long-term nature and the
 12 very real potential short-term implications of
 13 JEA's strategic planning process. As such, the
 14 Chair plans" --
 15 BY MR. GRANAT:
 16 Q Just that. I mean, I just wanted the first
 17 sentence.
 18 A Okay.
 19 Q Because I want to ask you about that.
 20 Just in layman's terms, explain to me what
 21 your reason for canceling the PUP was.
 22 A I got advice from counsel, OGC, that they had
 23 outstanding legal issues.
 24 Q Okay.
 25 A Number two, began to realize the very real

1 potential financial impact that recapitalization might
 2 have on the plan, and the plan was never intended to be
 3 a -- you know, while we ended up working
 4 recapitalization into the documents, it was -- when we
 5 started the plan, it was intended to be a rolling
 6 three-year long-term plan.
 7 And so, as I've said in public meetings, you
 8 know, it was a realization that after July 23rd I really
 9 didn't have much in the way of discussion on the plan,
 10 because Herschel, Lynne, OGC, Foley, and Pillsbury were
 11 all working through the legal side.
 12 You had the Attorney General stuff going on
 13 one side. And I was waiting on all those checks and
 14 balances to be done. And then on November 5th, it was
 15 kind of an "aha" moment of this is -- we need to be done
 16 with this.
 17 Q So I'm just a tort and employment lawyer. I
 18 don't -- I'm not in the business world, and a CEO,
 19 speaks the business language. Can you just simplify and
 20 explain for me what you mean incongruity of the
 21 long-term nature of the plan versus the very real
 22 potential short-term implications?
 23 A Yeah.
 24 Q Simply, what does that mean?
 25 A That recapitalization could have an impact on

1 the value of the plan.

2 Q Okay.

3 A And that was one of the main reasons of saying
4 this doesn't work.

5 Q The incongruity meant that -- what? That the
6 plan is really meant for -- if the business -- if JEA
7 was going to continue maybe under Scenario 1 or 2?

8 A No. Again, this is -- so when the plan --
9 when the long-term incentive planning started, it was
10 because we were realizing that 2,000 employees were not
11 cognizant of the profitability and financial value of
12 the business. That was in December of '18, moving into
13 January.

14 And so what you have is this very progressive
15 and involved discussions with the board and consultants
16 and attorneys to where you end up by November 5th with
17 me, as the CEO, going, oh, man, this just doesn't work.
18 And so that's what incongruity means.

19 Q Okay.

20 A This is very real business. It happens all
21 the time. You develop things and then you figure out
22 it's not going to work, and then you'll be done.

23 Q Well, the plan's long-term nature, I guess,
24 given because it's called a long-term incentive --

25 A Right, it was intended to incentivize behavior

1 financial employee --

2 Q Well, was the long-term incentive plan -- as
3 intended to be a long-term incentive plan, was it not
4 contemplated that that could be worth a lot of money?

5 A I'm not sure --

6 MR. MULLEN: Object to the form of the
7 question.

8 THE WITNESS: I'm not sure I understand that
9 question.

10 BY MR. GRANAT:

11 Q Okay. Sure.

12 If I'm hearing what you're saying, you saw
13 that, hey, a recap could happen and the plan could make
14 this PUP worth a lot of money; right?

15 A And OGC still has outstanding legal concerns,
16 and the Attorney General hadn't done its review, and
17 ethics -- all of those things, yeah.

18 Q My question is, if the long-term incentive
19 plan occurred without a recapitalization occurring, did
20 you believe that that long-term incentive plan could
21 still be worth a lot of money?

22 A Actually, I went back to the board meeting in
23 June -- or in July, and one of the -- one of the
24 hypotheses -- or one of the scenarios that was played
25 out was the value of the long-term performance unit plan

1 of employees towards long-term financial value.

2 Q And what is that term? Is it three years?

3 A Yes, it was a three --

4 Q A three-year plan.

5 A Well, it was a rolling three-year plan.

6 Q Right. And so the very real potential
7 short-term implications, what were the short-term
8 implications you're talking about?

9 A That the recapitalization could have a very
10 real impact on the value of the plan.

11 Q Okay. And how -- what kind of impact would a
12 short-term -- what kind of impact would the recap have
13 on the plan?

14 A It stopped -- so if you want it in layman, it
15 was -- or do you want me to reference the board document
16 that -- where it was presented to the board? It
17 basically stops the -- it stops the measurement period.

18 Q Okay.

19 A And so if a recap happened and you netted
20 3 billion, then would it be zero. It could -- you don't
21 know. You know, you could have --

22 Q It could be a lot of money?

23 A It could be a lot of money, yeah. And which
24 is one of the -- why it's no longer -- it's in
25 incongruent with kind of incentivizing long-term

1 under Scenario 2, and that was about \$30 million,
2 because you had substantially decreased costs and
3 improved the book value and then able to increase the
4 value of the plan.

5 So the idea was that if you're going to cut
6 overhead by 500 people or 400 people, the balance of the
7 people needed to work harder and needed to be
8 incentivized to drive the performance of the business.

9 Q Is that what was explained to the board --

10 A Yeah.

11 Q -- that that plan was under a Scenario 2
12 involving a reduction in force?

13 A No. It was actually -- the documents and the
14 plan say it was under all scenarios --

15 Q Okay.

16 A -- in July.

17 Q Okay.

18 A Because, again, we tried -- what was happening
19 was the team was trying to contemplate every potential
20 future alternative.

21 Q All right. And just for reference, if you'd
22 look at Exhibit 442, which is at Tab 17 of Exhibit 7.
23 This is actually Jason Gabriel's response to your
24 November 12th --

25 A Oh, okay. This is the one that I saw.

1 Q And I think that what we were referring to
 2 earlier --
 3 A That's the memo to file.
 4 Q -- was the memo to file.
 5 A Yeah, which I didn't see until I was given it
 6 by Chris Holme (phonetic).
 7 Q Okay.
 8 A And that would have been late November,
 9 because it was actually given -- this memo to file was
 10 given to JEA through to you.
 11 Q Okay.
 12 (Discussion off the record.)
 13 (Recess taken from 1:55 p.m. to 1:59 p.m.)
 14 THE WITNESS: By the way, there would be an
 15 email where I got that memo to file from
 16 Kerri Stewart, because she was the one that got it
 17 from OGC or Gina Kyle.
 18 BY MR. GRANAT:
 19 Q Let me ask you -- and that memo we're talking
 20 about, it's in Exhibit 7, Page 440, Jason Gabriel's memo
 21 to file.
 22 A Yeah.
 23 Q And I'm going to ask you to take a look at it,
 24 and I want you to tell me if there's anything you
 25 disagree with in this memo.

1 MR. MULLEN: And, Sean, with that caveat, as
 2 Mr. Zahn already testified, he was only there for a
 3 portion of the meeting that's discussed in this
 4 memo, for the record.
 5 THE WITNESS: No, I don't disagree with
 6 anything in the memo. I just wasn't there for the
 7 whole thing.
 8 BY MR. GRANAT:
 9 Q Okay. That's fair.
 10 A And as I remember -- and then I did follow up
 11 with Jason, and it was after this meeting. And that's
 12 when, between the 5th and the 12th, we decided
 13 collectively between the two of us that it was best to
 14 just be done with it.
 15 Q Okay. Now, you have referenced my memo. I
 16 want to talk about that for just a minute.
 17 A Okay.
 18 Q And if you look on Exhibit 7, it's Page
 19 JEA 290. It's Tab 3.
 20 A Okay.
 21 Q Is this the memo you were referring to when
 22 you said I was involved in the PUP?
 23 A Yes. You know, as well as I think -- because
 24 of the public records request, there were emails and
 25 other things like that, so I just assumed that you were

1 part of the discussion.
 2 Q Now, did you read this memo? It starts on
 3 Page 290.
 4 A I have not read it in totality.
 5 Q You have not read it?
 6 A No.
 7 Q Were you aware that neither I nor Kort Parde,
 8 who wrote this with me, were never told about the PUP or
 9 JEA's plans for a long-term incentive when we were asked
 10 to write this memo?
 11 A I am not aware of that.
 12 Q Were you aware that we were asked to write a
 13 general memo on whether JEA can establish a long-term
 14 incentive program?
 15 A I'm not aware of that.
 16 Q And do you know that this addresses -- merely
 17 addresses Florida Statute 215.425?
 18 A That would be on the front page. Again, I --
 19 Q Because you didn't read it?
 20 A I haven't read the whole memo. I got this
 21 well after the plan was killed.
 22 Q Are you aware that the PUP, as it was
 23 designed, does not comply with Florida Statute 215?
 24 A I am not aware of that. I thought that was
 25 part of the AG request.

1 Q Are you not aware of what the Attorney General
 2 was actually asked?
 3 A No. I left that to Herschel Vinyard and OGC
 4 and Jason Gabriel to -- and Foley to craft that formal
 5 opinion request and to submit it.
 6 Q So are you aware of what Section 215.425 is
 7 and what it says?
 8 A Not specific, no.
 9 Q Okay. Well, if you look on the front page of
 10 my memo --
 11 A I'm sorry. 4 --
 12 Q 290. I'm sorry. The first page of my memo,
 13 which is 290.
 14 A Okay.
 15 Q It lists four factors that are required for a
 16 bonus plan to be lawful for a public entity. Right? It
 17 has to be based on work performance, have a
 18 predetermined performance standards and evaluation
 19 process, provide notice to the program of all JEA
 20 employees prior to its commencement, and be available to
 21 all JEA employees.
 22 Are you aware that all of your legal counsel
 23 had determined that the PUP does not comply with 215,
 24 and the request of the Attorney General was to make sure
 25 that it wasn't within 215?

1 A My understanding was Foley and -- had a very
2 specific difference of that opinion.
3 Q So you weren't aware that the PUP --
4 A I know Foley thought it was completely in
5 accordance with all the statutes.
6 Q With 215?
7 A I wouldn't have imagined Foley would want to
8 continue --
9 Q Did you ever hear the PUP described as a
10 deferred comp plan rather than a bonus plan?
11 A Yes.
12 Q Okay. So that's taking it from 215 bonus to a
13 Section 112 Florida Statute --
14 A That's your expertise, not mine.
15 Q -- deferred comp -- you don't have any -- you
16 don't have knowledge of that?
17 A No. I acknowledge that I heard it referred to
18 as a deferred comp plan.
19 Q Okay.
20 A And the reason I acknowledge that is Foley, I
21 believe, had talked about that in terms of being able to
22 make it eligible for collectively bargained employees.
23 But as to your -- the specifics of where it
24 falls --
25 Q Okay. You don't understand the mechanics?

1 A It's not that I don't understand. I just
2 haven't ever investigated those statutes myself.
3 Q Do you know when the decision was made to stop
4 considering the PUP under 215 and start considering it a
5 deferred comp under 112?
6 A No.
7 Q Do you know who made that decision?
8 A No.
9 You had teams of people working on this, so I
10 would imagine it would be, as with most things at JEA,
11 you know, you investigate, you do a whole bunch of
12 investigation until such time if you find that your
13 investigation says that you can't move forward, you
14 stop.
15 Q Okay. Do you have any other evidence of my
16 involvement with the PUP other than this June 17th very
17 basic memo on Statute 215?
18 A Just emails that I saw when reviewing stuff.
19 But I don't --
20 Sean, I'm not trying to -- no, I don't have
21 specific evidence that -- other than what has been
22 provided to me in public records.
23 Q Well -- okay.
24 Let me -- let's go to another clip. I'm going
25 to ask you about something. And this is a clip from the

1 June 2019 board meeting.
2 (Audio played.)
3 A SPEAKER: "It will be interesting,
4 especially with the -- in the middle of what we're
5 doing right now, to have to talk about the
6 compensation structure, as much as it's needed,
7 when we talk about the potential of losing
8 employees as well as our senior management and
9 retention and long-term compensation --
10 A SPEAKER: At the same time (unintelligible).
11 A SPEAKER: I think it's important for people
12 to understand that the framework that was proposed
13 and discussed within the compensation committee
14 would effectively render a long-term incentive
15 compensation that would be worthless in the
16 event -- in the face of traditional utility
17 response.
18 A SPEAKER: Correct.
19 A SPEAKER: So ultimately what it is is
20 incentivizing growth -- a growth trajectory. So I
21 think that's an important distinction that everyone
22 understand.
23 A SPEAKER: Okay."
24 (Audio stopped.)
25 (Exhibit Number 13 was marked for

1 identification.)
2 BY MR. GRANAT:
3 Q That comment was made after Camille
4 Lee-Johnson's motion to pass the long-term incentive
5 plan --
6 A Yeah.
7 Q -- charging you to come back with a plan in
8 July?
9 A In hindsight, that's a misstatement.
10 Q Okay.
11 A Because, actually, if you -- if you run the
12 numbers on the traditional utility response, which was
13 corrected in July, the plan would have been worth
14 \$30 million.
15 Q So let's -- let me ask you flat out. Was the
16 PUP created for the purpose of a successful ITN?
17 A No.
18 Q No?
19 A No.
20 Q It was legitimately considered for continuing
21 JEA under a Scenario 1 or 2 situation?
22 A It started under -- it started as a long-term
23 incentive for all employees back in December, before
24 there was ever any contemplation or even I knew the
25 words ITN. And then progressively it developed.

1 And in June and July, when we got to the
2 strategic planning process of contemplating
3 recapitalization to solve the constraints, we did what
4 humans do. We said, okay, we now have this plan. We've
5 been working on it for seven months. Let's incorporate
6 recapitalization. Because you need to contemplate every
7 single potential outcome in terms of, you know, how this
8 would work.

9 After that, the board approved it. I asked my
10 CAO, my legal counsel, my CFO, my HR to do all the work
11 necessary to make sure that it was, you know, in
12 accordance with all laws, statutes, and ethics codes, to
13 the point where at -- and then got to November 5th, when
14 the teams were so consternated and frustrated where
15 Jason and I talked about just killing it, and we killed
16 it.

17 Q But in June of '19 when you made that
18 statement in the clip we just played that an LTI would
19 be worthless under a traditional response, that was a
20 misstatement?

21 A As I just said, yeah, it was a misstatement.

22 Q Okay.

23 A Because ultimately, when you look at the -- in
24 July, we corrected that.

25 Q Is it true that under an ITN scenario, the PUP

1 right?

2 A That's absolutely right. And that's one of
3 the reasons why we got to where on November 12th I said
4 this is incongruous and we need -- we need to be done
5 with it.

6 Q And potentially under an ITN situation, the
7 PUP could have been worth hundreds of millions of
8 dollars; do you agree?

9 A I agree.

10 Q Do you remember telling members of your
11 short -- of your senior leadership team that if a
12 recapitalization occurred, there would be a large amount
13 of money that could be used to fund the PUP?

14 MR. MULLEN: Object to the form of the
15 question.

16 You can answer.

17 A Do I recall -- the senior leadership team, I
18 don't recall being the one that told them that. But it
19 was at one point discussed that, hey, if an ITN ended up
20 being successful, then you would have a pocket of
21 capital to be able to perform -- to fund debt and all
22 the performance units and other things like that. I
23 mean, everything, right? So --

24 Q Was that conversation before July 23rd, 2019?

25 A I don't think so.

1 value would be directly tied to the sale price of JEA?

2 A As it -- as it was designed, yes.

3 Q Intentionally designed?

4 A No. Well -- I don't understand.

5 "Intentionally designed," what does that mean?

6 Q Was it intentionally designed to be tied to a
7 sale price?

8 A No. It was designed to be tied to the
9 financial value of JEA, which was the book value, the
10 contribution to the City, and distributions to
11 customers.

12 Q Okay.

13 A Which if you -- the book value is the
14 accounting book value of the business. Contribution is
15 the equivalent of a dividend. And then basically --
16 what did you call it -- rebates to customers or the
17 equivalent of a dividend.

18 Q Did you know that the value of the PUP was
19 tied to the financial value of JEA when it was passed on
20 July 23rd?

21 A Everyone did.

22 Q Everyone did?

23 A Yeah. It's actually in the board doc.

24 Q In relation to an ITN, the higher the sale
25 price of JEA, the more valuable the PUP units would be;

1 Q Now, let me ask you specifically, you had a
2 number of off-site meetings with your senior leadership
3 team; right?

4 A We did, yeah.

5 Q And prior to July 23rd, 2019, at any of these
6 off-site meetings, did you ever make a statement to
7 members of your senior leadership team that if there was
8 a recapitalization, there would be a large sum of money
9 that could be used to fund the PUPs?

10 A Not to my recollection, but ...

11 Q If others recall you saying that, is it
12 possible that you said it?

13 MR. MULLEN: Object to the form of the
14 question.

15 A You're asking me to speculate on --

16 Q I'm asking, do you doubt -- do you doubt it
17 and say it's not true, or -- I'm telling you other
18 people have said that you have said that.

19 A Okay.

20 MR. MULLEN: Object to the form of the
21 question.

22 THE WITNESS: Then it's entirely possible, but
23 it was part of what we were reviewing in between --
24 what would that be? July? June, July, whatever.

25 I don't know, when -- when did they say I said it?

1 BY MR. GRANAT:
 2 Q At a meeting prior to July 23rd.
 3 A Okay. But when? Where?
 4 Q You don't recall ever saying that?
 5 MR. MULLEN: Object to the form of the
 6 question.
 7 BY MR. GRANAT:
 8 Q You remember or you don't.
 9 A No, I don't remember.
 10 Q Okay.
 11 A But if somebody -- you know, if you have a
 12 bunch of people that --
 13 Q Tell me what would have happened if the PUP
 14 passed and there was a recapitalization. What would
 15 have happened --
 16 MR. MULLEN: Object to --
 17 Q -- to the PUP?
 18 MR. MULLEN: Object to the form of the
 19 question.
 20 A So, number one, in order for the
 21 recapitalization to occur, you would have had to have a
 22 board vote. And I do remember this being a discussion
 23 with legal counsel that performance units were not a
 24 mean -- were not within the control of senior
 25 management, because you had to have a board vote. You

1 had to have a City Council vote. You had to have a
 2 referendum, and then you had to have regulatory approval
 3 and a financial closing in order for the
 4 recapitalization event definition to trigger.
 5 And so, you know --
 6 Q Well, I think I've already answered it, and I
 7 think you agreed that if a recapitalization did occur
 8 and there was --
 9 A Yeah.
 10 Q -- an amount of money over, I think, 3.4
 11 billion netted to the City, 10 percent would have gone
 12 to fund the PUP, right?
 13 A Correct. And that was part of -- that was
 14 part of the plan documents from the time that the board
 15 approved it.
 16 Q All right. Did you ever calculate what the
 17 potential payouts of the PUP might be?
 18 A Yes. Actually, a lot of people did.
 19 Q Who calculated what the payouts may have been?
 20 A I know that I heard of people in the finance
 21 department calculating it. Senior leadership team
 22 members calculated it. It's a pretty easy calculation.
 23 Q Explain the calculation to me.
 24 A It's, in your own words, anything over 3.4
 25 billion, you take 10 percent, and that's the value of

1 the pool.
 2 Q When did you know that? When did you
 3 understand that that's how it would work under a
 4 recapitalization?
 5 A When the plan documents were being developed
 6 in July.
 7 Q And so let's call -- just for purposes of this
 8 conversation, let's call 10 percent of anything over 3.4
 9 billion netted to the City --
 10 A Yeah.
 11 Q -- the formula. Okay?
 12 A Sure.
 13 Q Did you know of the formula before
 14 July 23rd, 2019?
 15 A Yeah, because that's what was actually
 16 presented to the board.
 17 Q That formula was presented to the board?
 18 A Yes. That's what's in the board package
 19 online on JEA.com.
 20 Q Is that in the July 23rd board package
 21 materials?
 22 A Yeah. Now, it's -- you know, that formula is
 23 written in a way that I think the team, Foley, you know,
 24 and the finance group ended up -- it's in Exhibit A, I
 25 think, of the plan. And I don't know where it is. Does

1 anybody?
 2 (Discussion off the record.)
 3 MR. MULLEN: For the record there, Sean, I
 4 think you skipped 9 and 10, unless those were meant
 5 to be the video clips.
 6 MR. GRANAT: Those, I think, what we're
 7 considering the clips.
 8 MR. MULLEN: All right. And then your last
 9 video clip that you played, that would be 12, but
 10 you didn't designate --
 11 MR. POWELL: That would be 13. I'm sorry.
 12 12 --
 13 MR. MULLEN: So the video would be 12?
 14 MR. POWELL: The video -- this last audio
 15 would be 13.
 16 MR. GRANAT: Right. So we had an 11 and 12.
 17 So this is 14.
 18 (Exhibit Number 14 was marked for
 19 identification.)
 20 BY MR. GRANAT:
 21 Q Mr. Zahn, I'm going to give you a copy of the
 22 board materials for July 23rd, and I have Bates stamped
 23 these. Okay? They're -- with your name Zahn, 1 through
 24 352.
 25 MR. MULLEN: And this is the entire board

1 package for the July 23, 2019, board meeting?
 2 MR. GRANAT: It is.
 3 And it's -- we said this is 14.
 4 THE WITNESS: So go to Page Zahn 279.
 5 "Employee PUP pool equal to 10 percent of value
 6 created in excess of challenge target."
 7 Employees must increase value of JEA by at
 8 least \$300 million to benefit -- the calculated
 9 value is the sum of the net position, the City
 10 contribution, and any refunds to customers.
 11 BY MR. GRANAT:
 12 Q Okay. So -- okay.
 13 I see where it says, "Employee PUP pool equals
 14 10 percent of value created in excess of the challenge
 15 target value."
 16 Right?
 17 A And then above it, the challenge target value
 18 is 3.39 billion, which is a 300 million increase over
 19 forecasted, because at that point the audit hadn't been
 20 completed. And then it says this is how it works.
 21 I mean, that was the -- that was the layman --
 22 and I remember -- I went back and watched the video, and
 23 around this, this is where Ryan Wannemacher said, so,
 24 for example, if you had a \$600 million increase in the
 25 value of JEA, then that would be 300 million over the

1 challenge target, so 10 percent of that 300 million is
 2 30 million. It's on the board package.
 3 Q Is that what Mr. Wannemacher said?
 4 A On television in the board meeting.
 5 Q Okay.
 6 A Yeah.
 7 Q And so is this --
 8 A And I confirmed with board members afterwards
 9 that they understood that.
 10 Q Page 279, Zahn 279, this is how you
 11 communicated to the board what the formula would be in
 12 the event of a recapitalization --
 13 MR. MULLEN: Object to the form of the
 14 question.
 15 Q -- this slide?
 16 MR. MULLEN: You can answer.
 17 A No. There's the totality of the entire
 18 presentation, and then there's actually -- where's the
 19 resolution --
 20 MR. MULLEN: From the meeting?
 21 THE WITNESS: The resolution from the meeting
 22 had a more robust -- so Zahn 347, 348, 349, 350,
 23 this was drafted by OGC. The resolutions were
 24 drafted by OGC.
 25 And this would have been reviewed by senior

1 leadership as well as everybody through the typical
 2 board approval process. And, again, as is normal
 3 course, I would have had conversations with all the
 4 board members ahead of the July board meeting,
 5 walking them through each of the different items of
 6 the board package.
 7 BY MR. GRANAT:
 8 Q So are you telling me that you sat down with
 9 each of the board members and explained to them that if
 10 there was a recapitalization, the PUP would be funded
 11 with 10 percent of anything over 3.4 billion that was
 12 netted to the City?
 13 A Not in those exact words, but actually, if you
 14 watch the board meeting, Alan Howard actually asked that
 15 exact question. He said, what happens in the event of a
 16 recapitalization? How does this work? Does the
 17 performance unit have value? And the answers were yes.
 18 Q Let's do this. At the time that this PUP plan
 19 was passed on July 23rd, 2019, you were aware, then,
 20 right, that if JEA was -- there was an ITN and there was
 21 some sort of sale and the City netted \$4.4 billion, then
 22 10 percent of \$1 billion would have funded the PUP --
 23 MR. MULLEN: Object to the form of the
 24 question.
 25 Q -- is that right?

1 A Yes, that's what it -- I mean, that's what all
 2 the documents and public records say.
 3 Q Okay. I'm asking you --
 4 A So of course I was aware.
 5 Q So on July 23rd, 2019, you were aware that if
 6 the City netted \$1 billion out of the sale of JEA that
 7 the PUP would be funded with \$100 million?
 8 A That the City would have to net 4.4 billion.
 9 Q Okay. Let me restate that, because I want a
 10 clean question here. I want to make sure there's no
 11 misunderstanding.
 12 On July 23rd, 2019, when the PUP was passed,
 13 were you aware that if the City netted \$4.4 billion out
 14 of the sale of JEA that the PUP would have been funded
 15 with \$100 million?
 16 A Yes.
 17 MR. MULLEN: Object to the form of the
 18 question.
 19 THE WITNESS: And again, that was well -- that
 20 was well defined by -- that was well understood by
 21 everyone. I mean -- I mean ...
 22 BY MR. GRANAT:
 23 Q My question, though, is did you, as CEO --
 24 A Yes, I've answered.
 25 Q -- of JEA understand that?

1 A Yes.
 2 Q Did you tell that to the JEA board?
 3 MR. MULLEN: Object to the form of the
 4 question.
 5 You can answer.
 6 A Yeah, we talked about it -- I talked about it
 7 with the Chair. We talked about it in individual
 8 meetings. Yeah, we --
 9 And then actually Alan Howard even asked how
 10 does this -- now, he didn't use your hypothetical, but
 11 Ryan Wannemacher used a hypothetical of 600 million
 12 increase and not a billion. You used a billion; he used
 13 600 million, right?
 14 Q Well, when this PUP passed, you were aware
 15 that a sale of JEA could result in hundreds of millions
 16 of dollars going to the PUP?
 17 MR. MULLEN: Object to the form of the
 18 question.
 19 You can answer.
 20 BY MR. GRANAT:
 21 Q Depending on the sale price?
 22 MR. MULLEN: Same objection.
 23 A Everyone was aware.
 24 Q And you were aware?
 25 A And I was aware. I am -- yes.

1 Q And knowing that, you allowed the PUP to be
 2 passed by the board?
 3 MR. MULLEN: Object to the form of the
 4 question.
 5 A I can't allow the board to pass anything. The
 6 board passes whatever they want to pass. It's their
 7 prerogative.
 8 Q You presented the PUP to the board for passage
 9 with that knowledge --
 10 A With OGC's -- with OGC's sign-off from
 11 July 22nd, which I would never have taken for the PUP if
 12 I hadn't gotten the letter from Jason, Lawsikia and --
 13 and that is the reason why I asked for that letter,
 14 because I wanted to make sure that everything in the
 15 ITN, everything in the performance units, everything in
 16 the employment agreements, everything that was being
 17 presented had been reviewed by counsel and the board had
 18 the proper authority and the proper reviews of -- the
 19 entire mechanism of consolidated government had reviewed
 20 this.
 21 Q And so you feel -- or let me rephrase that.
 22 Do you feel that you advised the board of this
 23 10 percent over the target value would be --
 24 A It's in writing.
 25 Q -- the funding of the PUP?

1 A It's in writing on Page --
 2 Q I understand it's in writing. I'm asking you,
 3 as CEO of JEA, do you feel that you advised the board
 4 that that was the formula?
 5 MR. MULLEN: Object to the form of the
 6 question.
 7 You can answer.
 8 A Yes, it's in writing in a presentation
 9 provided to the board.
 10 Q And you're relying on it just being in writing
 11 and the presentation that we can all watch --
 12 A On television.
 13 Q -- on television; is that right?
 14 A That's the whole --
 15 MR. MULLEN: Object to the form of the
 16 question.
 17 You can answer.
 18 THE WITNESS: I also, you know, sat down
 19 with -- and my team sat down with the board members
 20 and talked to them about everything in the July
 21 board package.
 22 BY MR. GRANAT:
 23 Q All right. Did you talk to the board
 24 specifically about the potential large size of value
 25 that these PUPs might result in?

1 A Well, at that point in time, we didn't
 2 actually know -- it was a hypothetical. Does that make
 3 sense?
 4 So we didn't actually know what the real value
 5 of JEA was until actually right around when we killed
 6 the plan, because that's when it became pretty evident
 7 how big the plan would be. We got the revised replies
 8 November 6th, I want to say.
 9 Q And what was the greatest bid?
 10 A So I understand this is going to be a public
 11 record. Are you sure you want me to answer that
 12 question?
 13 MR. GRANAT: Is it still confidential?
 14 MR. PHILLIPS: I don't --
 15 THE WITNESS: I believe it is.
 16 MR. MULLEN: As I recall, the bid information
 17 has not been made public, because I think some of
 18 the bidders objected to the public records request
 19 and asked for the numbers to be --
 20 MR. GRANAT: That might have been resolved.
 21 MR. MULLEN: -- redacted.
 22 (Reporter clarification.)
 23 MR. PHILLIPS: We can redact the transcript.
 24 MR. POWELL: That's true, we can always
 25 redact --

1 MR. GRANAT: If it's not a public record, it's
2 not a public record.

3 THE WITNESS: So, again, that was around the
4 time that we decided -- I, myself, Jason, the
5 team -- said we need to be done with this plan.

6 BY MR. GRANAT:

7 Q And what was the largest bid?

8 A [REDACTED].

9 Q [REDACTED].

10 And do you know if that had gone through what
11 the net to the City would have been?

12 MR. MULLEN: Object to the form of the
13 question. Objection. It's a hypothetical.

14 A Not off the top of my head. It would be
15 something over [REDACTED] probably.

16 Q And that would have resulted in [REDACTED]
17 [REDACTED] to fund the PUP; right?

18 A So if the value of JEA went from \$3 billion to
19 [REDACTED], so the value of JEA increased [REDACTED]
20 and the City had -- was able to obtain -- and actually,
21 the City was able to get [REDACTED] times the contribution,
22 which is basically only worth \$ [REDACTED], then the value
23 of the performance unit would have increased, yes. But
24 again, we killed the plan.

25 Q Yeah, I'm aware of that.

1 it and that it was public.

2 Q Did you sit down with Andy Allen and talk
3 about the formula and potential payouts?

4 A Again, I don't recall -- I don't recall the
5 meeting with him, as I said earlier, in July, but I'm
6 sure -- that's why I asked for my calendar so I
7 could ...

8 Q Did you sit down with Alan Howard and discuss
9 the formula and potential payout?

10 A Absolutely. And actually, I've reconfirmed
11 that with him even subsequently.

12 Q When did you reconfirm that with him?

13 A In December

14 Q In person or on the phone?

15 A On the phone.

16 Q And what exactly did you reconfirm with
17 Alan Howard?

18 A I said, you know, it's clear that April Green
19 is trying to go back on a number of resolutions that her
20 signature's on. What do you -- what the heck is going
21 on and what kind of politics are being played? Wasn't
22 it really clear that it was 10 percent over a threshold?

23 And he said yes. I said, I thought it was
24 pretty clear to everybody.

25 Q Did you tell -- did you sit down with

1 So did you ever sit down with April Green and
2 talk about the formula and the potential payout numbers
3 of the PUP?

4 A Yes.

5 Q When was that?

6 A It would have been before the July board
7 meeting. I sat down with each of the board members.

8 Q And you specifically talked about the
9 potential value of the PUP --

10 A Absolutely.

11 Q You sat down with Camille Johnson and told her
12 the potential payouts and the formula?

13 A Actually, more than that, because she was the
14 plan administrator, and we talked about how it would be
15 administered and all that.

16 Q Did you sit down with Fred Newbill and tell
17 him about the formula that we've agreed on and the
18 potential payout numbers?

19 A Again, you're -- so you're -- you're saying
20 potential payout numbers.

21 Q Yes.

22 A So we walked through the formulas. I wasn't
23 going to sit around and hypothesize on, you know,
24 transaction values. We did review it in public board
25 meetings on television so that people could understand

1 Kelly Flanagan and discuss this formula with her?

2 A Most of my board reviews work with her were in
3 conference calls, because she was flying back and forth
4 to London. So sit down, I don't know. But we would
5 have talked about the performance units. She was on the
6 finance and audit committee.

7 Q So did you talk to Kelly Flanagan about this
8 PUP formula?

9 A Yes. About the whole performance unit plan.
10 And I believe other members of my senior leadership team
11 did.

12 Q So are you -- are you saying that on July 23rd
13 when the PUP was passed, knowing the formula, you never
14 considered that a recapitalization might involve \$4 or
15 \$5 billion?

16 A I considered a lot of hypotheticals but didn't
17 know.

18 Q So as the CEO of JEA, didn't it occur to you
19 that maybe you should discuss some potential sale values
20 of JEA with your board before they passed a plan like
21 this?

22 MR. MULLEN: Object to the form of the
23 question.

24 You can answer.

25 A So actually, as the CEO of JEA, in individual

1 meetings with board members, after the 2017
2 privatization, board members and I talked -- and Melissa
3 Dykes and Ryan Wannemacher and a whole bunch of people
4 talked about, you know, the value of JEA and what it
5 might be worth or might not be worth.

6 And there was a lot of -- there was a lot of
7 variability to that principally because of Vogtle and it
8 being a \$4-and-a-half-billion contract and not knowing
9 how that ever would be handled.

10 So, you know -- while the [REDACTED] was a bid
11 for -- and by the way, there's a whole bunch of bids
12 somewhere in there -- was a bid for JEA Electric and
13 Water, it didn't take into account escrow -- one of the
14 things -- and this has been misreported in the media --
15 said that Vogtle is going to be left behind for the City
16 to pay, and the reality was, no, that wasn't the
17 structure.

18 One of the things they contemplated was
19 putting [REDACTED]

20 [REDACTED]

21 [REDACTED]
22 Q So on July 23rd, '19, when this PUP passed,
23 you had not considered it necessary to have a discussion
24 with the board members about the value of the PUP if a
25 recap occurred in the range of 4 or \$5 billion?

1 you didn't feel it necessary to sit down with each board
2 member and discuss with them the value of the PUP if a
3 recapitalization had occurred in the range of 4 or
4 \$5 billion?

5 MR. MULLEN: Object to the form of the
6 question.

7 BY MR. GRANAT:

8 Q That's a yes or no question.

9 MR. MULLEN: No, it's not. And the question
10 has been asked and answered multiple times.

11 MR. GRANAT: And you're here as a witness, and
12 please don't lead Mr. Zahn.

13 THE WITNESS: As I've answered before, yes, I
14 did talk to the board members about how the value
15 of the performance unit changes under a number of
16 scenarios.

17 BY MR. GRANAT:

18 Q Let me just ask this. Before this PUP passed
19 on July 23rd, did you discuss with the board members
20 what the value of the PUP would be if a recap occurred
21 in the range of 4 or \$5 billion?

22 MR. MULLEN: Object to the form of the
23 question.

24 A Well, if a recap occurred in the form of 4 or
25 \$5 billion, the PUP would be worthless, because you have

1 MR. MULLEN: Object to the form of the
2 question.

3 A Actually, I said -- I think I answered I did
4 talk to the board members about that it's 10 percent
5 over a number, and if you have a transaction that's a
6 redemption, then it's going to be 10 percent over that
7 number.

8 They're sophisticated board members. They can
9 do 10 percent of a number. I mean --

10 Q Okay. So your position is the board should
11 have been able to figure that out for themselves?

12 MR. MULLEN: Object to the form of the
13 question.

14 A That's not my position. My position is that
15 the performance unit was a collaboratively developed
16 plan over a number of months with the -- intimate
17 involvement with a lot of board members, a lot of
18 leadership team members, a lot of finance members,
19 internal and external. The entire -- you know, to my
20 knowledge, a lot of OGC, special counsel,
21 Willis Towers Watson. This wasn't, you know --

22 Q Okay.

23 A It was covered over a seven-month period of
24 time.

25 Q So on July 23rd, 2019, when this PUP passed,

1 4 billion of debt you have to pay off.

2 Q Yeah. Okay.

3 Did you discuss with the board -- before this
4 passed on July 23rd, did you discuss with individual
5 board members what the value of the PUP would have been
6 if there was a recapitalization and the City netted 4 to
7 \$5 billion?

8 MR. MULLEN: Object to the form of the
9 question.

10 A I did not use the exact hypotheticals that you
11 talked about, but I did talk about how the value of the
12 performance unit changed based on the contribution to
13 the City. And it was well understood that that
14 contribution could go up in a recapitalization event or
15 it could go down.

16 Q Well understood by who?

17 A All the board members.

18 Q Why didn't the PUP contain a cap?

19 MR. MULLEN: Object to the form of the
20 question.

21 A So my guess is a mis-draft, because at the --
22 Willis Towers Watson actually talked about a cap.

23 Q Were you aware that there was no cap on the
24 PUP?

25 A Yeah, actually, we started -- somebody brought

1 it to my attention at the end of October, and -- because
2 I think it was a line of questioning from OGC, was
3 asking a whole bunch of questions about, you know, this
4 needs to be a capped liability.

5 And so one of the things that I talked to
6 Herschel and Lynne about was, well, why don't we just
7 consider a cap.

8 Q When did you become aware there was no cap?

9 A When did I become aware?

10 It would have been somewhere between September
11 and October. But, you know, again, the legal team was
12 doing all of their review, and as I understand it, that
13 was one of the major questions of OGC, and so -- and I
14 left this to Herschel, Lynne, Ryan, Melissa, our HR team
15 to figure out how they would implement it in terms of,
16 you know, all the protocols and implementations, that
17 kind of stuff. And we did start talking about a cap.

18 We never -- it never got redrafted.

19 Q Okay.

20 A But because -- it never got drafted in, but
21 more because we were dealing with the more major
22 structural issues of charter and AG. And -- and when I
23 say "we," the team and OGC and special counsel.

24 Q Okay. I want to back up. I asked you if you
25 recalled making a statement in an off-site meeting. And

1 leaders after the July 23rd meeting and talked to them
2 about how it would be extended to their membership.

3 Q Who besides JEA employees was going to be
4 considered to participate in the PUP?

5 A Dedicated OGC attorneys.

6 Q Which was Lynne Rhode and Miriam --

7 A Yes.

8 Q -- Hill?

9 Why were they going to be included?

10 A Because the intent was to -- and that became a
11 pretty hotly debated topic, as I understand it, between
12 Lawsikia and Lynne, that OGC attorneys would be
13 included. And the rationale around it was that you
14 would have all dedicated full-time employees --
15 professionals included in the plan.

16 Q Whose idea was that?

17 A Mine.

18 Q Did you contemplate anyone other than
19 Lynne Rhode and --

20 A No.

21 Q -- Miriam Hill who weren't JEA employees?

22 A No.

23 I was always a CEO that wanted to take care of
24 all my full-time employees.

25 Q So before the PUP was passed, you understood

1 let me just -- I'm going to rephrase and see if you
2 remember making a statement along these lines.

3 Did you ever say that upon recapitalization or
4 change of control of JEA that there's a large sum of
5 money being transferred and a small portion could be
6 used to fund an incentive plan for employees?

7 A Did I use those exact words, or did I make
8 that statement?

9 Q Did you say that or something along those
10 lines? Do you recall that?

11 MR. MULLEN: Object to the form of the
12 question.

13 A Again, the whole senior leadership team would
14 have been at that meeting, so -- and again, I don't know
15 when that meeting would have occurred.

16 Q Do you ever recall if you made -- anybody
17 reacting negatively to any statement that you made like
18 that?

19 A No. Definitely not.

20 So, in fact, there were a number of low-level
21 employees that would actually -- after the July 23rd
22 said, thanks for including all employees in the
23 performance unit plan. I was -- I think this could be a
24 great plan for all of our employees.

25 In fact, I even discussed it with union

1 that if there was a recap, part of the sale proceeds
2 would fund the PUP; right?

3 A That's exactly what it says in the documents,
4 and I understood that.

5 Q And what made you feel like you and JEA
6 employees would be entitled to those proceeds of the
7 sale?

8 MR. MULLEN: Object to the form of the
9 question.

10 You can answer.

11 A I'm not sure how to answer that question. How
12 do we feel entitled? That would have, you know --
13 number one, you know, the board -- it was the board's
14 prerogative to implement the plan.

15 Number two, if that sale were to go through,
16 you would have had to have the approval of the board, 19
17 City Council members, a million-plus voters, regulatory
18 approval. So the plan would have gone through the
19 scrutiny of a number of policymakers that had no benefit
20 to it plus the entire voting public.

21 Q Tell me what was it in November that led you
22 to this realization that, gosh, that the recap would be
23 too much, we need to kill --

24 A That wasn't actually it. What led me to kill
25 it was Lawsikia and Lynne having a very heated debate at

1 Foley and -- about whether it's chart -- you know, ruled
2 by the charter and all the different legal arguments
3 that, as I understand it, you guys were having between
4 July and that meeting.

5 And, you know -- and that's the one meeting,
6 Jon, I was referencing when Jon Phillips and -- you
7 know, I would get updates, but there were a lot of
8 different debates going on between -- with counsel
9 having opposing opinions, which would have ultimately,
10 as I understand it, been resolved on how the AG weighed
11 in.

12 Q So you're saying you didn't kill the PUP
13 because of potential value?

14 A I'm saying it was the amalgamation of the
15 November 5th meeting, recognition that it was -- that
16 it -- that it could have a substantial -- you know, that
17 the ITN's values were going to -- could be substantial.
18 There's a number of reasons.

19 Q So when was it that you had this realization
20 that the ITN numbers could be substantial?

21 A On November 6th when the revised replies came
22 in.

23 Q So you referenced the July 23rd presentation
24 that Ryan Wannemacher gave.

25 A Yeah, and Jon Kendrick.

1 Exhibit 15, because the board package was 14.
2 (Exhibit Number 15 was marked for
3 identification.)

4 (Audio played.)

5 A SPEAKER: "I will turn it over to
6 Mr. Wannemacher to explain how the performance
7 units work.

8 A SPEAKER: So what we're proposing is the
9 adoption of a performance unit plan which would be
10 a new benefit program to enable employees to
11 participate in both the upside and the downside as
12 the business changes.

13 So employees will be eligible to purchase
14 performance units for \$10 per unit, and the units
15 will increase or decrease in value based on the
16 financial performance of JEA over a three-year
17 period.

18 Employees will be required to remain employed
19 through the end of that performance period to
20 receive any benefit from any (unintelligible). The
21 first performance period would be fiscal years 2020
22 to 2022, and it's recommended that 30,000
23 performance units be made available for purchase.

24 In your packet, you'll find a full summary of
25 the details of this program, but I wanted to walk

1 (Discussion off the record.)
2 (Recess taken from 2:47 p.m. to 2:54 p.m.)
3 THE WITNESS: Sean, I was thinking about
4 something. You said a number of times, you know,
5 that the performance unit could have been hundreds
6 of million dollars plan. Recognize that you also
7 had the pension plan that could have been -- was a
8 couple hundred million dollars, the retention plans
9 that were a component.

10 I openly acknowledge that the policy decision
11 around this performance unit ended up being widely
12 unpopular, and I get it. But it was widely
13 discussed and presented. I mean, I understand the
14 point, though.

15 BY MR. GRANAT:

16 Q The question, though, is, was the board
17 properly and adequately advised?

18 A I believe so.

19 MR. GRANAT: And you believe so. Okay.
20 That's fair.

21 I want to play a portion of the July 23rd
22 board meeting. And this is going to be Exhibit 14.
23 The clip itself is labeled Number 3, just for the
24 record.

25 MR. MULLEN: I think you want to call it

1 through the board -- walk the board through some of
2 the mechanics of how this would work for the first
3 performance period

4 So the performance units would increase or
5 decrease in value based upon the financial
6 performance of JEA. And before employees would see
7 any benefit from this program, JEA would be
8 required to exceed a challenge target for value
9 over the course of the performance period.

10 So for the first period -- for the first
11 performance period, the three-year period,
12 employees would need to increase the value of JEA
13 by at least \$300 million before they would receive
14 any benefit. So between now and 2022, they'd have
15 to exceed \$300 million in increased value.

16 If they increase value by more than that
17 \$300 million, they would be eligible to receive
18 10 percent of the value that's generated above
19 300 million. So, for example, if employees
20 increase the value of JEA by \$600 million, which
21 would represent a substantial increase of over
22 20 percent in the value of JEA over that three-year
23 period, these performance units would be eligible
24 for 5 percent of the \$600 million in value that was
25 created. This would equal \$30 million, or an

1 average of about \$10 million per year over that
2 performance period. To put that in perspective, it
3 represents a little more than 6 percent of our
4 total annual payroll.

5 On the flip side, if the value of JEA was less
6 than it is today at the end of the performance
7 period, the value of the performance units would
8 decline in value, and employees would experience a
9 loss at the end of the performance period.

10 In the event that the employees increase the
11 value of JEA but it does not exceed the
12 \$300 million challenge, then they would receive no
13 gain -- experience no gain or loss and would simply
14 receive their money back at the end of the
15 performance period."

16 (Audio stopped.)

17 BY MR. GRANAT:

18 Q So let me ask you some questions about what
19 Mr. Wannemacher said.

20 He gave an example and said that if the value
21 of JEA increased by \$600 million, right, that was his
22 example?

23 A Uh-huh.

24 Q He said that was a substantial increase,
25 20 percent increase.

1 Q And then he kind of put that in perspective
2 and said that's a little more than 6 percent of total
3 annual payroll; right?

4 A That's what he said.

5 Q Let me ask you, can the value of JEA increase
6 independently of employee performance?

7 MR. MULLEN: Object to the form of the
8 question.

9 A Independent of employee performance?

10 Q No? You can't just raise rates and increase
11 the value of JEA?

12 A You still need employees to perform their
13 duties. I mean, you still need -- and that's a board
14 decision of who has no vested interest in raising rates
15 just to increase the value of a performance unit.

16 Q I'm just asking, is the value of JEA
17 completely dependent on employees improving their
18 performance?

19 A The financial value of any company is
20 predicated on a number of employee performance, market
21 factors, a whole bunch of things that go into the, you
22 know -- I mean, that's business. Business is predicated
23 on sales. It's predicated on employee performance.
24 It's predicated on your customers continuing to consume
25 your product. Like --

1 That's a very large increase, would you agree,
2 in the value of JEA?

3 A Yeah.

4 Q Okay. But then he said the PUPs would be
5 eligible for 5 percent of the 600 million; right?

6 A Right.

7 Q He didn't use the 10 percent --

8 A Well, he used the 10 percent earlier to say
9 10 percent of the coverage in the challenge target was
10 300 million. So what he was doing is simple math -- he
11 was doing simple math, right?

12 Q Then he said 5 out of the 600, where he could
13 have said 10 percent of the 300; right?

14 A I'm sure he could have said a lot of things.

15 Q A little confusing?

16 A Not to me.

17 Q That's not confusing to you?

18 A And 30 million is -- when he -- he further
19 clarified that it was 30 million, which would be
20 10 percent of 300 million.

21 Q And then he said that would break down to
22 about 10 million a year?

23 A Yeah, because that was the -- the idea of the
24 performance unit was that it was a three-year
25 measurement period.

1 Q But can you just answer the question? Aren't
2 there factors, things that could occur that increase the
3 value of JEA that aren't dependent on improved employee
4 performance?

5 A We could have a nuclear war and that would
6 have a pretty substantial impact on the value of JEA. I
7 mean, we could have a hurricane and sales would go off
8 dramatically, and that would have an impact on the
9 performance of JEA. So --

10 Q The things that could happen to increase the
11 value of JEA that aren't dependent on increased
12 employee --

13 A But what I'm telling you is there are equally
14 a number -- there are an equal number of things that
15 have financial impacts on a business that go up and down
16 and that the financial -- the employees' performance is
17 one very major factor of that.

18 Q But it's not the only factor?

19 A It is not the only factor.

20 Q You're aware, right, that the -- that Ryan
21 Wannemacher, during his presentation, told the board
22 that the board packet contains a full summary of the
23 plan? Did you hear him say that?

24 A I believe I heard him say that.

25 Q And it's true; right? There's a full summary

1 of the plan and lots of documents that describe the plan
 2 in the board materials; right?
 3 A Yeah. Actually, in the July board meeting, we
 4 were very specific to include all of the materials on
 5 total compensation from beginning of conception through
 6 end so that the board had a comprehensive set of
 7 documents relative to that.
 8 Q And is it reasonable to expect that the board
 9 is going to rely on the materials that you give them in
 10 their packets?
 11 MR. MULLEN: Object to the form of the
 12 question.
 13 You can answer.
 14 BY MR. GRANAT:
 15 Q Don't you expect the board members to read and
 16 understand the materials you give them in the board
 17 packet?
 18 A As a board member, I always read and
 19 understand the materials that I'm asked to vote on.
 20 Q Well, as CEO, when you presented the July 23rd
 21 board materials to the board at that time, did you
 22 expect that they would read and understand those
 23 materials?
 24 A Yeah.
 25 Q You're aware that there's reference in the

1 board materials that says that the PUP plan cost would
 2 be 3.4 million a year?
 3 MR. MULLEN: Object to the form of the
 4 question.
 5 A That's in the Willis Towers Watson analysis.
 6 Q Right. And it's in the board packet; right?
 7 A And it was specifically -- conflicts with Ryan
 8 Wannemacher's exact statement at the board meeting. So
 9 I'm aware that the number's there. I've seen it.
 10 Q Yeah. Let me point you to it in JEA
 11 Exhibit -- it's Exhibit 7, Page 305. Would you turn to
 12 it, please?
 13 MR. MULLEN: It's under Tab 4, Page 305.
 14 THE WITNESS: Uh-huh.
 15 BY MR. GRANAT:
 16 Q And this is a slide from the
 17 Willis Towers Watson analysis; is that right?
 18 A Yes.
 19 Q And it says estimated cost of the performance
 20 units to all employees based on current incumbent base
 21 salaries is 3.4 million?
 22 A That's based on their recommendation. Their
 23 recommendation also only recommended giving it to
 24 executives and directors.
 25 Q Did you --

1 A Which is on Page 306.
 2 Q Well, that's interesting. Did you have a
 3 discussion with the board about that?
 4 A That was presented in the June comp committee
 5 meeting, and we talked about including all employees.
 6 Q Did you tell the board specifically that the
 7 Willis Towers Watson material in the July 23rd board
 8 packet only contemplated executives participating in the
 9 PUP?
 10 A Yeah, we reviewed this actual -- we reviewed
 11 the presentation in the minutes. If you look at the
 12 June comp committee meeting --
 13 Q No. I'm asking you in the July 23rd board
 14 meeting. At the time of the July 23rd board meeting --
 15 A No, we didn't -- because this was -- this was
 16 historical material provided as additional reference for
 17 all board members on top of what was being presented, so
 18 it went all the way back to January.
 19 Q So why did you include this
 20 Willis Towers Watson document in the July 23rd board
 21 meeting if it contained information that wasn't
 22 applicable to the PUP you were presenting?
 23 A I wanted to be complete and comprehensive in
 24 providing every single document, including minutes,
 25 around total compensation from inception to the time the

1 board was going to take an action.
 2 Q Are you aware that board members on July 23rd
 3 reviewed this Willis Towers Watson document and relied
 4 on it and relied on the 3.4 million representation of
 5 cost?
 6 MR. MULLEN: Object to the form of the
 7 question.
 8 A I'm not aware of that, but it would seem in
 9 the presentation that you got a -- you got a number that
 10 was tenfold that.
 11 Q If it's the case that board members relied on
 12 this Willis Towers Watson number of 3.4 million, would
 13 you agree that the board wasn't well advised on what
 14 they were passing?
 15 MR. MULLEN: Object to the form of the
 16 question. Object to the hypothetical.
 17 A I can't speak for board members.
 18 Q I mean, did you point out to the board on
 19 July 23rd that information that you included in this
 20 packet contained a Willis Towers Watson compensation
 21 strategy document that was inapplicable, and the figures
 22 and numbers in here didn't contemplate the whole company
 23 participating?
 24 MR. MULLEN: Object to the form of the
 25 question.

1 A That had been reviewed at the June comp
2 committee meeting and -- when the Willis Towers Watson
3 report was reviewed by Jon Kendrick and -- where Towers
4 Watson analysis of JEA versus -- and Jon Kendrick
5 interim, you know, provided the committee with an
6 overview as well as was asked questions related to the
7 Towers Watson presentation. This item was presented for
8 information to the committee.

9 So I hear you zeroing in on that, but I also
10 provided the total comp philosophy presentation from
11 January's comp committee, the total package and minutes,
12 you know, from that. It was -- everything was produced.

13 Q Well --

14 A To be complete and comprehensive.

15 Q What would your response be if I told you that
16 the majority of board members who passed the PUP on
17 July 23rd believed that the cost would be \$3.4 million
18 as referenced by Willis Towers Watson?

19 MR. MULLEN: Object to the form of the
20 question. Asking the witness for his understanding
21 of other people's perspective.

22 A I heard the statement in the December 17th
23 board meeting and also in the City Council meeting by
24 Kelly Flanagan to that same effect.

25 Q And I'm asking you, what is your response to

1 MR. MULLEN: Object to the form of the
2 question.

3 A I think I followed the advice of OGC in terms
4 of them drafting the resolution. I followed the advice
5 of an entire team. I had -- I had an entire team review
6 this entire board package before I came to review and
7 approve it.

8 It was reviewed with the board members
9 one-on-one, and I'm sure my calendar will reflect those
10 meetings.

11 Q You said that OGC drafted the resolution. Is
12 that Lynne Rhode? Who drafted it? You don't know?

13 A You know, as I -- and I don't know if Lynne
14 reviewed resolutions with, you know -- well, actually, I
15 do know that those resolutions were reviewed by
16 Jason Gabriel and Lawsikia Hodges, because the letter we
17 received on July 22nd stated as much.

18 Q The Willis Towers Watson document on Page 305
19 also reflected that there was a cap, a maximum payout?

20 A As we talked about earlier, it sounds like
21 that was a drafting error. And it was actually part of
22 OGC's -- and OGC's review from August to October. As I
23 understand it, that was one of the major points that OGC
24 said needed to be corrected.

25 Q And let me ask you, the board materials from

1 that?

2 We'll use Kelly Flanagan as an example. She
3 believed when she passed that, based on the materials
4 that she reviewed, that the cost would be 3.4 million.

5 A Again, I also point to that actual board
6 package, the presentation that was presented at the
7 board meeting that said it was 10 percent of the
8 overage, that it gave an example that was tenfold that.
9 So, you know, I understand the conflict. I'm not -- I'm
10 not disputing that.

11 Q Would you agree, then, that she was not well
12 informed of the PUP plan on July 23rd?

13 A I think I did --

14 MR. MULLEN: Object to the form.

15 A -- my duty to inform her.

16 Q You think that you did your duty even given
17 the fact that she understood the value to be 3.4
18 million?

19 MR. MULLEN: Object to the form of the
20 question.

21 A Again, I can't speak to what she believed.

22 Q Do you think you could have done a better job
23 advising the board of --

24 MR. MULLEN: Object to the --

25 Q -- the specifics of the PUP plan?

1 July 23rd, did they contain the actual PUP document or
2 just the summary?

3 A I don't know the answer to that.

4 Q Would it have been important to have a copy of
5 the actual PUP plan in the board materials?

6 A So they contained a very detailed summary
7 which calls out all the major facets of the performance
8 unit. That is attached to Resolution 2019-10. And in
9 the recitals of 2019-10, it says the board has reviewed
10 a summary of the terms and has reviewed all the
11 applicable analysis.

12 And, in fact, actually, April Green makes a
13 statement ahead of this in that board meeting that she
14 personally wants to assure the public that every board
15 member has had a chance to review all the materials.

16 Q Right. And so my question is, did the
17 materials that you provided to the board contain a copy
18 of the actual PUP plan?

19 A In this board package?

20 Q The July 23rd package.

21 A Apparently not, but I would imagine that the
22 board members -- from my recollection, the board members
23 got a copy of the plan or reviewed it.

24 Q Why isn't it in the board packet materials,
25 though?

1 A I can't answer that question.
 2 Q Now, you --
 3 A Again, but, you know, the important part about
 4 the performance unit plan is, okay -- so it was approved
 5 on July 23rd. As the CEO, I took the appropriate
 6 measures to make sure that the system of checks and
 7 balances were followed, and at the end of the day, once
 8 there's an issue that was identified, killed it.
 9 Q You gave testimony at Councilman Diamond's
 10 hearing --
 11 A Yes.
 12 Q -- on December 16th, right?
 13 A I did.
 14 Q You weren't sworn in then, but did you tell
 15 the truth?
 16 A Yes.
 17 MR. GRANAT: I'm going to play -- because
 18 we've been discussing it and so there's no question
 19 about it, I want to play another clip from the
 20 Diamond meeting. And this will be Exhibit 16, but
 21 for the record, the clip is labeled Number 4.
 22 MR. MULLEN: Do you have a time stamp?
 23 MR. GRANAT: I do, and I can provide that. I
 24 don't have it right now.
 25 MR. MULLEN: Okay.

1 MR. GRANAT: But I do have times for these
 2 clips.
 3 (Exhibit Number 16 was marked for
 4 identification.)
 5 (Audio played.)
 6 A SPEAKER: "Ms. Rhode, I've heard from
 7 multiple board members there were two reasons why
 8 they voted for this plan. That comment, "yes,
 9 sir", you -- you said OGC had approved the plan and
 10 the \$3.4 million.
 11 So that comment caused multiple board members
 12 that I spoke to to vote in favor of the plan. So
 13 if there were -- I agree with -- well, and
 14 Councilman Diamond. Well, let --"
 15 (Audio stopped.)
 16 BY MR. GRANAT:
 17 Q So that was Councilman Salem, and he had
 18 heard -- and we're going to talk about that later,
 19 Lynne Rhode answering "yes, sir" to whether OGC approved
 20 the plan, and we talked about that a little bit earlier.
 21 But the part about the \$3.4 million, you heard
 22 Councilman Salem doing his diligence. The board members
 23 believed that was the cost.
 24 So I'm just going to ask you, based on that,
 25 do you feel that you did a satisfactory job informing

1 the board about the PUP?
 2 MR. MULLEN: Object to the form of the
 3 question.
 4 A I feel I did my duty to inform the board
 5 adequately. It is easy four or five months later, after
 6 a massive political blow-up, to have a different
 7 perspective.
 8 Q Let's look at the next --
 9 A And I think that's being quite clearly played
 10 out by, you know, one of the board members.
 11 MR. GRANAT: This will be Exhibit 17, and it's
 12 labeled as C'lip 5.
 13 (Exhibit Number 17 was marked for
 14 identification.)
 15 MR. GRANAT: We talked about Ms. Flanagan and
 16 what she said, so let's hear exactly what she said.
 17 (Audio played.)
 18 A SPEAKER: "And since Ms. Flanagan is here,
 19 would you like to speak about your contemporaneous
 20 thoughts at the time of this board meeting? It's
 21 up to you.
 22 MS. FLANAGAN: All right.
 23 A SPEAKER: Okay. Do you have a microphone
 24 there?
 25 (Unintelligible.)

1 A SPEAKER: We'll get you a spot. Here we go.
 2 If you'll just state your name for the record.
 3 MR. FLANAGAN: Kelly Flanagan, JEA board
 4 member.
 5 A SPEAKER: Thank you, Ms. Flanagan.
 6 And let me ask you just some generic
 7 questions, and I'll give you a chance to speak.
 8 What did you think the cost of the PUP plan
 9 was at the July meeting when you approved it?
 10 MS. FLANAGAN: At the time of the vote, I
 11 believed it to be \$3.4 million per the
 12 Willis Watson report that was within the
 13 compensation committee materials included in the
 14 board package.
 15 A SPEAKER: Is that what you based your
 16 understanding on, the materials?
 17 MS. FLANAGAN: It is what I based my
 18 understanding on.
 19 A SPEAKER: Were you briefed on the PUP plan
 20 prior to this meeting?
 21 MS. FLANAGAN: As I reviewed my calendar and
 22 diary for the week, I believe that on either Monday
 23 or Tuesday prior to the board packages being
 24 received on Friday was my standing meeting with
 25 Mr. Zahn, and I do not recall the PUP being

1 discussed during that meeting.
 2 As you know, this was a three-hour board
 3 meeting for which the predominant material that was
 4 being discussed in that meeting was the strategic
 5 planning.
 6 A SPEAKER: And what was your impression of
 7 OGC's role at this point? Did you feel it had been
 8 vetted yet by OGC?
 9 MS. FLANAGAN: In the course of delegating
 10 responsibilities to management, I would not have
 11 been -- it would not have been unusual for there to
 12 be subsequent follow-up required. And as I read
 13 the materials that have been produced for this
 14 meeting, it does not surprise me that there was
 15 further work to be done between OGC and management.
 16 But one of the primary rationales and reasons
 17 for voting in favor of this was confirmation during
 18 that meeting that it was within the legal realm of
 19 the organization to pursue."
 20 (Audio stopped.)
 21 BY MR. GRANAT:
 22 Q Ms. Flanagan is a very smart woman. Would you
 23 agree?
 24 A I think all my board members are very smart
 25 people.

1 Q Ms. Flanagan is a CPA and a high-level CFO --
 2 A Yes.
 3 Q -- right?
 4 Given her, I guess, ultimate misunderstanding
 5 of the plan, do you feel the PUP was clearly presented
 6 to her?
 7 MR. MULLEN: Object to the form of the
 8 question.
 9 A I feel I fulfilled my duties to provide all
 10 the adequate information for board members to make their
 11 own informed decision.
 12 I would also point you to Ryan Wannemacher's
 13 direct statements contrary to exactly that 3.4 that are
 14 in the meeting right before the vote with a factor of 10
 15 over that 3.4 number?
 16 Q So that would be information contrary to
 17 what's in the board packet; right?
 18 MR. MULLEN: Object to the form of the
 19 question.
 20 A We've already discussed the conflict.
 21 Q And so why wasn't that discussed or brought
 22 out?
 23 MR. MULLEN: Object to the form of the
 24 question.
 25

1 BY MR. GRANAT:
 2 Q You don't know?
 3 We'll play another clip --
 4 A Again, you know, we're focusing on the
 5 performance units. But remember, you also had similar
 6 plans like retention and pension, all of which had
 7 different impacts on different employees.
 8 And pension, for example, I was not a very --
 9 was a very small beneficiary of that plan. That
 10 benefited all -- mostly front line and long-term
 11 employees and had very comparable values in terms of
 12 dollars, in terms of hundreds of millions of dollars.
 13 And, you know --
 14 Q That's a good point, Mr. Zahn. Let's talk
 15 about the retention. The retention agreements were
 16 given to all employees, and that said in the event of a
 17 recapitalization, every employee would receive a bonus
 18 of one year's salary over three years.
 19 A In order to retain them at the company,
 20 correct.
 21 Q Correct. But that's what it said; right?
 22 A Yeah.
 23 Q But the value of their salary was locked in as
 24 of July 23rd, 2019; right?
 25 A I don't think so. I think the retention was

1 at the -- it was comparable -- no. That was the
 2 three-year comparable comp.
 3 I don't know what the -- I'd have to read the
 4 retention. I don't know if it was locked in. I think
 5 it might have included wage increases. So it was at the
 6 time of recapitalization.
 7 Q Okay. Well --
 8 A We'd have to go look at the document again.
 9 Q The document would say.
 10 But I guess my question is, the value -- or
 11 the cost to JEA of the retention bonus program could be
 12 calculated, and it was known how much it would cost JEA;
 13 right?
 14 A As with the long-term incentive. You can
 15 calculate what it is under a number of different
 16 scenarios.
 17 Q My question is the retention bonus program.
 18 It was a calculable number that was presented to the
 19 board? It was a known number; right?
 20 A It was a known -- it was a number presented as
 21 one times the employees' --
 22 Q Current payroll; right?
 23 A At the time of recapitalization.
 24 Q Okay. That's your recollection or if --
 25 A Or whatever --

1 Q -- it was --

2 A Yeah, we didn't -- we'll go look at it. I
3 mean, we can go look at --

4 Q Okay. But it was a known number, right, that
5 you could tell the board, this is how much this plan
6 will cost?

7 A And pension isn't a known number. Pension, we
8 had a -- we had an actuary do an analysis. But as we
9 all know, actuarial analysis has changed dramatically,
10 and that actuarial analysis for the pension legislation
11 would have been done at recapitalization as well and --
12 which would have gone -- maybe two, three years later,
13 that would dramatically shift.

14 Q But there was a -- but there was a large
15 payment contemplated from JEA to the pension fund at
16 recapitalization; correct?

17 A Specifically for JEA employees.

18 Q Right. And if the -- if the calculations that
19 were done were wrong for the pension, that was going to
20 be the City's liability in the future to have to pick up
21 those extra payments; right?

22 A Well, the pension is always the City's
23 liability. It's never been JEA's.

24 Q Okay. So if the actuarial was off, that was a
25 liability that was going to be on the City --

1 Why wasn't there a number of scenarios or a
2 worksheet or something provided to the board to show
3 different scenarios of what the PUP might be worth? If
4 it was such easy math, why was there only one example
5 given by Mr. Wannemacher at the board meeting that
6 happened to be inconsistent with the material in the
7 packet that was given?

8 A So I can't hypothesize as to why
9 Mr. Wannemacher didn't give multiple scenarios. I can
10 say you might have securities law issues. If you all of
11 a sudden start forecasting the value after you've
12 approved an ITN, you could potentially have procurement
13 law issues. And I'm not a procurement expert. You
14 could have securities law issues. You could have all
15 sorts of issues if you started trying to say -- like
16 forecast values out on a public meeting.

17 That being said, it was discussed with the
18 board members internally as to potential values of JEA.
19 And they were wide ranges.

20 Q Explain that to me, what you just said. It
21 was -- ITN values were discussed with board members?

22 A No. Prior to the ITN, you had -- you had the
23 PFM report. That was from 2017. That had a number of
24 values in it. You had the council auditor's analysis.
25 That was a public document. That had a number of values

1 A Yeah. But again, so all three of those
2 programs, retention, pension, and performance units --
3 as I said, one of the great degrees of comfort that I
4 drew beyond the systems of checks and balances that were
5 followed after the July 23rd -- because if you remember,
6 pension and retention had to be collectively bargained
7 and go through City Council -- was that we had full due
8 diligence, as Ms. Flanagan pointed out, continuing going
9 on. We had the Attorney General going on.

10 And even on the performance units, in order
11 for them ever to have value, it would have been very
12 widely known at the time of a proposed transaction,
13 because the board would review it and get an opportunity
14 to see exactly what that number is.

15 To your point, that number would be fixed in a
16 transaction, and the board would review that number.
17 Then City Council would have the ability to review that
18 number and opine on it and whether they approved it or
19 not. And then a referendum and then regulatory approval
20 and closing before that payment could ever be made for
21 the performance units. And that's exactly the same for
22 the retention and the pension.

23 Q Well, I don't -- I don't know that that's
24 accurate, but let me ask you. Let me get back to my
25 question.

1 in it.

2 So those were public documents that, you know,
3 actually were reviewed at board meetings on -- in
4 public.

5 So there were wide ranges of values, and a lot
6 of them accounted for -- you know, could have taken into
7 account -- but no one really knew.

8 Q During the July 23rd presentation to the board
9 before they passed the PUP, why didn't someone from your
10 management team bring up what would happen under an ITN?

11 A Actually, Alan Howard asked the question, and
12 it was answered.

13 Q I understand that. A board member asked the
14 question. But why wasn't that part of the presentation?
15 And why wasn't it directly addressed?

16 A I think it was directly addressed.

17 Q You mean the question was answered?

18 A Yeah.

19 Q So if that question hadn't have been
20 answered -- the question hadn't been asked, then there
21 would have been no mention of what would happen to the
22 PUP --

23 A I can't rewrite history. There could have
24 been a whole -- if that question hadn't been answered,
25 there could have been a whole bunch of other

1 questions --

2 Q I'm asking you, why wasn't an ITN scenario
3 part of the PUP presentation to the board on that day?

4 MR. MULLEN: Object to the form of the
5 question.

6 A I think it was. It was discussed. I mean, in
7 the board materials it even talks about recapitalization
8 and impacts of recapitalization on -- in the summary, it
9 says -- which would be the direct result of an ITN or
10 and an IPO or a co-op.

11 Q As the CEO of JEA, did you not believe that it
12 was worthy of a discussion brought up by the management
13 team to the board about what would happen to the PUP in
14 the case of an ITN?

15 MR. MULLEN: Object to the form of the
16 question.

17 A We did talk about it one-on-one. You can
18 appreciate not wanting to forecast values right in front
19 of a procurement as well as potential -- and I don't
20 know all the SECs, but I can tell you that very rarely
21 would a board or anybody ever want to forecast a value
22 before they ever thought about that type of transaction.

23 Q So are you telling me that the -- the effects
24 of an ITN on the PUP was not discussed openly, brought
25 up by management, in the June 23rd meeting

1 strategically?

2 A No, that's not what I said.

3 Q Well, I'm asking you why it wasn't verbally
4 brought up by your management team for discussion with
5 the board.

6 A I didn't give the presentation. But I can
7 tell you management did answer the question as to what
8 recapitalization -- and that's not just the ITN. That's
9 IPO. That's everything.

10 Q And I guess that -- my last question on this
11 is -- you're right, it wasn't brought up by your
12 management team in their presentation.

13 A It was answered.

14 Q As the CEO, before questions were -- it was
15 opened up for questions, did you not feel that it was
16 important to bring up, that it should have been brought
17 up by you or your management team?

18 A I feel --

19 MR. MULLEN: Object to the form of the
20 question.

21 A I feel I did my duty to inform board members
22 both one-on-one as well as in board meetings.

23 And I also view my board members, as you
24 already articulated, as quite sophisticated individuals
25 able to formulate their own opinions and ask informed

1 questions.

2 Q Okay.

3 I'm going to play the next clip. And it was
4 actually a conversation between you and Rory Diamond
5 just before -- it was after a break just before the
6 session started.

7 (Audio played.)

8 (Audio played was unintelligible.)

9 (Audio stopped.)

10 BY MR. GRANAT:

11 Q Okay. Can you agree you said, "Rory, look at
12 Tab 0850 on Tab 66."

13 A Correct. And that references a transcript of
14 the July board meeting where the \$30 million was pointed
15 out. Because at that point in time, I was just getting
16 very publicly, you know, humiliated for, you know, and
17 charged with the same \$3-and-a-half-million thing that
18 you've been talking about, and I was pointing him to the
19 transcript where the number was actually tenfold that.

20 Q And you were referring him to a transcript of
21 the clip we heard earlier of Mr. Wannmacher talking
22 about the \$10 million --

23 A Yeah. So this package was only provided to me
24 for the first time at that meeting.

25 Q Okay.

1 A And I -- so I was quickly -- you know, my
2 recollection of the July board meeting was that it had
3 been discussed that the number -- you know, that there
4 was -- that the 3 and a half million wasn't the number.
5 And then -- and I had not watched that clip. I have
6 subsequently since December. But I went really quickly
7 and tried to find, you know --

8 MR. GRANAT: Okay. Now, I didn't finish
9 playing the clip, because I just wanted to define
10 it.

11 And what number are we on? Did I --

12 MR. POWELL: This would be 18.

13 MR. GRANAT: This is 18. And just for the
14 record, it's -- on the digital file, it's called
15 Number 6.

16 (Exhibit Number 18 was marked for
17 identification.)

18 MR. GRANAT: So let me just finish playing the
19 clip of your conversation with Mr. Diamond.

20 (Audio played.)

21 A SPEAKER: "The description of it all, it
22 talks about 30 million.

23 A SPEAKER: Yeah.

24 A SPEAKER: Like so there was discussion, but
25 to your point, not a full vetting, I acknowledge

1 that."
 2 (Audio stopped.)
 3 BY MR. GRANAT:
 4 Q So you said there was discussion -- you said,
 5 there was 30 million. Said "there was discussion, but
 6 to your point, not a full vetting, I acknowledge that."
 7 A Okay.
 8 Q Did you say that to Mr. Diamond?
 9 A It's on the recording.
 10 Q And do you agree with that, that there wasn't
 11 a full vetting of the PUP at the July 23rd, 2019,
 12 meeting?
 13 MR. MULLEN: Object to the form of the
 14 question.
 15 A No, I do not. In that meeting at the City
 16 Council, I was trying to be very conciliatory and trying
 17 to take responsibility and -- for a plan that had grown
 18 widely unpopular as well as also basically be able to
 19 answer questions. And again, I'll remind you it's the
 20 same plan that, in consultation with OGC, we decided to
 21 kill.
 22 All the checks and balances, every single duty
 23 of care as a CEO was taken to make sure that this plan
 24 was handled accordingly and managed appropriately, and
 25 we ended up in the right place.

1 Q So do you believe there was a full vetting of
 2 the PUP at the July 23rd meeting?
 3 A As I've gone back and reviewed the tape, it's
 4 far more clear to me. I had not reviewed the July 23rd
 5 board meeting prior to that December 16th meeting.
 6 Q Okay.
 7 A I can understand how you can take some -- one
 8 or two statements of mine out of context.
 9 Q So you think that statement was taken out of
 10 context now?
 11 A As people, we oftentimes try and appease
 12 and --
 13 MR. GRANAT: Okay.
 14 I'll play another clip. And this is, again,
 15 from the Diamond hearing. And we'll call this Clip
 16 19?
 17 MR. POWELL: Yes, 19.
 18 MR. GRANAT: And for the record, this one on
 19 the digital file is called Number 2.
 20 (Exhibit Number 19 was marked for
 21 identification.)
 22 (Audio played.)
 23 A SPEAKER: "Got this right. You're the CFO
 24 of JEA. We're at a hearing to talk about the
 25 enormously expensive plan and the problem with

1 recapitalization, and your response to me on what
 2 the math is is "I haven't done the math yet."
 3 A SPEAKER: \$4 billion, the threshold value, I
 4 believe, for 2019 would have been 3.4 billion. And
 5 so it would have been 10 percent of \$600 million,
 6 so \$60 million, I believe, in that instance.
 7 A SPEAKER: Okay. At --"
 8 (Audio stopped.)
 9 BY MR. GRANAT:
 10 Q Now, Mr. Zahn, was that known on July 23rd?
 11 MR. MULLEN: Object to the form of the
 12 question.
 13 A Sure. The PFM report was out. Everybody had
 14 the information that was publicly, you know --
 15 Q Did you hear how precise Mr. Wannemacher was
 16 able to state that to Mr. Diamond?
 17 A I'll point you back to the page that I pointed
 18 you to earlier, which said that the value of the pool is
 19 worth 10 percent over the challenge target. I think
 20 that's really clear. It's the same math.
 21 Q My question is, did you hear how clear
 22 Mr. Wannemacher explained that in one sentence?
 23 A You got to remember, this is three or four
 24 months later after a massive political blow-up, and
 25 you're in front of City Council in a very contentious

1 place. I mean --
 2 Q Will you answer the question?
 3 A I am, I think. I hear -- I hear it's concise.
 4 MR. GRANAT: Let's continue. I rewound it a
 5 little bit.
 6 (Audio played.)
 7 A SPEAKER: "The threshold value, I believe,
 8 for 2019 would have been 3.4 billion, and so it
 9 would have been 10 percent of \$600 million, so
 10 \$60 million, I believe, in that instance.
 11 A SPEAKER: Okay. At least 60 million?
 12 A SPEAKER: So -- yes, that's correct.
 13 Now, again, not having -- this is all off the
 14 top of my head. So -- that's why I want to be
 15 careful in the context of the record. But that's
 16 the general broad map.
 17 A SPEAKER: Sure. And as we go up a billion
 18 dollars more cleared to the City, it goes up pretty
 19 enormously to the point where Councilman Salem puts
 20 the number up \$1.6 billion with sufficient
 21 amount -- not an unreasonable amount cleared to the
 22 City; isn't that correct?
 23 A SPEAKER: Again, that was in -- that was
 24 reflective of all 100,000 units being allocated.
 25 A SPEAKER: Okay. So 1.6 billion divided by

1 3.
 2 A SPEAKER: By 3.3, yeah.
 3 A SPEAKER: You can do that math.
 4 A SPEAKER: Yeah.
 5 A SPEAKER: It's a lot of money; right?
 6 A SPEAKER: Understood.
 7 A SPEAKER: Okay. So you're looking at the
 8 equation.
 9 A SPEAKER: (Unintelligible.)
 10 A SPEAKER: Please.
 11 We're looking at the equation. You're the CFO
 12 of JEA. Lawyers for JEA are saying the equation is
 13 spitting out too much money and we're having
 14 problems. You're making edits to the equation, and
 15 you still haven't done the math, that this is going
 16 to cost us \$300 million if we get the sales price
 17 right?
 18 A SPEAKER: I don't think there's a record of
 19 that.
 20 A SPEAKER: Okay. I don't think there is,
 21 either.
 22 Did you ever do this math prior to, say,
 23 August of 2019 of what the cost to the City would
 24 be if there's a recapitalization event and say we
 25 cleared \$4 billion?

1 A SPEAKER: It was -- it was very clear that
 2 it was intended to be 10 percent of whatever the
 3 amount above the challenge target was, so --
 4 A SPEAKER: Yeah --
 5 A SPEAKER: -- correct.
 6 A SPEAKER: -- I get -- I get the equation,
 7 but did you ever plug the numbers in to see that
 8 this was a lot of money?
 9 A SPEAKER: It's pretty easy math. And so in
 10 the context of the conversation, it's 10 percent of
 11 whatever the number is minus 3.4 billion. I --
 12 A SPEAKER: Okay. I mean, that's fine --"
 13 (Audio stopped.)
 14 BY MR. GRANAT:
 15 Q So the 3.4 billion is a pretty significant
 16 number regarding recapitalization, right, in relation to
 17 the PUP?
 18 A Well, it would be almost 50-plus percent more
 19 value to the City than the current contribution. 3.4
 20 billion would a lot of money.
 21 Q Right. But it was known to you and Ryan
 22 Wannemacher on July 23rd --
 23 A No. The 3.4 billion was determined by the
 24 audit at the end of the year, which would have been
 25 September 30th, and that's when the audit started to be

1 completed. And actually, I believe the audit was done
 2 by early December.
 3 Q What audit?
 4 A Our E&Y financial audit --
 5 Q Okay.
 6 A -- by independent auditors.
 7 Q Okay. The meeting on July 23rd was a very
 8 important meeting. Would you agree with me?
 9 A Yes.
 10 Q There were -- you were asking the board to do
 11 a number of significant things that day; right?
 12 A Correct.
 13 Q You're asking them to pass a new compensation
 14 plan?
 15 A Which one?
 16 Q In general, you're asking them to pass a new
 17 compensation plan that included an LTI?
 18 A And employment agreements and retention --
 19 Q Right.
 20 A -- and pension.
 21 So remember, there's substantial discussion
 22 about all of these employee programs being necessary to
 23 provide comfort and security to employees to endure --
 24 Q I understand that.
 25 A -- pretty substantial, you know --

1 Q But let me just --
 2 A -- disruption to their daily life. That's
 3 normal business. You always do that for your employees.
 4 Q Let's just review that. All that was being
 5 asked of the board on the 23rd was the compensation
 6 plan, your employment contract, SLT members' employment
 7 contracts, changes to the pension; right? All those
 8 things?
 9 A And the ITN.
 10 Q And authorizing pursuit of Scenario 3; right?
 11 A And -- or authorizing pursuit of Scenario 2.
 12 Q Right. Lots of decisions for this board to
 13 make, would you agree?
 14 A Yeah, and which -- those were all very
 15 rational things to have contemporaneously contemplated.
 16 Q And would you agree that that day, July 23rd,
 17 was -- and the decisions that the board was going to
 18 make were very, very important?
 19 A And we stressed that to them ahead of the
 20 July 23rd board meeting. They knew that very well.
 21 Q Now, let me ask you, when were the board
 22 members given the board materials?
 23 A I don't recall. I think they -- they were
 24 given them in different parts and pieces. You have a
 25 document?

1 A lot of times board members were given paper
2 copies, by the way, for their review, just like I was
3 given paper copies for my review.

4 Q Okay.
5 (Exhibit Number 20 was marked for
6 identification.)

7 BY MR. GRANAT:

8 Q Are you saying that because you're
9 anticipating an email that I'm about to show you?

10 A No. I'm just telling you that very frequently
11 we would provide board members paper copies ahead of
12 time for them to review.

13 Q Okay. Let me ask you to look at Exhibit 20,
14 which is an email from you to Lynne Rhode, Melissa
15 Dykes, Kerri Stewart, and some others.

16 A Sure.

17 Q And it's dated Saturday, July 20th, 2019 --

18 A Yep.

19 Q -- at 7:17 a.m.

20 A Yep.

21 Q And the subject is Full Board Package.

22 A Right, which would be the full board package.
23 So every single agenda item compiled in the exact order
24 in terms of how it would go out, be distributed to the
25 public.

1 Q So it looks like earlier on the 19th there's a
2 message from you that says, "I need to review. Can we
3 plan to send tomorrow?"

4 And then Melissa Dykes responds, "Copying
5 Kerri so she can have someone on standby to post
6 tomorrow."

7 Right?

8 A Public post.

9 Q And then another email on the 19th from
10 Lynne Rhode that says, "The version of the memo
11 regarding bond counsel is old and needs to be replaced
12 with a final version. I can assist Madricka, or
13 whomever, tomorrow with making sure the right document
14 is uploaded."

15 A Sure.

16 Q And then your final -- would you read your
17 final response on Saturday, July 20th?

18 A "Approved once Lynne's comment is addressed.
19 When does team want to get together to finalize board
20 docs for Tuesday? Have those been printed and laid out
21 in my office for review?"

22 Q Was it normal for the board materials to be
23 laid out in your office for you to review before they're
24 finalized?

25 A It was normal for the board package -- so

1 oftentimes pieces of the board package would be
2 distributed well in advance of the actual full board
3 package. Then what would occur is that I'd get an --
4 I'd get an accordion folder like that that literally had
5 this document laid out in this exact format that I could
6 literally page-flip to make sure that it had every
7 single document in the right order so -- for my final
8 approval perspective.

9 Q So reading this email, Exhibit 20, on
10 Saturday, July 20th, you're asking when the team wants
11 to get together to finalize the board documents for
12 Tuesday; is that right?

13 A Correct. To finalize the board package, the
14 full package.

15 Q So that would mean the board package wasn't
16 finalized at least as of Saturday, July 20th, at
17 7:17 a.m.?

18 A The full public package that would go out to
19 everyone on JEA.com, correct.

20 Q Oh, so are you saying that the board was given
21 their packages before this?

22 A I believe so.

23 Q So the board is given their packets before
24 they're finalized?

25 A No. They're given -- they're given different

1 materials that, to your point, we had a lot of very
2 important materials to discuss, and we reviewed those
3 with them.

4 Q So the board's given the packets in pieces
5 over time?

6 A Similar to, for example -- great example per
7 our earlier conversation. My employment agreement, sat
8 in my office and went through my employment agreement
9 with April Green and negotiated that with her. We
10 talked about all the major issues of that. She was
11 given a paper copy or emailed it, I don't know.

12 But, you know, that would be a great example
13 of how you would take a major element of the board
14 package, review with an individual board member to get
15 their insights so that what was eventually finalized and
16 published publicly was something that had, you know,
17 different input from board members and where we could
18 answer their specific questions.

19 Q So what's your normal practice? To give the
20 board the board package materials in pieces over time or
21 in one concise package?

22 A Both.

23 Q And so --

24 A And actually, one of my public records
25 requests was for the standardized board preparation

1 process that the EAs followed.

2 Q Why wasn't the board packet finalized three
3 days before such an important board meeting?

4 A Well, one thing is I was waiting on the letter
5 from OGC from Jason Gabriel and Lawsikia and Lynne
6 saying that they'd done their final review before ever
7 issuing a public document.

8 Q And, again, we talked about --

9 A I got that on July 22nd.

10 Again, there were oftentimes where you would
11 have a board package and then an agenda item would get
12 pulled, you know, last minute.

13 Q Okay.

14 A That was not uncommon.

15 Q Again, we discussed earlier that -- and I
16 don't remember whether you said you were aware or not --
17 that Jason Gabriel told Herschel Vinyard and Lynne Rhode
18 that OGC had not signed off on the PUP and was going to
19 consider what Pillsbury and Foley had done and were
20 going look at it over time over the next few months.

21 A And we did that.

22 Q Right?

23 A My interpretation of the letter I received was
24 not that, though. So when I read that letter, I read it
25 differently.

1 Q Oh.

2 A That being said, it doesn't matter, because
3 after the -- after the board approved it, we did work
4 with general counsel to go through all those reviews we
5 talked about.

6 Q Did Herschel Vinyard or Lynne Rhode --

7 A No.

8 Q -- ever tell you that Jason had said we -- OGC
9 had not signed off on the PUP?

10 A No. Actually, they gave me the letter with
11 his signature on it that referenced the exact resolution
12 for the performance units.

13 Q With the caveat and the footnote that we
14 already discussed, right?

15 A We did. And I think to your point, that
16 caveat and footnote was part of the impetus, probably,
17 for having done all the thorough review we did with OGC
18 and special counsel and all the formal opinion requests
19 and continuing to do the work, which is what you do in
20 business.

21 Q So what involvement did Willis Towers Watson
22 have with the final PUP product?

23 A The legal document?

24 Q Yes.

25 A I don't know.

1 Q Do you know if Willis Towers Watson signed off
2 on the PUP?

3 A I don't know. That was not my relationship to
4 manage. That would be the VP of HR.

5 Q Do you know if the PUP is in line with the
6 framework of -- that Willis Towers Watson set forth?

7 MR. MULLEN: Object to the form of the
8 question.

9 BY MR. GRANAT:

10 Q Because that was what was directed by the
11 board, right?

12 A So a lot of it is. We certainly have covered
13 places where, you know, including 100 percent of the
14 employees as opposed to just executives. You know,
15 those are policy decisions.

16 Q And the way that the PUP was drafted, units
17 were going to be issued in January of 2020; right?

18 A Not necessarily. If the AG opinion and OGC
19 and ethics -- now, the resolution from the board does
20 say January.

21 Q It does say that?

22 A And the reason is because of a tax issue. But
23 just because the resolution says that, very similarly,
24 you know, I'm not going to move forward if I don't have
25 all the appropriate --

1 And actually, Jon Phillips and Lawsikia, who
2 are here, can attest that I actually dropped into a
3 meeting where Lynne, Herschel, Jason, Lawsikia, and Jon
4 were talking about it in August. I said, guys, if this
5 doesn't have every I and every T dotted and crossed,
6 then just tell me and let's kill it.

7 Q What was the rush with cramming the PUP
8 through?

9 MR. MULLEN: Object to the form of the
10 question.

11 You can answer.

12 A I reject the premise of that question. I
13 don't see it as cramming the PUP through.

14 Q Why -- so you don't think the PUP was rushed?

15 A Clearly not. We issued a -- we issued a
16 formal opinion request to the Attorney General that who
17 knows how long that could have taken.

18 Q So why pass the resolution before you had that
19 answer?

20 A Because it was part of the total compensation
21 plan.

22 Q So why pass the total compensation plan until
23 you have that answer? What was the rush to get that
24 done if you didn't even know if --

25 A The board issued --

1 MR. MULLEN: Object to the form of the
2 question.
3 THE WITNESS: The board passed an approval to
4 build a new building without having a final lease.
5 It happens all the time. I mean, there's a lot of
6 things where the board approves a policy decision
7 and then asks the CEO to work with appropriate
8 staff consultants and advisers to implement. And
9 if staff finds that there's a problem, they come
10 back to their board and say, hey, we have a
11 problem, which is what I did on November 12th. And
12 April Green confirmed on November 19th.
13 (Discussion off the record.)
14 (Recess was taken from 3:47 p.m. to 3:58 p.m.)
15 MR. GRANAT: A housekeeping matter, we're
16 going to conclude at 5:00, because this has gone
17 way, way slower than I anticipated, and --
18 MR. MULLEN: How much time do you think you
19 need tomorrow?
20 MR. GRANAT: -- should be way into -- I don't
21 know. That's dependent on the responses.
22 So I can tell you that we've been asked to
23 investigate by the board, and they're taking this
24 very seriously, and we're going to take the time
25 that we need. We're not unnecessarily dragging

1 this out. I want you-all to understand that. It's
2 not my intent, so ...
3 MR. MULLEN: Okay. Can you advise if you have
4 other interviews to conduct after Mr. Zahn's? If
5 you can tell me.
6 MR. GRANAT: I don't know.
7 MR. POWELL: For the record, let me just
8 confirm that we've fully executed the Garrity
9 statement, and it will be placed at the front of
10 the transcript, not an exhibit to the -- to the
11 proceedings.
12 (Discussion off the record.)
13 BY MR. GRANAT:
14 Q All right. I'm going to play another clip.
15 This will be 21, Exhibit 21. And for the record, it's
16 labeled Clip 7. And again, this is from -- this is from
17 the July 23rd, 2019, meeting.
18 (Audio played.)
19 A SPEAKER: "All right. I think I understand
20 how it works. And then there's accelerated
21 (unintelligible).
22 A SPEAKER: Correct.
23 A SPEAKER: I thought I saw somewhere where it
24 said there were 100,000 units. Is it 30,000 per
25 performance period?

1 A SPEAKER: So the plan document contemplates
2 a program. However, the 30,000 is all that would
3 be authorized under the current fiscal year
4 performance period."
5 (Audio stopped.)
6 (Exhibit Number 21 was marked for
7 identification.)
8 BY MR. GRANAT:
9 Q And so that was Alan Howard asking if there
10 was acceleration under a recap, and Mr. Wannemacher
11 said, "yes, sir"?
12 A Yes.
13 Q And that's the extent of the discussion at the
14 July 23rd board meeting on the effect of a recap --
15 A I don't know.
16 MR. MULLEN: Object to the form of the
17 question.
18 THE WITNESS: I don't know.
19 BY MR. GRANAT:
20 Q If that was all, do you feel that that was
21 sufficient discussion of a recap effect on the PUP?
22 MR. MULLEN: Object to the form.
23 A It's the board's prerogative what they want to
24 discuss in a public meeting.
25 Q At the time that that question was asked, were

1 you aware that if a recap occurred, the value of the PUP
2 could be over \$100 million?
3 A It could also be negative.
4 Q Let me ask the question again. At the time
5 that that statement, Clip 7 that we just played, was
6 asked --
7 A We hadn't -- we hadn't revised -- we hadn't
8 received bids.
9 Q Let me ask my question. At the time that
10 Mr. Howard asked his question about recap and the effect
11 of a PUP, were you aware that the value of the PUP could
12 have been over \$100 million?
13 MR. MULLEN: Object to the form of the
14 question.
15 A If every single hypothetical scenario could
16 exist under the world, then sure, the PUP could be worth
17 \$100 million. But at the time of that -- how am I to --
18 how am I to forecast what the market's really going to
19 bid? I can't -- I don't know the value of a security
20 until such time as I know the value of the security.
21 Q And so you hadn't considered various
22 scenarios?
23 A I considered a lot of scenarios, just like any
24 professional investor would.
25 Q Are you a professional investor or a CEO of

1 JEA?
 2 A I've been a professional investor in my past
 3 life.
 4 Q Okay.
 5 A And so, you know, when you're contemplating
 6 any sort of future event, you think, well, it could
 7 be -- it's the -- that's why you run scenarios. I mean,
 8 there are multiple scenarios, right?
 9 Q So is it wise to run multiple scenarios before
 10 you make a business decision?
 11 MR. MULLEN: Object to the form of the
 12 question.
 13 A Yes.
 14 Q Why weren't multiple scenarios given to the
 15 JEA board of directors before they made a decision on
 16 this PUP?
 17 MR. MULLEN: Same objection.
 18 A They were.
 19 Q What multiple scenarios were they provided
 20 with?
 21 A Which page?
 22 Ryan said if the value went up, it would --
 23 they would increase by 10 percent. He said if the value
 24 went down, it would be -- it would decrease in value.
 25 If the value stayed the same at 3.3 -- 3 to 3.4 -- I

1 mean, a number of different scenarios were provided by
 2 Ryan during that presentation.
 3 Q All right. Other than --
 4 A That's at least three.
 5 Q Okay. Those are just --
 6 A And then he gave a \$600 million -- you know,
 7 he gave a -- what would that be -- a \$4 billion scenario
 8 under that. He also gave that one too.
 9 Q When did he give that? That was in the
 10 Diamond hearing?
 11 A Oh, the 600 million. I'm sorry. You're
 12 right. The Diamond hearing, was that when he gave the
 13 3.6 billion or --
 14 Q You think he should have given the billion
 15 dollar scenario in the July 23rd meeting, though?
 16 MR. MULLEN: Object to the form of the
 17 question.
 18 A I think we fulfilled our duty of care, and the
 19 board members are savvy enough to be able to understand
 20 what 10 percent means and see the documents and make
 21 informed decisions, and if not, ask appropriate
 22 questions, just as Mr. Howard was doing.
 23 MR. GRANAT: All right. That's your position?
 24 Okay. Play another clip. This is -- this is
 25 from the Diamond hearing, and it's going to be

1 Exhibit 22 for us, but the clip itself is labeled
 2 Number 8.
 3 (Exhibit Number 22 was marked for
 4 identification.)
 5 (Audio played.)
 6 A SPEAKER: "So we have a plan that starts in
 7 March. It's created by management and
 8 Willis Towers Watson. It's presented to the board
 9 at the end of the meeting. It's unclear to at
 10 least one board member that this is not a \$3.4
 11 million plan, but potentially
 12 hundreds-of-millions-of-dollar plan in the event of
 13 recapitalization. We're looking at the option, and
 14 no one at that board meeting in staff at any point
 15 discusses the impact of recapitalization on the
 16 value of the PUP; is that correct?
 17 A SPEAKER: I think the -- just looking here,
 18 I think that the answer to the question about
 19 recapitalization was something about --
 20 A SPEAKER: If it happens in 30 days, you pay
 21 off; right?
 22 A SPEAKER: Actually, on 0853
 23 (unintelligible).
 24 A SPEAKER: It's paid off at the time if it
 25 occurs.

1 A SPEAKER: That it would end the performance
 2 period.
 3 A SPEAKER: Yeah.
 4 A SPEAKER: Yeah.
 5 A SPEAKER: But that was it.
 6 A SPEAKER: So, you know, at that point in
 7 time, you know, again, we -- we had no idea whether
 8 or not, you know, recapitalization would ever be
 9 pursued. As you might imagine -- and I don't know,
 10 Kevin, you can maybe speak to this -- but I think
 11 in the drafting of this, it was basically trying to
 12 concentrate all potential future options, and
 13 that's basically how recapitalization became part
 14 of this."
 15 (Audio stopped.)
 16 BY MR. GRANAT:
 17 Q So Councilman Diamond, in the hearing,
 18 basically asked you the same question I did, why wasn't
 19 part of the management presentation addressing the
 20 recap?
 21 And you said that at the time, meaning
 22 July 23rd, you had no idea whether recap would be
 23 pursued?
 24 A Remember one of the options on the table for
 25 the board was basically to -- and when I say pursued,

1 that would be whether the board -- at the end of the
2 day, the board would have had a choice to make at the
3 end of strategic planning as to whether or not to pursue
4 the status quo, the traditional response, an IPO, a
5 co-op, and that decision wasn't going to be made for,
6 you know -- well, it would have been nine months from
7 that date.

8 Q So did you mean pursued as in a final decision
9 to actually recap?

10 A Sure.

11 Q Because at the time, on July 23rd, 2019,
12 recapitalization was certainly being pursued by JEA?

13 A No. We issued an ITN to understand what the
14 market might bid. We issued -- I'm sure there a lot of
15 bids that get issued in government where government
16 issues a bid, they get a bunch of responses, and they
17 say we're not going to do anything.

18 Q In your mind, that's not pursuing an ITN,
19 starting the ITN process?

20 A In my mind, that's getting information from
21 the market. Just like an -- you know, just like
22 evaluating your IPO, just like evaluating your co-op.

23 And at the end of the day, you had 7
24 policymakers on a board, plus 19 policymakers on the
25 City Council who had to make a decision to actually

1 So we did -- we did all the work on all the
2 material presented in this board package so that we were
3 prepared which -- whichever way the board decided to go.

4 Q But you did all that work, and the board on
5 July 23rd may not have given you the go-ahead; right?

6 A Yeah, that's right.

7 Q So how much money was spent on the Scenario 3
8 prior to it being approved on July 23rd?

9 A I don't know that answer.

10 Q Millions?

11 A What?

12 Q Millions of dollars?

13 A I doubt it. You had -- only would be the law
14 firms engaged by OGC, because the -- McKinsey hadn't
15 done any work on it.

16 Q McKinsey hadn't done any work on what?

17 A Scenario 3, or recapitalization.

18 Q Before July 23rd?

19 A I don't think so.

20 Q You had a meeting at, I think it's called
21 Club Continental?

22 A Yes.

23 Q It was July 10th through 12th?

24 A Uh-huh.

25 Q What was the purpose of that meeting?

1 pursue, you know, recapitalization. And candidly, you
2 had 7 board members that had to choose one of those five
3 scenarios, four of which -- well, two of which were
4 government and three of which had some form of
5 recapitalization.

6 But one of -- the co-op more than likely would
7 have lost -- would have dramatically decreased the value
8 of the performance units. IPO, who knows?

9 Q How much work had been done on Scenario 3
10 before the June 23rd board meeting?

11 A Substantial discussion with the board members
12 around the minimum requirements for the ITN and initial
13 drafting of the ITN, because we wanted to be in a place
14 where if the board -- no matter whether the board chose
15 Scenario 2 at the July board meeting, we had enough work
16 done that we could start implementing.

17 And if we had Scenario 3, we could basically
18 start issuing engagements and execute -- and get the ITN
19 out the door and start -- because that's a public
20 meeting telling the world that you're about to issue an
21 ITN. And in Florida, the moment you do that, you're
22 going to get nailed with a whole bunch of public records
23 requests, to which you don't want any bidder to get a
24 competitive advantage by getting more information
25 sooner.

1 A The purpose of that meeting was that we had
2 Morgan Stanley, J.P. Morgan, Pillsbury, OGC,
3 communications teams, to basically have a planning
4 session and start thinking about how -- we had to
5 work -- we had a mandate from the board in June to come
6 back with all these different scenarios. We had to
7 frame up all the different potential scenarios, 3(A) to
8 (F).

9 We had to think about how would we execute on
10 that. We had to work on retention, because we were
11 instructed to have employee protection programs.

12 So it was -- it was a preparation meeting for
13 a lot of the stuff that needed to be done before the
14 July board meeting.

15 Q Why was it at Club Continental?

16 A Because you have -- we had some 40, 50 people.

17 Q Was that the only place you could find to fit
18 40, 50 people?

19 A I don't schedule venues --

20 Q You didn't choose Club Continental?

21 A I did not.

22 Q Did you approve it?

23 A I don't know. A lot of times my EAs would
24 just handle venue scheduling.

25 Q Club Continental is a pretty nice, upscale

1 place, isn't it?
 2 A I'm not going to make that statement.
 3 Q No? You don't think it's a fancy place?
 4 A I don't consider it fancy, but ...
 5 Q What was the cost of the meeting at
 6 Club Continental?
 7 A I do not know the answer to that.
 8 Q Should you?
 9 MR. MULLEN: Object to the form of the
 10 question.
 11 A As the CEO of a multi-billion-dollar company
 12 tracking the individual costs of venues? No. I mean,
 13 that's not -- that's something that was managed by EAs.
 14 There's a whole financial team that reviews expenses to
 15 make sure they're appropriate --
 16 Q When you say EAs, you mean executive
 17 assistants?
 18 A Uh-huh.
 19 Q So at JEA, a public company, the executive
 20 assistants decide where we're going to hold meetings?
 21 A A lot of times they'll do the research to find
 22 the venues, yeah.
 23 Q Okay. And was this Club Continental meeting
 24 catered, breakfast and lunches?
 25 A Yes.

1 Q And you don't have any idea what the cost of
 2 that was?
 3 A No.
 4 Q You're not concerned with cost?
 5 MR. MULLEN: Object to the form of the
 6 question.
 7 A I'm always concerned with costs. That's why I
 8 have a track record while at JEA of cutting substantial
 9 costs out of the business, to the tune of hundreds of
 10 millions of dollars of interest expense and being very
 11 cognizant of the profitability of the business.
 12 Q There was a question in the July 23rd board
 13 meeting by Mr. Howard about whether OGC has approved the
 14 PUP. Do you recall that?
 15 A I've since watched the tape.
 16 MR. GRANAT: Okay. And just for the record,
 17 let's -- I have that clip. It will be clip 20 --
 18 Exhibit 23, but it's labeled here as Clip 9 on the
 19 digital file.
 20 (Exhibit Number 23 was marked for
 21 identification.)
 22 (Audio played.)
 23 A SPEAKER: "This is -- you know, absent the
 24 conversation today, this is really a continuation
 25 of the conversation the board of directors has been

1 having since January of 2019. And so it's a
 2 follow-up, presenting a plan that would have
 3 effectively lived in perpetuity on an annual basis,
 4 just as other --
 5 A SPEAKER: Sure.
 6 A SPEAKER: I assume that this -- this has
 7 been passed by OGC. I know we've got some legal
 8 constraints over statutory plans?
 9 A SPEAKER: Yes.
 10 A SPEAKER: Yes, sir.
 11 A SPEAKER: (Unintelligible.)
 12 A SPEAKER: Thank you, Madam Chair.
 13 A SPEAKER: You're welcome."
 14 (Audio stopped.)
 15 BY MR. GRANAT:
 16 Q So it was kind of a compound question by
 17 Mr. Howard, and Lynne Rhode answered, "yes, sir"; right?
 18 A Uh-huh.
 19 Q And we talked about before, and you said you
 20 were not aware that Jason Gabriel, before July 23rd, had
 21 told Herschel Vinyard and Lynne Rhode that OGC has not
 22 reviewed the PUP and has not approved it; is that right?
 23 A Again, absolutely in contrary, I'll point to
 24 the July 22nd memo, which my -- when I read it was an
 25 approval, to take the appropriate step in that board

1 meeting but not go through full implementation, which is
 2 exactly what we did. We followed the -- we followed all
 3 the steps and procedures to diligence and reviewed the
 4 materials.
 5 Q Well, if --
 6 A That's what I was -- that is the extent of
 7 what I knew was the --
 8 Q Okay.
 9 A -- written document I received.
 10 Q And I understand that's what you knew.
 11 Let me ask you, as the CEO, if Jason Gabriel
 12 had told Lynne Rhode and Herschel Vinyard that he has --
 13 OGC has not reviewed the PUP and is going to conduct its
 14 own legal analysis going forward, do you think that
 15 either Herschel Vinyard or Lynne Rhode should have
 16 stated that in this meeting in response to Mr. Howard's
 17 question?
 18 A Again, I have no knowledge of what
 19 Jason Gabriel said. So you're asking me to opine on a
 20 hypothetical.
 21 Q I am asking you a hypothetical.
 22 MR. MULLEN: Object to the form of the
 23 question and to the hypothetical.
 24 A If Lynne and Herschel had specific knowledge
 25 to something to the contrary, then I would expect them

1 to tell me and anybody else.
 2 Q Should they have spoken up at this meeting?
 3 A I would expect them to tell all the
 4 appropriate people.
 5 But again, the written letter with the
 6 signature on it was pretty clear to me and -- which is
 7 one of the reasons why I didn't question that answer.
 8 You know, I read the written letter to be very concise,
 9 which is that the board had the proper authority to move
 10 forward.
 11 Q All right.
 12 A Now, to your point, there's a footnote that
 13 says you have to go do all this other analysis, and we
 14 did exactly that. We followed all the checks and
 15 balances.
 16 MR. GRANAT: In the Diamond-Salem hearing,
 17 Councilman Salem asked you a question. He was
 18 asking you about how the board members were
 19 briefed. And I want to play that clip and then ask
 20 you a follow-up question.
 21 So this will be Exhibit 24, and it's going to
 22 be Clip 12 on the digital file.
 23 (Exhibit Number 24 was marked for
 24 identification.)
 25 (Audio played.)

1 A SPEAKER: "Do you know when the board packet
 2 for this particular meeting was completed?
 3 A SPEAKER: I don't know.
 4 A SPEAKER: Okay. I've spoken to several
 5 board members who have reached out to me.
 6 A SPEAKER: Okay.
 7 A SPEAKER: They tell me they got it late
 8 Friday prior to the Tuesday meeting.
 9 Do you -- do you know if the board members
 10 were briefed on the PUP plan prior to the meeting?
 11 A SPEAKER: Yes. It's a practice to talk to
 12 individual board members and make them apprised of
 13 significant elements that are coming up in board
 14 meetings.
 15 A SPEAKER: No, I understand that's the
 16 practice, and I was told that normally occurs. For
 17 this meeting, though, I'm talking about.
 18 A SPEAKER: My recollection, yes.
 19 A SPEAKER: Okay.
 20 A SPEAKER: I haven't -- don't recall
 21 deviating from that practice.
 22 A SPEAKER: Okay. Well, I have -- I
 23 understand from board members that they got the
 24 packet late Friday and were not briefed. So if you
 25 could provide any information to suggest they were,

1 I would be interested in that.
 2 A SPEAKER: Okay."
 3 (Audio stopped.)
 4 BY MR. GRANAT:
 5 Q So he invited you to produce information that
 6 suggests that you did brief the board. Did you do that,
 7 or do you have that?
 8 A I've done a public records request for my
 9 calendar over 14 days ago, I think --
 10 Q Okay.
 11 A -- to try and get the calendars of when all
 12 the briefings would have occurred.
 13 Q So the briefings with the board members would
 14 be on your calendar?
 15 A Yeah.
 16 Q Okay.
 17 A Actually, correct the record. John Mullen of
 18 Phelps Dunbar did the public records request. I did
 19 not.
 20 MR. MULLEN: That's correct.
 21 MR. GRANAT: Is that one of the items that you
 22 requested expedition on? I don't remember if it
 23 was emails --
 24 MR. MULLEN: I think the emails was requested
 25 for expediting. The calendar may not have been.

1 MR. GRANAT: Okay. We can sort that out.
 2 MR. MULLEN: But if you would, Sean, since
 3 we're talking about it, it would be good to
 4 expedite that. It should be obtainable from your
 5 folks. Usually the calendar and the emails are
 6 part of a Microsoft inbox.
 7 THE WITNESS: I'm surprised at how long it's
 8 taken to just fill that, because I know how fast
 9 JEA is with public records on -- for everybody.
 10 BY MR. GRANAT:
 11 Q Okay. What's your understanding of how the
 12 PUP units were going to be allocated?
 13 A So that was a decision to be made by Camille
 14 Lee-Johnson. Certainly, again, we never got around to
 15 allocation. I know I had a number of employees ask, you
 16 know, certainly as they started doing -- as they started
 17 kind of calculating, I had employees say that they
 18 wanted as many performance units as they possibly could
 19 get.
 20 I did think about -- you know, the
 21 Willis Towers Watson, which is what you're -- what
 22 you're pulling up, recommends just executives and
 23 directors. As discussed, you know, that was very
 24 contrary to my philosophical belief and that it was
 25 going to be to 100 percent of employees.

1 I had thought through scenarios where they
2 would be ratably distributed across all employees
3 equally. I thought about scenarios where there were
4 different grades, you know, based on the grade of the
5 employee.

6 So, you know, there was a number of, call it
7 scenarios that got played out in my head, but we never
8 got to a place where I discussed anything with Camille
9 about formal allocation.

10 Q So you never got to a place where you had a
11 recommendation for her --

12 A No.

13 Q -- as to how it should happen?

14 A Correct.

15 Q Well, I'm going to -- I'm going to ask you
16 about what's Exhibit 14, the July 23rd board packet on
17 Page -- and the Bates stamp is Zahn 339.

18 MR. MULLEN: That's in there.

19 Did you say 339?

20 MR. GRANAT: 339, right.

21 BY MR. GRANAT:

22 Q Yeah. And before I ask about this, you had
23 said that some employees had mentioned to you they want
24 as many units as they could get.

25 A Yeah.

1 Union leaders. Actually, I remember we talked
2 about them with union leaders, and a couple of the union
3 leaders, Valerie and -- what are their names?

4 Q Which union --

5 A Well, that's IBW.

6 Q Right.

7 A We talked about it with them, and they were
8 very interested.

9 And remember, this is on the heels of nine
10 months of conversation with -- in a lot of town halls
11 about trying to get employees financially vested in the
12 financial success of the business. So people were, you
13 know -- they were interested in it.

14 Q You said you had a meeting with 400 employees.
15 Was that to discuss the PUP?

16 A No. We did board downloads. So after each
17 board meeting, we would have a board -- a leadership
18 meeting at the library, where we'd go through, here's
19 what was discussed at the -- you know, at the board
20 meeting, here's the results, here's these kinds of
21 things.

22 And then after that we would have a meeting
23 with the union leaders to inform the union leaders so
24 that they could inform their members, and we would cover
25 the same things.

1 Q Who are those employees who said that to you?

2 A Oh, I'd say, you know, a lot of my senior
3 leadership team, a lot of directors. I would
4 oftentimes -- you know, we actually, after the July 23rd
5 board meeting, had a leadership meeting with 400 people
6 where we just talked about how a total comp would have
7 been approved and --

8 Q Can you name me any specific people you recall
9 who said they wanted as many units as they could get?

10 A So there would be people whose names I don't
11 even recall that said, you know, they were interested in
12 the performance units. But my entire senior leadership.
13 You know, directors --

14 Q What are their names?

15 A So you've got Melissa Dykes, Ryan Wannemacher,
16 Herschel Vinyard, Kerri Stewart, Steve McInall, you
17 know -- keep just rattle them off, I mean ...

18 Q Do you remember -- do you recall any
19 non-senior leadership team members expressing to you
20 that they would want as many units as they could get?

21 A Yes.

22 Q Who were they?

23 A Different people in the finance and accounting
24 department, but I don't recall their names, because I
25 had a hard time tracking 2,000 --

1 Q And where was the union leader meeting?

2 A That was on the 16th floor in one of our
3 conference rooms.

4 Q And that was after July 23rd?

5 A Correct.

6 Q And is that the 400-person meeting?

7 A No. That's the union leaders. The union
8 leaders are 15.

9 Q Okay.

10 A It's the union business managers and a couple
11 of their stewards, right?

12 Q So the 400-person meeting, was that -- which
13 meeting was that?

14 A That's the leadership meeting.

15 Q The leadership meeting.

16 A And that is all managers and above, all
17 appointed.

18 Q And that was at the library?

19 A Uh-huh.

20 Q And at that library meeting, the leadership
21 meeting, would that have been in July?

22 A Don't know. It would be on my calendar.

23 Q It would be after July 23rd?

24 A It would be after July 23rd.

25 Q Did you discuss the PUP at that leadership

1 meeting?
 2 A I'm sure. We discussed everything that would
 3 happen at the board meeting. Any actions that were
 4 taken, we would --
 5 Q What did you tell the leadership about the PUP
 6 in that July meeting -- or the post --
 7 A I don't recall.
 8 Q -- 23rd meeting?
 9 You don't know?
 10 A No.
 11 Q Are those meetings recorded?
 12 A I don't know.
 13 MR. MULLEN: Did you say "I don't know"?
 14 THE WITNESS: I don't know.
 15 BY MR. GRANAT:
 16 Q Okay. So --
 17 A And those would be typically presented by
 18 different senior leadership that -- you know, relative
 19 to what was going on. So HR would present, safety would
 20 present, and he presented a whole bunch of stuff, and
 21 then after the board meetings, he'd also present, here's
 22 what happened -- here's what happened at the board
 23 meeting, here's major actions, this is what you need to
 24 be aware of so that as your members -- as your people
 25 ask questions, you can be informed.

1 Q Were you at the leadership meetings?
 2 A Yes.
 3 Q Was your entire senior leadership team at
 4 these leadership meetings?
 5 A Unless they were on leave.
 6 Q Okay.
 7 A And so were all the directors and managers of
 8 the company. 400 people.
 9 Q So back to Exhibit 14, which is the July 23rd
 10 board packet. I referred you to Page Zahn 339. This is
 11 a product from Willis Towers Watson; is that right?
 12 A Correct.
 13 Q And I want to make sure I'm understanding
 14 this. I'm looking at the chart, and there's -- I guess
 15 there's three -- there's four charts, and I'm looking at
 16 the third one that says LTI Opportunity Percentage.
 17 A Uh-huh.
 18 Q And there's a Current and -- with all dashes,
 19 and there's -- I guess the columns are Executive,
 20 Director, Manager, Individual Contributor, and
 21 Bargaining Units.
 22 A Uh-huh.
 23 Q And so am I correct that this third column,
 24 LTI Opportunity Percentage, Current, is what does JEA
 25 currently have regarding an LTI; is that right?

1 A Yes.
 2 Q And then the next column says Market, and
 3 under Executive, it says 40 percent; Director 8 percent?
 4 A Yep.
 5 Q And so what does that mean?
 6 A That means that the market says that
 7 executives typically get 40 percent of the LTI
 8 opportunity and directors get 8 percent. And, you know,
 9 LTI is a percent of salary is how that -- if you read
 10 the second bullet.
 11 Q So would that mean that the executives would
 12 have the opportunity to earn 40 percent of their salary
 13 through an LTI?
 14 A That would mean that the market -- so, you
 15 know, public utilities, comparable companies, IOUs,
 16 everybody would have the opportunity to earn 40 percent
 17 of their salary annually in a long-term --
 18 Q Okay.
 19 A -- program.
 20 Q And when you say IOUs, that's an
 21 investment-owned utility?
 22 A Investor-owned.
 23 Q Investor-owned.
 24 And does that mean it's a private company?
 25 A Yes. But I -- Willis Towers Watson included

1 government entities as well.
 2 Q Okay. I understand. I just wanted to be
 3 clear on what an IOU is.
 4 Okay. So then the second part of this, it
 5 says Directors, then -- across to Market have an
 6 opportunity to earn 8 percent of their annual salary
 7 through an LTI program --
 8 A Correct.
 9 Q -- is that right?
 10 So -- and then the third column under the
 11 third chart is what was being proposed for the LTI plan?
 12 A That's what Willis Towers Watson proposed.
 13 Q Okay. And so Willis Towers Watson proposed
 14 the executives would have an opportunity to earn equal
 15 to the market 40 percent of their salary?
 16 A That's correct.
 17 Q And directors would be -- it was proposed they
 18 could earn 5 percent of their salary; right?
 19 A Correct.
 20 Q But that's under market?
 21 A Correct.
 22 Q Why would that be?
 23 A I don't know. You'd have to ask Willis Towers
 24 Watson.
 25 Q Did you not ask Willis Towers Watson about

1 this?
 2 A This was a work product that I -- I had maybe
 3 one or two meetings to talk about general direction.
 4 Q I see. And then they had proposed 3 -- up to
 5 3 percent for the managers?
 6 A Yes.
 7 Q And then 1 percent -- 3 percent for individual
 8 contributors?
 9 A Yes.
 10 Q What is an individual contributor? What would
 11 that mean?
 12 A An appointed individual that isn't a manager
 13 of people that contributes individually.
 14 Q And then bargaining units, it was proposed
 15 that they could earn up 1 percent of their salary;
 16 right?
 17 A That's what Willis Towers Watson --
 18 Q And that would be all the union members?
 19 A Correct.
 20 Q That's the majority of JEA?
 21 A 1,600 people.
 22 Q As opposed to 400 in management and appointed?
 23 A Correct.
 24 Q And so if you were to look at this chart, that
 25 would suggest that the PUP would be distributed or

1 allocated in a proportion that favored executives?
 2 A That's what Willis Towers Watson recommended.
 3 Q Okay. And this is information that you --
 4 were you not accepting that, or did you --
 5 A No.
 6 Q You weren't?
 7 A So I'll take you to Zahn 322, which is CEO
 8 Competitive Market Pricing, where the average base
 9 salary is, you know, of combined market group, is
 10 \$800,000. The target bonus was 100 percent, so the
 11 average total compensation in a year was \$1.2 million.
 12 The employment agreement I negotiated for
 13 myself was well off the 50th percentile of what was
 14 recommended by Willis Towers Watson.
 15 So yeah, you get -- you get compensation
 16 consultants that give you a whole bunch of data, but at
 17 the end of the day, policy decisions are decisions that
 18 get made by the board, and you work to do what you think
 19 is in the best interest of your entire company.
 20 So yeah, I reject -- I point-blank rejected
 21 this proposal, because I thought that more of it should
 22 be skewed down towards the individual contributor on the
 23 front line.
 24 Q When you say you rejected this proposal, do
 25 you mean the Willis Towers Watson proposal in total

1 or --
 2 A No. Just --
 3 Q -- just what we were talking about?
 4 A Just what we were talking about. I
 5 philosophically, just as an individual and a CEO, don't
 6 believe that that's the way you should skew long-term
 7 incentive.
 8 Q Okay. Now --
 9 A Now, at the end of the day, that wasn't going
 10 to be my call, so ...
 11 Q So we're talking about Zahn 339; right?
 12 A Yes.
 13 Q And this was material that was provided to the
 14 board?
 15 A Uh-huh.
 16 Q Did you inform the board members that there
 17 were portions of the materials here that you were not in
 18 agreement with?
 19 A Yeah, specifically my 50th percentile
 20 salaries, would be a great example of that. Another
 21 good example would be the 50th percentile compensation
 22 for senior executives, which is 42 percent below market.
 23 I didn't favor raising all of their salaries to be at
 24 the --
 25 Q Okay. Other than salaries, though, did you

1 inform them that you didn't agree with other things?
 2 A Yeah.
 3 Q What else?
 4 A We talked about short-term programs which
 5 we're under market on. So JEA is below market on that.
 6 And we chose not to touch the short-term pay for
 7 performance program. Instead, what we chose to do --
 8 because, again, the principal thing -- and the quote in
 9 that that you played, references exactly that -- it was
 10 a seven- or eight-month period of time where we were
 11 trying to get all of our employees financially vested in
 12 the health and financial success and long-term value of
 13 the business. So if you had union people that only got
 14 1 percent, that doesn't do a whole lot.
 15 Q Okay. I'm going to ask you to look at Zahn
 16 333.
 17 MR. MULLEN: You got the pages out of order.
 18 Here it is, right here. I'll put it back in order.
 19 THE WITNESS: Okay.
 20 BY MR. GRANAT:
 21 Q This is part of the Willis Towers Watson chart
 22 that was presented to the board on July 23rd, and under
 23 the Public Power Utilities, under Prevalence, it says,
 24 Long-Term Incentive Plans Are Used Selectively --
 25 A Uh-huh.

1 Q -- right?
 2 Now, I know that Councilman Diamond had asked
 3 you about a different version in the hearing, and I just
 4 want to turn to that real quick. That's in Exhibit 7.
 5 The Diamond material is on Page 519 -- well, it starts
 6 on Page 519, but it's actually on Page 523.
 7 MR. MULLEN: What was the tab number, Sean?
 8 THE WITNESS: I got it.
 9 MR. GRANAT: It's 523, and it's Tab --
 10 THE WITNESS: 33.
 11 MR. GRANAT: -- 33.
 12 BY MR. GRANAT:
 13 Q And do you recall that conversation with
 14 Councilman Diamond --
 15 A Yeah.
 16 Q -- about that?
 17 A They say two different things.
 18 Q Yeah. Let me just -- just so we're on the
 19 same page, let me play that. I have that clip cued up.
 20 It's Exhibit 25, but it's going to be on the digital
 21 file Clip 10.
 22 (Exhibit Number 25 was marked for
 23 identification.)
 24 (Audio played.)
 25 A SPEAKER: "You want to look at JEA 0523.

1 That is under Tab 33.
 2 For your information, this is that original
 3 Willis Towers Watson draft document that you guys
 4 were taking a look at. You see the chart there?
 5 You and I discussed it earlier.
 6 A SPEAKER: 05 --
 7 A SPEAKER: Based on -- it's Number 40523.
 8 A SPEAKER: Yes.
 9 A SPEAKER: Okay. So when we looked at this
 10 before, we were kind of walking through the fact
 11 that long-term incentive plans are unusual in
 12 public power utility companies and that they're not
 13 unusual in investor-owned companies. And it says
 14 there in that Prevalence box that they are
 15 uncommon.
 16 And then if you look at this document that's
 17 posted behind me -- it's also in your packet --
 18 that exact same chart is replicated to the word
 19 except for -- and you'll see -- instead of saying
 20 LTI plans are uncommon, it says, LTI plans are used
 21 selectively.
 22 At some point between this Watson Towers
 23 report that you-all paid for and when you provided
 24 the information to the board -- and this comes
 25 right out of the board members' packet -- it was

1 changed.
 2 Do you know who changed it?
 3 A SPEAKER: It would have to be
 4 Willis Towers Watson.
 5 A SPEAKER: They would have done that? Why
 6 would they change the word "uncommon" to
 7 "selectively"?
 8 A SPEAKER: So this is a draft, and I know
 9 between this draft and the final, they did a lot of
 10 work (unintelligible).
 11 A SPEAKER: Okay. And did anyone at JEA have
 12 the ability to edit these documents prior to the
 13 presentation to the board?
 14 A SPEAKER: Not that I'm aware of.
 15 A SPEAKER: Okay. All right. We can follow
 16 up with them."
 17 (Audio stopped.)
 18 BY MR. GRANAT:
 19 Q So I want to ask you, you said that
 20 Willis Towers Watson had done some more diligence --
 21 A Yeah.
 22 Q -- and then made the change.
 23 Do you know if there are other public power
 24 utilities who have long-term --
 25 A I'm not a compensation specialist. You know,

1 I pushed Willis Towers Watson. I said, look, surely
 2 there have to be some, because they gave us -- you know,
 3 a lot of compensation consultants will give you a first
 4 draft and they'll give you a whole bunch of stuff, and
 5 you give them feedback.
 6 Q So you're not aware of whether they found
 7 others -- as we --
 8 A As I understand, you know, it says for those
 9 public power utilities with LTI plans, eligibility
 10 typically --
 11 So they must have found some plans if they can
 12 make that statement.
 13 Q As we sit here today --
 14 A Yeah.
 15 Q -- are you aware of any other public power
 16 utility that has an LTI plan?
 17 A I'm not from the public power space, so I
 18 don't have --
 19 Q Well, you -- you're not from the public power
 20 space?
 21 A I've always been in the private side.
 22 Q But you're the CEO of JEA.
 23 A Sure. I have been.
 24 Q So you are, right, at least since -- when did
 25 you start with JEA?

1 A April of 2018.
 2 Q Okay. I mean, so --
 3 A And I was focused on a lot of facets of
 4 running the business as opposed to going and
 5 investigating long-term compensation plans of other
 6 public utilities. So I was focused on de-leveraging the
 7 business. I was focused on making rates lower. I was
 8 focused on dealing with Vogtle. I was focused on a lot
 9 of other things that were higher priority to me.
 10 Q And I'm just simply asking if you had received
 11 information about any other power -- public power
 12 utilities or if, as we sit here today --
 13 A I have not.
 14 Q -- do you know another that has such a thing?
 15 And you do not?
 16 A No.
 17 Q Okay.
 18 A As Jason Gabriel's, you know, letter on the
 19 12th says, that this is in all context and --
 20 Q Have you ever heard of the PUP called a
 21 unicorn, described as a unicorn?
 22 A No.
 23 Q Have you heard anybody call it that?
 24 A No.
 25 Q You said no?

1 A No.
 2 Q Okay.
 3 A A unicorn?
 4 Q A unicorn.
 5 A I don't -- I don't even understand that
 6 question.
 7 Q Yeah. I'm just saying have you heard any of
 8 your senior leadership team members refer to the PUP as
 9 a unicorn or describe it as a unicorn, meaning unique
 10 or --
 11 A No.
 12 Q -- one of a kind?
 13 A No.
 14 Q Or something that doesn't exist, perhaps.
 15 Did any JEA employees ever suggest to you that
 16 they thought the PUP was a bad idea?
 17 A No.
 18 Q Did any JEA employees ever inform you of any
 19 concerns they had with the PUP at any time?
 20 A No.
 21 There was dis -- to be -- now, there was
 22 discussion around the performance units similar to the
 23 retention agreements and the pension programs about, you
 24 know, public consumption -- you know, perception of it,
 25 but not as a matter of policy.

1 Q So there were -- there was never any time when
 2 any JEA employees came up to you and said that, you
 3 know, Mr. Zahn, this is wrong. This PUP would lead to a
 4 huge payout if a recap occurred, and it's not right and
 5 we shouldn't do this?
 6 A So I reject the premise of that question,
 7 because you're antidoting wrong versus right. We
 8 clearly followed the law. We clearly followed and were
 9 abiding by all ethics standards. And the decision to
 10 implement the plan was that of the board of directors,
 11 not mine. And I did not have somebody come up to me and
 12 make that type of accusation.
 13 Q Okay. And I'm just asking you --
 14 A Yeah.
 15 Q -- if someone had come up to you --
 16 A No.
 17 Q -- and said that.
 18 What is Project Freebird?
 19 A So Project Freebird was the nickname that
 20 J.P. Morgan gave to the ITN.
 21 Q Do you know why -- so J.P. Morgan is the
 22 inventor of that nickname?
 23 A They were.
 24 Q Do you know why they choose Freebird or why it
 25 was given a nickname?

1 A Well, so very frequently banks put nicknames
 2 on projects.
 3 Q Okay. So that's common?
 4 A It's a very common market practice.
 5 Q Okay. So there's no element of secrecy or
 6 code name --
 7 A No. They typically picked some idiosyncrasy
 8 of, you know, the company or whatever and then make up
 9 the name. And obviously Jacksonville --
 10 Q Lynyrd Skynyrd --
 11 A Lynyrd Skynyrd.
 12 Q -- Freebird? Okay. That makes sense.
 13 A Just like -- and I'm surprised the news never
 14 picked this up -- Scampi, do you know where it comes
 15 from?
 16 Q Is it the mascot for the Jumbo Shrimp?
 17 A Yeah.
 18 Q Okay.
 19 A Favorite pink mascot.
 20 Q Okay. So did Project -- when did Project
 21 Freebird start? When J.P. Morgan started its work on
 22 the ITN?
 23 A Yeah, I mean, that would be -- so if they
 24 started working on kind of drafting it, that would be
 25 when they would call it -- they'd give it a nickname and

1 they'd -- that's how they would track it internally.
 2 Q Was the nickname Project Freebird widely known
 3 to your senior leadership team that Freebird was the
 4 ITN?

5 A It got changed to Scampi really quick. So I
 6 want to say within a matter of weeks of the issuance of
 7 the ITN it went from Project Freebird to Project Scampi.
 8 Because I'm a Jumbo Shrimp fan, and I like -- I like
 9 Scampi.

10 Q And so was Freebird solely ITN?

11 A No. Well -- no. It was IPO and co-op too.
 12 It was all the work that J.P. Morgan and Morgan Stanley
 13 and Pillsbury and everybody -- so Scampi -- we would
 14 have frequent Scampi calls, and they would send around
 15 agendas for Project Scampi, and in that would have
 16 updates on, you know, Vogtle structuring, tax issues,
 17 the ITN in terms of, you know -- obviously once --
 18 there's drafting of the ITN, right? So that's where you
 19 get a lot of work.

20 But once the ITN was drafted and issued, then
 21 that was handed off to -- that was handed off to
 22 procurement, and they managed that. And then Project
 23 Scampi updates became more about IPOs and -- and kind of
 24 the mechanics of it.

25 MR. GRANAT: Okay. Just so we can get some

1 Q -- a lot of activities would happen resulting
 2 in a successful ITN?

3 A This is a very -- well, absent the ITN, this
 4 is a -- this is a very standardized, call it, you know,
 5 scheduling process, if that makes sense.

6 Q Okay. And this was the rough schedule that
 7 you were going to follow; correct?

8 A No. This, if you recall, was the first
 9 meeting we talked about. So this probably was a draft
 10 that was presented by -- produced by J.P. Morgan for
 11 review and input.

12 Q Okay. That's fair.

13 A And ultimately, Melissa started tracking with
 14 J.P. Morgan and Morgan Stanley, as the world continued
 15 moving forward, all -- a far more detailed project
 16 schedule.

17 Q So why did the name change to Scampi?

18 A Because I'm a Jumbo Shrimp fan.

19 Q Just because of that fact? Because you didn't
 20 like Freebird?

21 A Well, I like Freebird. Don't get me wrong.

22 Q Okay. All right.

23 A My prerogative as the CEO, I wanted the pink
 24 mascot.

25 Q Okay. Do you know exactly when you changed to

1 reference of time, let me give you Exhibit 26.
 2 (Exhibit Number 26 was marked for
 3 identification.)

4 BY MR. GRANAT:

5 Q And this is a J.P. Morgan document; correct?
 6 It says Project Freebird on the front. And on the
 7 second page it says, "Meeting agenda: July 10th through
 8 12th" --

9 A Sure.

10 Q -- which was the Club Continental meeting;
 11 right?

12 A Uh-huh.

13 Q And so if we review it on -- actually, on Page
 14 2, the printed Page 2, there's kind of a time schedule.
 15 And it says, Draft Invitation to Negotiate, which is the
 16 ITN, with a due date of July 19th. And it shows a lot
 17 of work being done prior to the July 23rd --

18 A Yep.

19 Q -- board meeting. And earlier you explained
 20 why that was.

21 A Yeah, and banks will oftentimes do free work
 22 to try and earn business.

23 Q And if you look on Page 7, there's an
 24 estimated -- basically a timeline set out for --

25 A Sure.

1 Scampi?

2 A No.

3 Q I have -- we'll call it Exhibit 26. I have an
 4 email here where you request the change on July 25th.

5 A Okay.

6 MR. MULLEN: Sean, just for the record, I
 7 think you called the Morgan Stanley document 26.

8 MR. POWELL: That's 27.

9 MR. MULLEN: So then the new one is 27.

10 MR. GRANAT: Can I see that? Can I have that?
 11 Thank you, John.

12 We'll call this email that's dated July 25th
 13 from Aaron Zahn Exhibit 27.

14 (Exhibit Number 27 was marked for
 15 identification.)

16 BY MR. GRANAT:

17 Q So do you know, is that the date that it was
 18 changed? Was it earlier? Was it around then?

19 A This would probably be me asking them -- this
 20 was the working group team, and just saying, you know,
 21 let's get all on the same page. If you're going to use
 22 a word, use it.

23 Q Okay.

24 A Now, I know that Freebird -- the word Freebird
 25 would track every once in a while and I'd see it, but it

1 wouldn't make any comments on it.
 2 Q Okay. Are you aware of a public record
 3 request being made for documents relating to
 4 Project Freebird inside JEA?
 5 A I did not manage public records.
 6 Q I understand that.
 7 A I'm not aware of it.
 8 Q So you're not aware of there being a very
 9 frequently made request for Freebird-related documents?
 10 A The public records department is three or four
 11 rungs removed from me in the organization.
 12 Q That's true.
 13 A Yeah.
 14 Q Just for the record, you're not aware of a
 15 frequently made request --
 16 A I did not track public records unless they
 17 were elevated to my -- brought to my attention.
 18 Q Okay.
 19 A Generally speaking, they would pertain to me.
 20 Q But are you aware of a frequently made request
 21 for Freebird documents at JEA?
 22 A No, I'm not aware of that.
 23 Q So the name Freebird wasn't changed to Scampi
 24 to avoid a public records request?
 25 A No.

1 (Exhibit Number 28 was marked for
 2 identification.)
 3 BY MR. GRANAT:
 4 Q The next exhibit is going to be 28. Let you
 5 review this. And can you tell us what is Exhibit 28 is,
 6 please.
 7 A This is a copy and paste of text messages sent
 8 by Mike Hightower to me in the December time frame --
 9 late December time frame that I decided to put into his
 10 human resource file.
 11 Q Are there -- are these the messages that
 12 Mike Hightower sent to you?
 13 A It's a compilation. So a lot of the rambling
 14 ones are. And then, I want to say that -- it's all his
 15 all the way down to the line "agreed," and then "at your
 16 convenience," and then he continues on.
 17 Q So "agreed" and "at your convenience" are
 18 yours?
 19 A Yeah. I tried not to respond to these. They
 20 were sent when he was extremely intoxicated.
 21 Q Okay. So this is a full recount of --
 22 A I think what I did was copy and paste and then
 23 send it to Angie, because we were having substantial
 24 issues with performance as well as alcohol utilization.
 25 Q Well, I'm just asking if your responses were

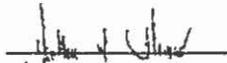
1 included in this --
 2 A Yes.
 3 Q -- or were your responses removed --
 4 A No, they're included in this.
 5 Q Okay.
 6 A They were one-word answers because I was very
 7 aware of what -- once I read something about "it's time
 8 for me to exit and move on" from an employee, that, to
 9 me, signals send this to HR.
 10 Q Okay. I have requested a number of documents
 11 through your attorney, and you've produced a large
 12 number of them, and I did not see any text messages.
 13 MR. MULLEN: I can address that, Sean.
 14 They're actually being processed right now. But
 15 there's a limited number.
 16 MR. GRANAT: Okay.
 17 MR. MULLEN: And the primary reason there's a
 18 limited number is that Mr. Zahn's -- as he looked
 19 into this, his iPhone is set at a standard
 20 30-day -- 30 days is the life of the
 21 text messaging. So he does not have any
 22 text messages that are --
 23 THE WITNESS: Personal or otherwise.
 24 MR. MULLEN: -- more than 30 days from today,
 25 whether that's from JEA business, his family,

1 whatever it might be; it's a 30-day deletion
 2 period.
 3 BY MR. GRANAT:
 4 Q Is that a setting that you --
 5 A No.
 6 Q -- put on your phone --
 7 A No.
 8 Q -- intentionally?
 9 A No. I upgraded my phone, and I guess it's
 10 like a standard setting.
 11 Now, I did produce my phone oftentimes at JEA
 12 for them to scan for records, and they did that
 13 oftentimes, so ...
 14 Q Well, I can tell you, Mr. Zahn, your attorney
 15 let me know that. And I checked and was told that that
 16 was done once, and it was in August of 2018.
 17 So you believe it was done more recently than
 18 that? Because I'd certainly like to know that.
 19 A I believe so, but --
 20 Q Do you know who the person was with IT who did
 21 it, who did the scanning?
 22 A No, I don't.
 23 Q Do you have an iPhone?
 24 A Yes.
 25 Q What model is it?

1 A It's an 11.
 2 Q And how long have you had the iPhone 11?
 3 A A month, a month and a half. A little bit
 4 more, maybe.
 5 Q So did you -- did you purchase your iPhone 11
 6 after the December 17th board meeting?
 7 A I don't know. I'd have to go back and look.
 8 Could have been. It's around that time, probably.
 9 My iPhone 10, or whatever it was, was
 10 having -- wasn't taking pictures of my children. It
 11 wasn't doing things right. It was having issues. And
 12 so I was eligible for a free upgrade, and I upgraded.
 13 Q Well -- so you think you've had it for about a
 14 month, but it's been more than a month since the
 15 December 17th board meeting.
 16 A Okay.
 17 Q So since you've been on administrative leave,
 18 do you recall getting a new phone?
 19 A It's either in or around that meeting or, you
 20 know, after or before. But again, I'd have to go look
 21 at the actual records.
 22 Q And prior to getting that new phone, were your
 23 texts saved --
 24 A Yes.
 25 Q -- more than 30 days?

1 A Yeah, to my knowledge.
 2 Q When did you discover that your phone was set
 3 to delete texts after --
 4 A When John called me and said, hey, you know,
 5 we need the records from this date to this date, and I
 6 started going back and through and realized that
 7 effectively I don't have my wife's text messages. I
 8 don't have anybody's text messages. And tried -- and I
 9 didn't even know it was a setting.
 10 Q Have you checked your iCloud, or have you
 11 spoken to anyone with Apple about that?
 12 A No.
 13 Q Do you realize that's a public records
 14 problem?
 15 A To the extent that there were JEA records.
 16 But I'm not -- I never made it a standard practice of
 17 using my text message to convey JEA business.
 18 Q Okay.
 19 MR. MULLEN: I don't know how much of a public
 20 records problem it could be if during Mr. Zahn's
 21 tenure at JEA, his phone was only taken one time to
 22 scan for texts, which is what you discovered.
 23 MR. POWELL: Well, I'm going to chime in and
 24 say that has absolutely nothing to do with the
 25 issue --

1 MR. MULLEN: I think it does.
 2 MR. POWELL: -- as to whether or not Mr. Zahn
 3 had an obligation to retain his texts, which were
 4 public records, they dealt with JEA --
 5 MR. GRANAT: That's fine. But actually --
 6 MR. MULLEN: What Mr. Granat reported is that
 7 there was very little effort. There's apparently
 8 only one effort ever made to obtain Mr. Zahn's
 9 texts.
 10 MR. GRANAT: And I believe that was at
 11 Mr. Zahn's request. But I'm going to ask you to
 12 let me conduct my interview, please.
 13 THE WITNESS: What I will offer to you is that
 14 we coordinated with OGC as well as IT to use
 15 GroupMe to communicate amongst JEA senior
 16 leadership, and that's how we -- if we used
 17 messaging, that's what we used. And that was
 18 coordinated with OGC to retain those records.
 19 MR. GRANAT: Okay. It's 5:00.
 20 (Sworn statement adjourned at 5:00 p.m.)
 21
 22
 23
 24
 25

1 CERTIFICATE OF REPORTER
 2
 3
 4 STATE OF FLORIDA
 5 COUNTY OF DUVAL
 6
 7
 8 I, HEATHER M. THOMAS, Court Reporter and
 9 Notary Public, State of Florida, was authorized to
 10 and did stenographically report the foregoing
 11 proceedings; and that the transcript, pages 4
 12 through 276, is a true and accurate record of my
 13 stenographic notes.
 14 I further certify that I am not a
 15 relative, or employee, or attorney, or counsel of
 16 any of the parties' attorney or counsel connected
 17 with the action, nor am I financially interested in
 18 this action.
 19
 20 DATED this 27th day of January, 2020.
 21
 22 
 23 HEATHER M. THOMAS
 24 COURT REPORTER
 25 

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