

SPECIAL INVESTIGATORY COMMITTEE ON JEA

SESSION #3

DATE: Monday, March 9, 2020

TIME: 5:00 p.m. - 8:08 p.m.

PLACE: Council Chambers
First Floor
City Hall at St. James Building
117 West Duval Street
Jacksonville, Florida 32202

COUNCIL MEMBERS PRESENT:

Scott Wilson, Council President, District 4
Rory Diamond, Chairman, District 13
Randy DeFoor, District 14
Brenda Priestly Jackson, District 10
Joyce Morgan, District 1
Al Ferraro, District 2
Garrett Dennis, District 9
Danny Becton, District 11
Randy White, District 12
Terrance Freeman, Group 1
Ronald Salem, Group 2

ALSO PRESENT:

Carol Owens, Legislative Services
Steve Cassada, IT Administrator
Kyle Billy, Council Auditor
Heather Reber, Council Auditor
Colleen Hampsey, Council Research
Richard Distel, Council Research
Makenzi Conner, Executive Council Assistant
John Phillips, Office of General Counsel
Sean Granat, Office of General Counsel
Jason Gabriel, Office of General Counsel
Steve Busey, Smith, Hulsey & Busey

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P R O C E E D I N G S

CHAIRMAN DIAMOND: We're going to call this Special Investigatory meeting to order, March 9, 5:00 p.m. We will first be going around the room to welcome everyone.

So, Councilman Dennis, if you want to go first.

COUNCIL MEMBER DENNIS: Good afternoon. Garrett Dennis, District 9.

COUNCIL MEMBER FERRARO: Al Ferraro, District 2.

COUNCIL MEMBER DeFOOR: Randy DeFoor, District 14.

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

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

COUNCIL MEMBER FREEMAN: Hello. Terrance Freeman, At-Large Group 1.

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

COUNCIL MEMBER WHITE: Randy White, District 12.

CHAIRMAN DIAMOND: And we've got two

1 more.

2 COUNCIL PRESIDENT WILSON: Scott Wilson,
3 District 4.

4 COUNCIL MEMBER BECTON: Danny Becton,
5 District 11.

6 CHAIRMAN DIAMOND: Okay. And we will
7 start with the Pledge of Allegiance. If you
8 all want to rise, it's behind me.

9 (Pledge of Allegiance.)

10 CHAIRMAN DIAMOND: Okay. And just so
11 everyone knows, we had, at Councilwoman
12 Priestly Jackson's recommendation to have
13 this in kind of the late afternoon, early
14 evening meeting to have as much public
15 participation as possible, it made perfect
16 sense at the time. However, given the
17 health concerns publicly, what we are
18 recommending is that we're not going to have
19 public comment at the end of this, and
20 instead we're going to encourage anyone to
21 participate by watching us on the live
22 stream. And so that's what you can expect.

23 If you're here as a witness, I
24 understand you have to stay in the room and
25 all of us have to stay in the room, but

1 that's our recommendation for everybody
2 else.

3 And we'll jump right into our agenda,
4 except for I'm going to skip to item number
5 five, our document request update, and we're
6 going to talk with the folks at OGC.

7 And just to tee this up for the public,
8 and so everyone knows, a month ago at our
9 very first meeting we issued an 84-item
10 document request to JEA. As of this second,
11 we have received zero documents.

12 So I'm really hoping you've got good
13 news for us today. So I'm not putting it on
14 your shoulders, but I'm certainly eager to
15 hear what you have to say. So your name,
16 for the record.

17 MR. GAVIN: My name is Kyle Gavin, with
18 OGC, and also...

19 MR. GARRETT: I'm Chris Garrett, with
20 OGC.

21 MR. GAVIN: Since that time -- well,
22 first, the -- I don't know that the volume
23 of information from which we have to mine
24 those 84 requests is -- we have determined
25 is about 24 terabytes. And now, to me, that

1 doesn't mean a whole lot, but to put it in
2 terms that I can understand, that's about
3 1.8 billion single-spaced typewritten pages.
4 That's the universe of documentation.

5 And requests, although some of the
6 requests are, indeed, easy to go grab, if
7 you will, low-hanging fruit. But keep in
8 mind the request, for example, presenting
9 let's say the PUP document, I mean, that's
10 an easy request to get. But the request
11 went further in that the Committee wants to
12 know, well, who drafted the document, who
13 changed it, who made modifications, who
14 attached it to emails, who discussed it.
15 And that's a lot of information.

16 And so what we've kind of -- not kind
17 of. We have employed really, like, the
18 federal court e-discovery protocol to be
19 able to mine this information. And part of
20 that includes using e-discovery experts.
21 And our experts have told us -- and at least
22 the instructions we got initially was, We
23 want all this information in one database
24 that's searchable. And it wasn't our
25 impression that they wanted it piecemeal,

1 here is some, here is the other, because
2 then you have to keep running the same
3 searches over and over and over again. And
4 at least in the beginning, we were
5 proceeding towards getting all that
6 information into a single database.

7 We have been told by the experts,
8 initially, it was collect all the servers,
9 all the email exchanges, all the laptops,
10 all the desktops, all the mobile devices,
11 tablets, iPads, you know, provide all that
12 information so they can be copied and mined.
13 And again, 24 terabytes, to do that takes
14 weeks just to hook up the machinery that can
15 copy it.

16 There are also security concerns for
17 doing that. You know, JEA has customer
18 information, HR information, HIPAA
19 information. And there are real security
20 concerns of just uploading all that into the
21 cloud. So we had to come up with a
22 hopefully more scientific way of what they
23 call mining the data, mining those 24
24 terabytes and boiling it down to a workable
25 number.

1 And what we estimate is that, when all
2 is said and done, that becomes about 1 to 2
3 terabytes. And again, that's roughly 75 to
4 150 million single-spaced pages. So then it
5 has to be further mined from that.

6 It just takes some time, some planning,
7 some targeted searches to do that. We will
8 and have been working with the SIC's counsel
9 to try to accomplish that. We have engaged
10 outside counsel that has a specialty in this
11 e-discovery technology also.

12 And there was a delay in getting that
13 done because at first, obviously, we would
14 like to use local firms. And we tried for
15 the firms that have the capability of doing
16 that, they all had conflicts or otherwise
17 weren't able to, you know, jump into this
18 immediately. We do have a Tampa --

19 CHAIRMAN DIAMOND: Let me interrupt you.
20 And I appreciate everything you're saying.
21 And, you know, for the public's knowledge,
22 the Members of the Committee are hearing
23 many of these same things directly from
24 OGC -- give me one sec. So fully understand
25 that piece of the puzzle. Can we cut to the

1 chase? When are we going to get documents?

2 MR. GAVIN: We estimate -- right now the
3 top priority is getting the email servers,
4 the exchange server, download it, that's
5 roughly 350 gigs. So it's -- and then they
6 process it so it's searchable. And then
7 we'll work with SIC's counsel in coming
8 up -- and that's still too much information
9 -- work with their counsel with targeted
10 searches to narrow that down to a reasonable
11 number. We think that within two weeks that
12 can be captured. It will take another week
13 of interacting with the SIC's counsel to
14 target and narrow that down.

15 And then once that's done we have to do
16 an exemption search. Some of these emails
17 could have HIPAA information, HR
18 information, social security numbers,
19 security information. So there is no
20 short-circuit. And by our estimates that we
21 use typically, for example, if we can boil
22 this down to 6 or 7,000 emails, that will
23 take us a week to review for exemptions.

24 CHAIRMAN DIAMOND: My understanding is
25 there are documents that can be produced

1 immediately.

2 MR. GAVIN: Yes.

3 CHAIRMAN DIAMOND: What are those?

4 MR. GAVIN: I actually have with me
5 all -- and willing to -- ready to hand over
6 all of the previously publicly released ITN
7 PUP related documents pursuant to media
8 requests, the What's Next website, all those
9 documents. So that's ready now.

10 It's my understanding, as we speak, that
11 the interrogatories or at least preliminary
12 responses to the interrogatories are being
13 emailed or will very shortly be emailed to
14 the SIC's counsel.

15 Some of the what I'll call low-hanging
16 fruit, for lack of a better word, we can
17 start producing that -- some of that, by the
18 end of the week and just continually roll
19 on.

20 Again, that data won't be, for
21 example -- my example earlier, we can
22 produce the PUP plan, but the information
23 about who looked at it, when did they look
24 at it, what did they do to change it, modify
25 it, discuss it, that data takes more time to

1 gather.

2 We do think that the emails should, if
3 everything works fine, be gathered, mined,
4 processed, searched by your counsel and
5 should be in front of you within four weeks.

6 Now, there would be -- and then while
7 that's going on, we've also got 20 terabytes
8 of servers and personal computers that have
9 to be -- the information taken from and the
10 same process. And so that may lag another
11 week or two or so behind the emails. But
12 we've put a top priority, unless the
13 Committee wants us to prioritize something
14 else, on the emails.

15 CHAIRMAN DIAMOND: So let me just say --
16 it's going to sound like I'm picking on you
17 personally and I'm not -- this is a message
18 for JEA and their executives. If I were
19 trying to design a way to drag this out, it
20 is exactly what they've done, is to say that
21 it is an enormous amount of information.
22 And correct me if I'm wrong, but they
23 rejected the first law firm that was working
24 for them because they presented here, and
25 they didn't like the fact these people came

1 and presented to us and spoke to us and told
2 us what they thought about the documents
3 that were presented to the board so they
4 rejected that counsel. Then for no reason
5 that I can discern, they ask for another law
6 firm.

7 Now, just so it's clear to everyone in
8 Jacksonville, JEA is Jacksonville and
9 Jacksonville is JEA; they are not separate
10 entities. But they want to put a law firm
11 between us and them, and that makes no sense
12 to me. There is no conflict. There should
13 be no filter of a law firm between us and
14 them. Although I understand OGC has, as a
15 matter of courtesy to JEA, done that. And
16 now we have this firm, Hill Ward Henderson,
17 which is all the way in Tampa.

18 So we issued this a month ago. Here we
19 are a month later and we're talking -- and
20 two law firms later, and we're still talking
21 about interrogatory responses, which are
22 preliminary. This is nuts.

23 I get that it's hard. But in regular
24 civil litigation, I would have sent you a
25 document request or sent them a document

1 request, and it was due in 30 days, plus 3
2 days, 33 days to respond. I don't get it.

3 So I'm not sure what it's going to take,
4 what kind of message we have to send to JEA
5 and their executives to know that we're
6 serious about getting these documents, but
7 if we don't see them roll out this week,
8 immediately, and I have to speak for my
9 Council Members, then we're going to issue
10 the subpoena immediately asking Rules next
11 week to do that. We're then going to go and
12 get the documents ourselves, because there
13 is nothing between us.

14 MR. GAVIN: If I might. One of the --
15 and maybe this was miscommunication, but we
16 were advised that a third party needed to be
17 there as a filter because it was like we
18 really don't want JEA pulling these
19 documents. So our view was, Well, then
20 let's get an officer of the court, the -- my
21 marching orders are, This Committee is
22 entitled to every -- all the nonexempt
23 information that JEA has, period. That's a
24 lot of information. It's got to be filtered
25 down.

1 CHAIRMAN DIAMOND: I get that. And we
2 need a vendor to make it easier. I'm
3 tracking. But the number of trips to get
4 there, the number of "We'll tell you in a
5 couple days," our response to this, coming
6 from JEA, is ridiculous at this point. And
7 again, I'm not picking on you. And I do
8 think OGC has been pushing as hard as they
9 can.

10 My message is over OGC and over to JEA
11 that we are very serious about this, that
12 we're not messing around, and our patience
13 is gone. And they need to work with you
14 much faster and diligently than they are
15 now. Where am I missing this?

16 MR. GAVIN: Well, I think JEA would
17 respond that, Look, we were prepared to do
18 this on our own, but at least -- I'll have
19 to say myself personally and I've talked
20 with SIC's counsel, they wanted a third
21 party involved. And so we did that. Now,
22 if that was not the correct information --

23 CHAIRMAN DIAMOND: Perhaps there is a
24 misunderstanding about what a vendor who can
25 quickly aggregate information so that

1 searches can be done that are intelligent
2 and another law firm being involved, but
3 fair enough. I'm not sure it's super
4 productive for us to go back and forth.

5 What I'm hearing from you, and I'll go
6 to the Council Members, is within a month
7 all of these are going to be answered,
8 wholesale, 100 percent?

9 MR. GAVIN: I've been told by this
10 vendor that is physically impossible within
11 a month. We can have the email, we
12 believe -- they believe the emails will be
13 ready in a month, but it will be a week or
14 two or three after that before the entire --
15 that volume of data can be mined through.

16 And keep in mind we have an exemption
17 review obligation that that's part of
18 what -- that's a major part of what Hill
19 Ward Henderson is doing, in addition to our
20 office. That really has to be supervised by
21 attorneys.

22 CHAIRMAN DIAMOND: I'll go to my Council
23 colleagues, whichever.

24 Council Member DeFoor.

25 COUNCIL MEMBER DeFOOR: Thank you.

1 The fact that we're a month into this
2 and you're just now saying this to us --
3 again, this is not to you, this is to the
4 JEA -- this is absolutely unacceptable. You
5 know, we're in the age of electronic
6 documents and word search. So I'm going to
7 call this is bunk, it's bunk.

8 My message to the JEA is not only are we
9 going to be issuing subpoenas, but this is
10 in violation of public records request. And
11 I think we should take it to the State
12 Attorney's Office. I mean, honest to God,
13 this is ridiculous.

14 And if they think that we're just
15 going -- that time, in time this will all go
16 away or if we just move along, nothing to
17 see here, just sweep it under the rug, let
18 me tell you there is not a rug big enough
19 for this.

20 MR. GAVIN: The information I have
21 provided is not coming from JEA. It's
22 coming from the third party vendor --

23 COUNCIL MEMBER DeFOOR: These are --

24 MR. GAVIN: -- KL Discovery. And that
25 was recommended by your counsel and this is

1 the information they have provided to us.

2 COUNCIL MEMBER DeFOOR: I know

3 Ms. Brenda Priestly Jackson would like to
4 speak, but I would also like to hear from
5 Mr. Busey, if we could get his comments on
6 this.

7 CHAIRMAN DIAMOND: Councilwoman.

8 COUNCIL MEMBER PRIESTLY JACKSON: I
9 don't think I have to echo what my
10 colleagues have said and their frustration.
11 And so for me, I don't intend to be
12 frustrated four more weeks. I don't intend
13 to wait. So I want an answer resolved now,
14 how we can get the information we requested.
15 And so for me, it is as simple as our
16 outside counsel that we retained, and one of
17 the expectations we have of our outside
18 counsel is that they would get experts to
19 facilitate the Council Members doing their
20 job.

21 So my question for Mr. Busey is do you
22 have access to any third-party consultants
23 that can timely respond to the request of
24 the Investigative Committee to get the
25 documents?

1 MR. BUSEY: We did recommend some time
2 ago a third-party vendor who could do this,
3 and is KL Discovery. They were retained, I
4 understand, by JEA just last week. And
5 we're starting to get the answers over the
6 weekend, which you just heard.

7 We share your frustration. We need to
8 have a more responsive JEA. And I don't put
9 it at OGC. I think we're not getting the
10 help we need from JEA.

11 COUNCIL MEMBER PRIESTLY JACKSON: Okay.
12 So the third-party vendor that you
13 recommended that you say now has been
14 retained, what was your understanding in
15 your recommendation regarding how long it
16 would take them to respond to our request?

17 MR. BUSEY: I brought my partner Chris
18 Dix with me, who is a technology expert,
19 which I don't purport to be. I'm going to
20 ask Mr. Dix to answer that.

21 CHAIRMAN DIAMOND: Mr. Dix, come on
22 forward. Just state your name and address
23 for the record. We'll start a party up
24 there.

25 COUNCIL MEMBER PRIESTLY JACKSON:

1 Following up on the question from the
2 third-party expert that originally our
3 expert witness was looking at retaining who
4 has now been retained by JEA, what is your
5 understanding on a reasonable response time
6 to our request for the 84 documents?

7 MR. DIX: The time frame that you just
8 heard --

9 CHAIRMAN DIAMOND: Can you give me your
10 name and address for the record?

11 MR. DIX: I'm sorry. It's Chris Dix.

12 The time frame that you've just heard is
13 accurate. It's going to take a week to
14 collect the information, a week to search
15 for it, and then a week maybe, maybe less,
16 to review it for exemptions. And it's going
17 to take three or four weeks before we
18 finally have access to that information.

19 COUNCIL MEMBER PRIESTLY JACKSON: So
20 this is what's confusing for me, and someone
21 needs to explain this: I am not
22 understanding why information that you think
23 is confidential, that it has trade secrets
24 or proprietary, why that information cannot
25 be called out through the systems

1 administrator to get what we've asked for.
2 So that's what's confusing to me.

3 It would appear -- I made a list. And I
4 have a list of about 12 items from
5 different -- 12 different entities. Our
6 window and time frame that we requested is
7 narrow. So that, to me, should
8 automatically exclude certain confidential
9 documents and proprietary information
10 because it's not related to that.

11 So help me and help the public
12 understand, if we have narrowed our window
13 of time down, and so we are looking at
14 probably the latest maybe 2015, but maybe
15 2017 to present, from various entities,
16 Willis Towers, PUP, McKinsey, Public
17 Financial Management, ADP, Pillsbury, Morgan
18 Stanley, JP Morgan, Southern Group, et
19 cetera, why cannot a query be made for the
20 documents we requested for the window of
21 time from those entities, that information
22 then given and then that information checked
23 to see if it fits any type of exemption?
24 Help me understand why that can't happen.

25 MR. DIX: That is the plan. That will

1 be done. That's what -- we've asked that
2 the vendor be involved for that very reason,
3 because it wasn't happening at all as far as
4 we could tell. So we needed someone to go
5 in there, get the data to be able to search
6 it.

7 COUNCIL MEMBER PRIESTLY JACKSON: I'm
8 just a little English major, and that's what
9 I knew that we needed to do. I mean, I'm
10 just saying it needs to happen now. So I
11 mean, this -- I'm glad everybody is on board
12 now. But there is a degree of frustration.

13 And let me be really clear. I
14 appreciate Council President Wilson
15 appointing us. We all have good names and
16 reputations on the line, and I intend to get
17 to the bottom of it. I don't intend to
18 waste the public's time or anyone else's
19 time saying something is so difficult to do
20 that should not be.

21 So, Mr. Chairman, I am not interested in
22 four weeks. I'm interested in immediately
23 responding. And I'll be happy to follow up
24 with what we should be able to get forth
25 with. And everybody get together. Whatever

1 the time frame looks like for them to work
2 around the clock to get it, we need it.
3 Other than this, this is fruitless; this is
4 not yielding very much.

5 CHAIRMAN DIAMOND: You'll get no
6 disagreement from me.

7 Jason, can you all tell us how do we put
8 this on steroids and get it done
9 immediately?

10 MR. GABRIEL: Jason Gabriel, General
11 Counsel.

12 In an effort to, I think, bridge --
13 obviously, there is a need for speed and
14 expediting all of this on the one hand. On
15 the other hand, we don't want to lose any of
16 the comprehensiveness of the 84-point doc
17 request that's been sent.

18 So to do that, I think something we
19 talked about and I asked the more tech savvy
20 folks in the room to confirm this, is to not
21 lose the comprehensiveness of it, we need to
22 undertake this process with KLD and give it
23 the next four to five weeks to accomplish
24 that.

25 To not lose any time in the process,

1 what we talked about is to simultaneously,
2 through a prioritization of the categories
3 and an identification of the various
4 important categories, as I've heard a couple
5 of Council Members here identify, to
6 immediately have -- and I understand as of
7 tonight there is an immediate set of gigs of
8 materials that are available for immediate
9 dissemination, is to do these tranches of
10 information so that in the next two weeks
11 you have at least a good running set of
12 information that you can utilize amongst and
13 against your -- as you undertake this
14 investigation.

15 So I guess what I'm saying is I believe
16 we need to immediately undertake this more
17 comprehensive, you know, aggregation of the
18 materials and get that done, even if it
19 takes another four to five weeks. In the
20 meantime, to not lose any steam or time with
21 your investigation and the things you're
22 trying to produce here, is to -- and there
23 may be some replication here, but I think
24 that's okay -- is to immediately take and
25 get the information that's available through

1 these re-prioritized categories from JEA
2 immediately and get those things going.

3 CHAIRMAN DIAMOND: How fast is that
4 going to be?

5 MR. GABRIEL: Well, I think tonight we
6 have a set of information that's immediately
7 available. And then, I think, on the heels
8 of that, we need to go and get whatever
9 information -- you know, like a sort of
10 second phase after that. And to do that
11 simultaneously with your meetings as we go
12 along so we don't lose any time in the next
13 month.

14 CHAIRMAN DIAMOND: Councilwoman Priestly
15 Jackson -- pardon me, Councilwoman DeFoor
16 was ahead.

17 COUNCIL MEMBER DeFOOR: Just along those
18 lines -- thank you, Mr. Chairman -- I just
19 want to make sure that we're going beyond
20 the Diamond-Salem committee meeting. We
21 already have those documents and reviewed
22 them. Tell me you've got me more documents
23 than that.

24 MR. GAVIN: It would be easy to collect
25 a million emails, I'm just making a number

1 up, and just say here. What we're trying to
2 do and what we thought in working with your
3 counsel was that's unmanageable, let's get
4 that in a place where then we can, what they
5 call, mine those emails for the ones you
6 really want that your counsel will select.

7 Once they select and if we can get
8 that -- again, I'm making this number up,
9 million emails, and if we can get it down to
10 5 or 10,000 that is something that you want
11 to look at, then we can do an exemption
12 review of just that, say, 5,000 and not a
13 million.

14 And the exemption review is like this,
15 sure -- I'm sure there are emails where
16 people are discussing the ITN, but if in
17 that discussion they've included some
18 information that some of these bidders have
19 claimed are trade secret, and we have a
20 lawsuit pending right now about that, we
21 have to go through and redact that. And
22 there is no easy way to do that other than
23 manually look at the emails and redact out
24 the information that they've claimed is a
25 trade secret.

1 COUNCIL MEMBER DeFOOR: Okay. I'm going
2 to stop you there. First of all, the bids
3 didn't come in until much later. So we
4 could have a lot of information prior to the
5 time the bids came in; correct? And I still
6 don't understand, for the Diamond and the
7 Salem committee meeting, they had -- I know
8 I reviewed at least 400 emails. How is it
9 they were able to get those documents in a
10 very short period of time, I want to say
11 days, and we're now a month or more into
12 this process and we've gotten the big zero?

13 Honest to God, this is embarrassing for
14 you and for the JEA. It just proves
15 everything -- it proves everything we've
16 been dealing with. The leadership that we
17 dealt with before is some of the same
18 leadership today. And it proves that they
19 don't care about the public, they don't care
20 about transparency. It just -- it continues
21 on and on and on.

22 MR. GAVIN: And I understand. And
23 400 -- I mean, there are a lot more than
24 400. And we're dealing with a large volume
25 here. And I can be corrected, but I thought

1 the goal was let's get it all in one place
2 so that it can be mined. Where, if we get
3 400 here, 500 there, 1,000 there, that means
4 your counsel that's searching has to run the
5 same search over and over and over again for
6 each set.

7 Again, we can do it any way that's
8 preferred, but at least in the beginning
9 that was the preferred way. And I'm sorry
10 if we misunderstood that.

11 CHAIRMAN DIAMOND: We have a lot of
12 people in the queue. Councilwoman Priestly
13 Jackson and then I'll go to the --

14 COUNCIL MEMBER PRIESTLY JACKSON: I
15 appreciate all that.

16 Mr. Chairman and Mr. President, I intend
17 to submit a memo later this week on the
18 84-point request asking for that information
19 by our next meeting. And I'm going to put
20 in there, since it seems to be confusing,
21 why that information will not be included.
22 So if it's proprietary, you state it. If
23 you think it has that, you state it.
24 Because my goal has always been to see where
25 this leads to make certain that we as a body

1 have a record and make recommendations for
2 change that we can.

3 And what we have done really right now
4 is not been the most efficient in our time
5 and our use, because we made a request early
6 on in advance and we've not gotten a
7 response. And so that's where I am. I'm
8 not real interested, because I still didn't
9 get an answer to why we couldn't have the
10 terms put in and get the information and
11 then you look at the information. But I'm
12 just going to say what I want specifically
13 based on the list, and then ask for that
14 window of time for that information. And I
15 want a response provided to us, to our
16 Committee, maybe by our next meeting so we
17 can keep moving forward with what we need to
18 do.

19 I just want to be really clear, I don't
20 find the reasons articulated today very
21 credible. I don't. You can always -- as an
22 attorney and one who has been practicing 25
23 years, you can bury anyone you want with
24 documents and not give them to them and they
25 can't move forward. And I'm not interested

1 in participating in anything that goes down
2 that line.

3 I want a request -- the request was
4 reasonable, we put in time and made it. And
5 I didn't see anything in there that
6 indicated trade secrets, proprietary
7 information about our publicly owned
8 municipal utility, so that's...

9 CHAIRMAN DIAMOND: Councilman Salem.

10 COUNCIL MEMBER SALEM: Thank you,
11 Mr. Chair.

12 To respond to Councilman DeFoor,
13 Councilman Diamond and I within three days
14 got, I believe, 700 pages of documents, and
15 it was all done through JEA. I don't
16 believe there was any third party involved
17 when we got those documents.

18 Through the Chair, do we know how much
19 JEA is paying this entity to do this search?

20 MR. GAVIN: Right now it depends
21 ultimately on how many terabytes are
22 gathered. It's basically \$55,000 a
23 terabyte, which lasts for four months. In
24 other words, they'll host that information
25 for four months for \$55,000.

1 CHAIRMAN DIAMOND: Councilman Salem, I'm
2 told by OGC that we're around the \$100,000
3 mark.

4 COUNCIL MEMBER SALEM: I guess my
5 question is in -- can they not put this on a
6 12-, or 14-hour, 16-hour-a-day process to
7 speed this process up? We've got
8 laboratories in this country that are
9 working 24 hours a day to develop a vaccine
10 for the virus. And my concern is we've got
11 people working 8 hours a day and going home
12 and it's -- I mean, we need some urgency to
13 this. And if that means 16-hour or 18-hour
14 days, 7 days a week to get these documents,
15 that's what I would urge someone to do.

16 Because -- and our outside counsel
17 picked this firm. I'm not sure what process
18 they went through to pick this firm. I'm
19 assuming they went through some type of
20 search and checked around and -- before they
21 selected them. But I hope we've got the
22 right firm doing this as well.

23 Thank you, Mr. Chair.

24 MR. GAVIN: I believe we have. And my
25 understanding is, I mean, they are devoting

1 an entire team. I can't sit here and tell
2 you how many bodies that is. But they're,
3 as they put it, parachuting in to get this
4 done as fast as they can. And the estimates
5 we've given you are the estimates that they
6 have provided to us and, I believe, Mr. Dix.

7 CHAIRMAN DIAMOND: Councilman Dennis,
8 we're 30 minutes into this so we need to --

9 COUNCIL MEMBER DENNIS: Yeah, through
10 the Chair, so I'll make it very quick. I
11 heard the third party was offered up by our
12 counsel several weeks ago and then -- to be
13 hired by us, but then JEA hired that
14 third-party firm. I'm concerned that, you
15 know, the third party is being hired and
16 paid by JEA because that's their master.
17 And we've dealt with this through the whole
18 JEA process when Pillsbury and Foley &
19 Lardner, they were being paid by JEA, and we
20 were bamboozled to say that, you know, we
21 could go to them and they would give us
22 legal advice, but they didn't work for us.
23 So I do have a concern there.

24 Also, the second thing, very quickly,
25 there are some things that I feel that we

1 can get today. I mean, I want to see all
2 Zahn's emails, I want to see all Herschel
3 Vinyard's emails. Why can't we get those
4 yesterday or tomorrow, you know, and then
5 get the other large documents? But there
6 are some individuals that, I think, we
7 should get those emails, like, tomorrow.
8 Thank you.

9 CHAIRMAN DIAMOND: Councilman Ferraro,
10 are you still on the queue?

11 COUNCIL MEMBER FERRARO: Thank you,
12 through the Chair.

13 I hear attorneys saying what you're
14 saying, but as a person who is just looking
15 at this who has no law background, we're
16 getting no results.

17 CHAIRMAN DIAMOND: You don't need a law
18 degree for that, sir.

19 COUNCIL MEMBER FERRARO: So I guess what
20 I'm looking at is who is with the JEA that
21 we need to find out who we need to get out
22 here right now. And then while we're doing
23 this and getting the information, we should
24 be interviewing people from JEA right now so
25 that, if what they're saying doesn't match

1 up with what you're saying, we need to
2 verify what they're saying.

3 We're talking about getting all the
4 paperwork all in one place. I'm really not
5 interested in all at once getting
6 everything. I'd be interested in getting
7 something and moving forward so you can
8 check out the information coming in, if it's
9 accurate or not. Even if it's small -- one
10 piece at a time.

11 And just to let everybody know, time is
12 not on our side. The longer this goes on,
13 the more things get lost and things like
14 that. So I would want somebody from JEA
15 coming out and explaining why we have to go
16 in front of our constituents to say that
17 we've attended each one of these meetings
18 and we have no information. I know I'm
19 taking time asking questions, but it's a
20 half hour, and we have gotten absolutely
21 nowhere. I don't want to waste my time or
22 anybody's time here. And I want to be able
23 to explain as I go to my neighborhood
24 meetings of what we're doing and how we're
25 getting ahead.

1 So if there is a way we can have people
2 from JEA coming up during this to find out,
3 instead of just OGC, why can't we find this
4 out. If this was something else, we would
5 be able to explain that, so.

6 CHAIRMAN DIAMOND: All great points.
7 I'm not going to pile on any more. I think
8 the message is clear.

9 On that point, though, I would, and I
10 would hope the support of the Committee
11 also, within about a week we can get a
12 deposition of Melissa Dykes under oath. I
13 think that Mr. Busey should do that
14 deposition. And I think one of the most
15 important questions will be, Where are the
16 documents and why haven't they been produced
17 yet? Unless the Council objects, the
18 Committee objects, that's our direction to
19 OGC and our special counsel, to get that
20 done. I think one week is more than enough
21 time to go and find Ms. Dykes. I'm sure
22 she's got the time for us. She's an
23 employee of JEA. So we need to get that
24 deposition done.

25 I would also ask that OGC prepare

1 subpoenas to the investment banks involved
2 in this matter, JP Morgan and Morgan
3 Stanley, to provide all of the written
4 materials related to the ITN process. We
5 own those documents, they're ours. I think
6 that the Rules Committee next week can look
7 at these subpoenas and approve them, I would
8 hope, because I think there is a significant
9 problem with the ITN process. And I think
10 the investment banks have a lot of the
11 information that we need.

12 The third thing I would ask, and I hope
13 the Committee will support me in this, is
14 that I think we need to get to the bidders,
15 and I think the bidders need to answer some
16 questions that we have. The first one is,
17 Who are their lobbyists and who are they
18 paying to push this thing through? I think
19 an unspoken part of this is there are many
20 people in Jacksonville working at selling
21 JEA and we don't know who they are. I don't
22 know how you do an investigation if you
23 don't know who the players are. In addition
24 to that, I would like to know whether or not
25 they were able to actually look at JEA

1 assets.

2 One of the big mysteries to me is, if
3 you look at the notes coming out of the ITN
4 process, people didn't get a chance to even
5 look at JEA assets. You wouldn't buy a
6 house without an inspection. And certainly,
7 you couldn't bid on a multibillion dollar
8 public utility if you didn't get to look at
9 it. I want to know why they didn't get to
10 see it. Someone asked that question too.

11 So is that clear direction to our folks
12 over there of what we need? And I would
13 like to have this rolling, because we need
14 to get Melissa Dykes deposed, we need to get
15 the subpoenas ready for Rules, and we need
16 the get this stuff out the door, because I
17 think we have a legal battle ahead of us.
18 And I would like to go ahead and get going
19 on that battle ASAP so we can get a judge to
20 weigh in on this, because we need to know
21 what the investment banks had, we need all
22 the documents that belong to us, and it's
23 time to get going on this, because I'm just
24 tired of this. Unless there is objections
25 from the Committee, that will be the

1 direction.

2 Okay. I'm sure that was pleasant for
3 all of you. We'll go ahead and cease and
4 desist on this portion. And we'll start
5 with our first witness. Thank you.

6 Mr. Brost, you want to come on up and be
7 sworn, please. Our court reporter here will
8 swear you in, sir.

9 **MICHAEL BROST,**
10 having been produced and first duly sworn as a
11 witness on behalf of the Council, then testified
12 as follows:

13 **EXAMINATION**

14 BY CHAIRMAN DIAMOND:

15 Q All right. Mr. Brost, thank you for
16 being here. I certainly appreciate it.

17 If you look in front of you, there is a
18 deposition transcript sitting there. Have you
19 seen that before?

20 A Yes, I have.

21 Q Is your microphone working?

22 A I'm working on it. Test one, two.

23 Q I don't think so.

24 A You want a green light or red light?

25 Q Green.

1 A Test one, two.

2 Q There we go. Awesome.

3 Okay. So what I would like to do is
4 just ask you some basic background questions, and
5 then I'm pretty much going to focus on the high
6 points of your deposition transcript. But
7 because we're taking -- you know, having a court
8 reporter here taking it all down, all I'm asking
9 is that you let me finish a question before you
10 answer it, crosstalk is confusing. If I ask a
11 question and you don't understand it, I'm just
12 asking you to let me know you didn't understand
13 the question; otherwise, I'll assume you
14 understand it.

15 Can you, first of all, give me your work
16 background here? You worked at JEA for quite a
17 long time.

18 A Yes, I did. I started in '83,
19 electrical engineer and retired January of 2019
20 after 35 years.

21 Q Can you give me an idea of what hats you
22 were wearing the last ten years?

23 A The last seven or eight years, electric
24 system general manager. I actually for about 12
25 years was responsible for the electric system,

1 the power plants, transmission distribution,
2 pretty much the electric business.

3 Q So forgive me, I'm not super bright, but
4 you worked at JEA and you ran electricity?

5 A Yes.

6 Q All right. That sounds like a big job.

7 A Big job.

8 Q No doubt. And then under that you
9 reported directly to CEOs or where were you in
10 the scheme?

11 A Under Paul McElroy 2012 through 2018, I
12 reported to Paul. And then when he left, Melissa
13 Dykes was set up as a chief operating officer and
14 reported to her. And then prior to Paul I
15 reported to Jim Dickinson but through another
16 chief operating officer, so one or two levels
17 from the top.

18 Q When did you finish your tenure, long
19 tenure, at JEA?

20 A I'm sorry?

21 Q When did you retire?

22 A January of '19.

23 Q January '19. Who were you reporting to
24 right at the end?

25 A I'm sorry?

1 Q Do you remember who you reported to
2 right at the end of your tenure?

3 A Yeah, Melissa Dykes.

4 Q Melissa Dykes, okay. Help me out here,
5 what would you do with your day? I'm trying to
6 understand what this job is, running the entire
7 electric side of the house. Are you the planning
8 guy? Are you the manager? What does that mean
9 to have your title?

10 A Executive-level responsibility for
11 basically the full electric system. So I had a
12 great team of about a dozen directors who
13 reported to me, and basically I lead that group.
14 So like I said, the power plants, so we did
15 planning and construction, big projects and then
16 just the day-to-day engineering operation and
17 maintenance of the system, power plants, the
18 substations, transmission lines, distribution
19 lines. So I had, again, about a dozen -- about a
20 thousand employees, a dozen direct reports under
21 them, another level of management. And again,
22 between planning and construction operation and
23 maintenance, ran the electric system.

24 Q Okay. Can you -- I'm going to talk
25 about a couple of different types of planning

1 documents. What I'm asking, if you just kind of
2 help us understand what they are. So I'll start
3 with the first one. Can you explain what a
4 ten-year site plan is?

5 A Certainly. Once a year, every April
6 1st, with the Public Service Commission, and it
7 zeros in on the electric system and the
8 generation part of the business. So it looks out
9 ten years into the future. You estimate future
10 customer demand. You look at your generating
11 fleet. You figure out what new units you might
12 need to bring online, what older units need to be
13 retired. So it's a planning study with a
14 ten-year horizon.

15 Utilities are required to carry a
16 ten-percent reserve margin. So we have to make
17 sure the Public Service Committee -- the Public
18 Service Commission makes sure that each utility
19 has enough generation to meet the peak demand,
20 plus a 15 percent margin. That's one of the
21 primary objectives of that annual process.

22 Q In your position, were you in charge or
23 part of the drafting of the ten-year site plan
24 for JEA?

25 A High level, working for me. Steve

1 McInall actually, who is up next this evening,
2 that was one of the things he did each year.

3 Q If you will, do me a favor and grab that
4 transcript in front of you and flip to page 46.
5 In here there is a back-and-forth where General
6 Counsel is asking you questions, and you're
7 giving some background on things. You say here
8 starting at line 5, "Well, that didn't work in
9 2019 because Aaron was saying utility of the
10 future is no more big plants, only small stuff,
11 customer-owned systems, distributed generation,
12 energy efficiency. We're going to get our power
13 through the Internet and all kinds of crazy
14 stuff."

15 Can you give me some insight? What are
16 you trying to say here about what you were
17 learning?

18 A We were talking about the IRP, the
19 integrated resource plan, which is sort of like a
20 ten-year site plan. You don't do them as often,
21 and they look much farther out into the future.
22 You do them about every five to ten years. We
23 had -- Steve McInall and I had done one in 2018
24 and was, essentially, finished when I retired in
25 January of '19. I tried a couple times to get a

1 copy of it just to see where it landed, what it
2 was recommending, and had a problem getting it.
3 It should have been out early in '19. In the
4 ten-year site plan that was filed with the PSC
5 April 1st, there was a reference to it coming in
6 the summer of '19. The summer of '19 came and
7 went, it still wasn't out.

8 So it appeared to me -- and similar to
9 the ten-year site plan, the planning documents
10 are reflecting growth in the system and the need
11 for future generation clash with the other
12 strategic planning work going on.

13 Q Let me see if I can kind of summarize
14 these, and tell me if I'm getting this off,
15 because I know these are incredibly technical
16 documents, but I'm trying to understand them. So
17 the ten-year site plan looks back ten years,
18 looks forward ten years, and you're trying to
19 make sure you have sufficient energy production
20 and capacity to do the job, and you file it every
21 year April 1st with the Public Service
22 Commission; right?

23 A Correct.

24 Q And then, in addition, you have the IRP.
25 And the IRP is a longer look at things. And you

1 typically only do those because there is
2 something unique happening or something big
3 coming up? Why would you do an IRP?

4 A If your system is stable and there is
5 nothing really tough going on in the
6 30-to-40-year horizon, there is no real reason to
7 do one. When there are changes on the horizon,
8 you would want to do one. And you're looking out
9 40 years; and you're looking at alternative
10 scenarios; and you're trying to bring all these
11 alternative scenarios back to today from a
12 present value; and you're trying to make the
13 right decisions for 40 years into the future.

14 At this point JEA is fairly stable from
15 a generation perspective as you're aware. They
16 retired St. Johns River Power Park in 2017.
17 There is not a whole lot going on right now.
18 Vogtle is on the way in a couple years,
19 that's 200 megawatts. JEA has a 1970s vintage
20 unit at north side that probably needs to be
21 retired soon and will need to be replaced. So
22 the question is, looking out 40 years, what's the
23 best decision to replace that unit.

24 Q Do you remember what the kind of
25 conclusion that you were coming to with the IRP

1 that you started in 2018 was, generally speaking?

2 A The IRP, generally speaking, reflected
3 growth, moderate growth, consistent with the
4 ten-year site plan and the need to retire north
5 side three, it's a 40-year-old unit. There are
6 some environmental regulations that are coming
7 that are going to be expensive, and you don't
8 need to be spending a lot of money on a unit that
9 old. And the recommendation would have been to
10 replace it with natural gas combined cycle.

11 Q If I told you that IRP was projecting
12 about one percent growth, would that sound right?

13 A Yeah, about that.

14 Q And then there is a consultant you all
15 used for the IRP, Black & Veatch. Does that
16 sound right?

17 A Black & Veatch was the -- they subbed it
18 to a smaller outfit, Brad Kushner was the
19 gentleman that ran the study for us.

20 Q What were they doing?

21 A Sorry?

22 Q Do you remember what that consultant was
23 doing for the IRP?

24 A Doing the IRP study.

25 Q So they actually do the work for you?

1 A Yes.

2 Q And you guys feed them inputs and they
3 come out --

4 A Yeah, typical. So a lot of
5 back-and-forth. And again, Black & Veatch was
6 the primary contractor. It was subbed to a small
7 company called nFront, F-r-o-n-t, and Brad worked
8 for them.

9 Q Let me just kind of pull these together.
10 Are you familiar that there was a McKinsey study
11 that was kind of made public in 2019?

12 A What kind of study?

13 Q A study by the McKinsey Group.

14 A McKinsey, yes, I've seen it.

15 Q Have you read it?

16 A Yes.

17 Q So you're familiar with the ten-year
18 site plan and the McKinsey study?

19 A Yes.

20 Q What are your thoughts on the
21 conclusions of these two documents?

22 A We have the ten-year site plan and the
23 IRP, you're lumping that together as one
24 document, it's pretty traditional in terms of
25 calling for growth in the system and the need to

1 continue to build generation to meet the load.

2 The McKinsey study -- so I'd have to --
3 there are really three -- there is another
4 document out there, which is the planning --
5 strategic planning work that was done by JEA in
6 the summer of '19. What got rolled out in June,
7 July, they talked about scenario one, two, three,
8 the status quo, the death spiral. That was
9 rolled out in the summer and looked pretty ugly.
10 They had a scenario two, which was a traditional
11 utility response. And then they jumped to
12 scenario three, which was privatization. That
13 was supposedly rooted in the strategic work with
14 McKinsey, but it pretty much just stood alone.

15 If you look at the McKinsey report that
16 I got in December for the first time -- I saw a
17 final draft in November -- it really bears no
18 resemblance or correlation to the strategic
19 planning work that Aaron and Ryan rolled out in
20 the summer. You can read it. There's 20 pages
21 of front-end fluff that's just stuff that doesn't
22 add a whole lot of value. Zero reference to
23 scenario one, two, three. Zero reference to
24 status quo. Zero reference to contraction. It
25 was very disconnected from what JEA verbally

1 rolled out in the summer.

2 McKinsey, good company, 155-page
3 document. The first 20 pages is executive
4 summary, what I call fluff, overview, you can
5 skip it.

6 The content of the report, from page 21
7 to 155, is good quality recommendations for the
8 future of JEA. There is this very loose implied,
9 This is only for JEA once it's privatized, but it
10 doesn't really come out and say that. There is
11 nowhere in there that it really goes into the
12 debate around JEA continuing as a public utility
13 versus being investor-owned.

14 So the McKinsey report is excellent in
15 terms of its recommendations from page 21 through
16 155. And it's totally applicable, from my
17 perspective, to JEA today as a public utility.
18 It's couched as though this would be what JEA
19 does post-ITN.

20 Q Gotcha. Okay.

21 A There is nothing in the McKinsey report
22 that really talks about growth being at one
23 percent or negative one percent or the need for
24 future generation or -- it really is disconnected
25 from the scenario that JEA rolled out in the

1 summer.

2 Q Let me see if I can kind of draw some
3 conclusions here, and tell me if they seem
4 accurate to you. So the ten-year plan and the
5 IRP generally look at some modest growth over the
6 next ten years and the IRP 30 years; is that
7 correct?

8 A Correct.

9 Q And then you have the McKinsey report,
10 which has some really good things through it that
11 would be applicable whether or not JEA was sold
12 or whether it stayed as a public utility?

13 A Correct.

14 Q And then you've got this section that
15 clearly anticipates that JEA would be sold. And
16 is it fair to say that section is more aggressive
17 about the disruption to JEA's future or does it
18 sync well with what you're saying the IRP and the
19 ten-year plan? Tell me about that.

20 A The entire McKinsey report is more
21 consistent with the IRP and the ten-year plan.
22 Nowhere in it does it support privatization or
23 this notion that there is a -- the headwinds, the
24 cataclysmic doom and gloom contraction of the
25 business, having to lay off 25 percent of the

1 workforce, having to raise rates, having to
2 drastically cut spending. None of that is in the
3 McKinsey report.

4 Q Okay. Let me --

5 A It's a little bit of stuff -- first 20
6 pages on the high end, high-level overview. And
7 then 130 pages of, Here are some really good
8 things JEA should be doing. And the implied
9 content, not the explicit content, the implied
10 part of that is that would be for JEA under
11 scenario three post-ITN as an investor-owned
12 utility.

13 From my perspective, 100 percent of it
14 applies to JEA today and ought to be pursued.
15 But none of it really addresses this issue of the
16 future of the business and growth versus
17 contraction.

18 Q Well, and on that point, if you will
19 flip to page 56 in this deposition, let me know
20 when you get there.

21 A Fifty-six?

22 Q Correct.

23 CHAIRMAN DIAMOND: For anyone following,
24 that's JEA-00293.

25 BY CHAIRMAN DIAMOND:

1 Q You're having a back-and-forth about
2 projections and contraction versus growth. And
3 it says right at the top, "Things changed in '18
4 with Paul's departure." And then if you go
5 further down, it says, "What happened, of course,
6 in '19, when Aaron came on, is the pro forma
7 began to take on a pessimistic view, more of the
8 status quo, bad stuff coming, contractions and
9 revenues." Do you see that paragraph there?

10 A I'm sorry. Which line numbers?

11 Q Eighteen through 24.

12 A I should have brought my reading
13 glasses. I apologize.

14 Q I feel you. I'm half blind myself.
15 Sorry, I realize that's very small type.

16 A Uh-huh.

17 MR. WING: He can borrow mine.

18 THE WITNESS: Thank you, sir.

19 CHAIRMAN DIAMOND: Team work.

20 Way to go, Mr. Wing.

21 A My issue is I'm jumping into the middle
22 of it.

23 BY CHAIRMAN DIAMOND:

24 Q No, I understand. Take a minute and
25 make sure you got the context.

1 A So ask the question again.

2 Q Sure. Help me understand what you're
3 trying to tell me. You're talking about Aaron
4 Zahn, then the CEO of JEA, and you're,
5 essentially, saying it took a pessimistic turn in
6 view of the agency. Is that fair to say?

7 A Right.

8 Q You say that multiple times throughout
9 this deposition transcript. It might be easier
10 just to ask you the plain question: What was
11 happening in your opinion with regards to his
12 impression of the entity?

13 A So if I follow your question, there
14 seemed to be a significant bias towards
15 projecting a future that was negative for JEA's
16 business and significant headwinds, significant
17 challenges on the horizon that would be very
18 challenging for JEA to deal with in its public
19 power model.

20 Q And did you agree with that conclusion?

21 A Absolutely.

22 Q You thought that JEA --

23 A I disagreed with that conclusion.

24 Q Oh, you disagreed, sorry. I said
25 agreed.

1 Can you tell me why you disagreed? You
2 were about to shock me based on this deposition
3 transcript. Can you explain why you disagreed?

4 A It just doesn't fit what I know about
5 the business and industry. There are certainly
6 headwinds, but to characterize them as a cat five
7 hurricane, it's overstated. If you got a chance
8 to read the 29-page report from Nelson Mullins,
9 they've got some really good information in
10 there, as well, that just challenged all the
11 JEA's assertions about the last ten years and
12 predictions to come in ten years.

13 Q Maybe this is a good time to ask you
14 about that. Did you have a chance to see their
15 entire presentation?

16 A Yes.

17 Q Did you agree with their conclusions?

18 A Yes.

19 Q I mean, you have more background about
20 the energy business than just about anybody at
21 JEA. Was there anything that they got wrong? I
22 mean, these are lawyers looking at documents.

23 A No, they didn't get anything wrong. It
24 was an excellent presentation. The 29-page
25 report is excellent. I encourage everybody to

1 read that as well in terms of its --

2 Q Was there anything in your opinion that
3 they missed, other missed information or
4 manipulation of data that you caught that they
5 didn't see?

6 A No, not really. Looking back they
7 zeroed in on JEA's claim that the business
8 contracted by 8 percent over the last 10 or 12
9 years, and they challenged that. There were also
10 in the rearview mirror assertions that JEA
11 contracted by 400 employees, that's about 25
12 percent. I don't believe that's accurate, but
13 that's kind of a parallel statement. And then
14 the 71 percent increase in rates over the last
15 decade, I mean, that could have been challenged.
16 And of those historical claims that I think JEA
17 was throwing them out to support their future
18 claims that not only are we going to contract in
19 the future, but we've contracted over the last
20 decade.

21 They zeroed in on the unit sales, the
22 kilowatt hours, and didn't really address the
23 other two aspects of that.

24 Q Which are what? What did they miss?

25 A A reduction of force in the last decade

1 of 400 employees and raising electrical rates by
2 71 percent over the last decade.

3 Q So let's look at both of these just so
4 we nail this down. There is a statement that
5 there's already been a reduction of 400
6 employees, but that wasn't true, was it? Many of
7 those employees were hired back; correct?

8 A As was the case with a lot of their
9 claims, it was hard to really challenge it
10 because they didn't provide a whole lot of
11 detail. They basically said JEA has 400 fewer
12 employees. I'm under the impression 200 of the
13 400 employees were associated with the retirement
14 of St. Johns River Power Park. That's kind of
15 like failing to mention the loss of the wholesale
16 contract to Fernandina, which was half of the
17 eight percent. So it's one thing to look at the
18 numbers in the data, but you need to footnote
19 important things.

20 So the power park employees were not JEA
21 employees. They were -- SJRPP was a joint
22 project with Florida Power & Light. They were
23 not regular JEA employees, they were not civil
24 service employees, they were not on the City
25 pension; a separate group of employees. If you

1 want to include them, that's fine, but you need
2 to footnote and say, Half of the 400 was due to
3 the closure of a large coal plant.

4 Q And let me ask you about the 71 percent
5 then. The claim has been made that rates are
6 going up -- have gone up by 71 percent. Do you
7 agree with that claim?

8 A No.

9 Q Why not?

10 A I disagree.

11 Q Why do you disagree?

12 A The data doesn't support it. They stand
13 up in the meeting and say 71 percent, here it is,
14 but they don't back it up with data. Go to the
15 tariffs, go to the tariff sheets. The rates are
16 in the tariff sheets. It's like residential
17 customers, it's ten cents a kilowatt hour.
18 Tariff sheets are filed with the Public Service
19 Commission. Go to today's tariff sheets for
20 residential customers and go to the tariff sheet
21 that was in place ten years ago. Rates have gone
22 down, rates have not gone up. And they've gone
23 down for the other three rate classes,
24 nonresidential business, commercial industrial.
25 And there are three sizes of business rates,

1 small, medium, and large. All of JEA's rates
2 have gone down over the last decade.

3 Now, you know, the trick was -- and Ryan
4 tried to tap dance through this at a later
5 meeting -- they ignored fuel.

6 Q By Ryan, you mean former --

7 A Ryan Wannemacher, yes. He addressed the
8 issue. The main issue is they're not looking at
9 the rate at all. They're looking at a financial
10 measurement called yield, y-i-e-l-d, not really
11 the rates. The rates are the tariffs that are
12 posted in the tariff sheet filed with the Public
13 Service Commission. And they only looked at the
14 base rate, they ignored fuel. So it's about
15 60/40 or 65/35. They looked at parts of the rate
16 and they ignored fuel. So while there have been
17 some upward pressure on the base rates over the
18 last decade, the fuel has gone down. And they
19 didn't talk about the total rate, because if they
20 talked about the total rate, they would have had
21 to say rates have gone down, not up.

22 By zeroing in on a subset of the rate,
23 they were able to inflate it, because it's only a
24 subset, so it's magnified. If you're only
25 looking at half the rate, it goes up five

1 percent, well that's really ten percent, even
2 though it's -- so they've magnified the, quote,
3 rate, and they've only looked at 65 percent of
4 the rate, the base rate.

5 Q Gotcha. And just so we can wrap all
6 this up into a bow, you were running the electric
7 side of JEA?

8 A Yes.

9 Q Does anyone know more about the rates
10 over there than you do?

11 A Well, maybe. That's a bit of a stretch,
12 but --

13 Q I'm feeling ambitious for you.

14 A Steve has a degree from MIT, so he's
15 pretty smart.

16 Q Fair enough.

17 CHAIRMAN DIAMOND: It's almost your
18 turn, we're on our way.

19 A I certainly -- if we had raised rates 70
20 percent over the last decade, I would be out of a
21 job; there is no way that happened. They would
22 have run the team out, there is no way. It was
23 such an exaggeration.

24 Q Let me ask you this: In July of last
25 year, the JEA board met and they approved an ITN

1 process. Had you -- I understand that you were
2 gone in January of that year. But prior to your
3 departure had you ever been a part of any effort
4 to privatize JEA in the last couple of years or
5 any discussions about it?

6 A No. Privatization, no.

7 Q Anything like the ITN as it was put out,
8 the various scenarios?

9 A No. We did lots of strategic planning
10 work.

11 Q Were you surprised by the ITN when it
12 came out?

13 A I wasn't surprised by the ITN. I was
14 shocked by the story, the false narrative, that
15 was told in June and July about JEA's future as a
16 public power entity and how everything is solved
17 if we just go to an IOU, privatized,
18 recapitalized, whatever.

19 But, no, there has been discussions
20 about privatizing JEA going back many, many
21 years. So it wasn't -- in my time there, it
22 popped up a number of times. So I wasn't
23 surprised that they ended up with -- the fact
24 that it happened this quick was a little
25 surprising. And just the fact that there was no

1 accountability to back up the statements was
2 troubling. They just basically threw a bunch of
3 stuff out there without any justification or
4 backing it up, in my opinion, solely to press the
5 fast-forward button to move to scenario three,
6 and a week later the ITN is on the street.

7 When I was there, I couldn't get
8 anything out of purchasing in two months. You
9 guys are not there yet with your public records
10 request.

11 But, yeah, it moved very quickly. And
12 it was clear they had things lined up in advance
13 of -- the board meeting was silly. They brought
14 in two sets of documents and resolutions, and
15 over here we've got rate increases and layoffs
16 and moving out of downtown, and we're ready to
17 pull the trigger tomorrow or you can sign off on
18 this ITN process. So it just struck me as a
19 little dishonest.

20 Q Let me ask you about public records
21 requests real fast. I read in your deposition
22 transcript that you did not necessarily
23 characterize your experience with Aaron Zahn and
24 public records requests as positive. Can you
25 just kind of give us some flavor there? Did you

1 make a public records request? Did you have any
2 interactions with Mr. Zahn or any other members
3 of the senior leadership team about public
4 records requests?

5 A No, not really any interaction with
6 Aaron. Aaron was not from public power or city
7 government, so it was an eye-opening experience
8 for him to learn about the various aspects of
9 working in our business and being subject to
10 public records and government in the Sunshine, so
11 he was learning. And as he learned he was, you
12 know, frustrated, and that's to be expected.

13 I personally, since I left, tried to get
14 my hands on two documents, and was told they
15 weren't available multiple times. One was the
16 McKinsey report and the other was the integrated
17 resource plan, IRP.

18 Q Who did you make the request to?

19 A I'm sorry?

20 Q Who did you make the request to?

21 A I didn't go through formal channels. I
22 sent a text to a colleague on 16 and said, Hey,
23 these ought to be ready, can you get me a copy of
24 them. And she saw it fit to hand it over to
25 Jeanie Gillespie in the public records office and

1 just kind of wanted to document it and handle it
2 as a formal request. So it started out literally
3 as a text to a former colleague --

4 Q Can you tell me who?

5 A I'm sorry?

6 Q I know you're not trying to get anybody
7 in trouble, but who did you make a request to?

8 A Melissa.

9 Q Dykes?

10 A Yeah.

11 Q And did you ever get these documents?

12 A I'm sorry?

13 Q Did you ever get the IRP or -- you say
14 you got the McKinsey report. Did you get it from
15 JEA?

16 A No. I've got them as of today. Both of
17 them eventually showed up with Chris Garrett,
18 OGC, so I ended up getting them through -- they
19 basically kept coming back saying they're not
20 available, as though it's still draft, still
21 working on it, we're not ready to roll it out
22 yet.

23 The IRP should have been done in
24 January, February. And the answer to the IRP was
25 in conflict with the planning false narrative

1 that was rolled out in the summer that JEA is
2 contracting and it needs -- it was Aaron's
3 philosophical belief looking at the future of the
4 industry that there would be no more traditional
5 large generating units. So he didn't want to
6 sign his name, I understand, off on being the
7 last guy at JEA to go put in a large generating
8 project.

9 So it just -- philosophically, he felt
10 like the future of the industry was different.
11 And it clearly clashed with their planning
12 scenarios, and they just chose to put it on the
13 shelf for a period of time.

14 Q Let me ask you some kind of blunt
15 questions. It may seem a little unfair, so you
16 can push back at me and say, I can't really
17 answer that. Did you find Aaron Zahn to be
18 qualified to be CEO of JEA?

19 A No.

20 Q Why not?

21 A Zero experience.

22 Q Did you ever take the effort to educate
23 him about the energy business?

24 A Did I ever take what?

25 Q An effort to educate him about the

1 energy business.

2 A Yes.

3 Q What happened?

4 A He was too busy. He wasn't interested
5 in learning the business.

6 Q What did you offer?

7 A I offered to take him in the field and
8 just show him the ropes. And he didn't appear to
9 be interested in learning about the business in
10 the time he was here. And from his perspective,
11 you know, JEA hasn't done a great job over the
12 last year or two. And hats off to Melissa Dykes
13 and the team running the business.

14 To some extent, you know, the fact that
15 Aaron wasn't steeped in utility operations
16 experience and running the utility maybe was
17 okay. Melissa has done a great job and her team
18 have done a great job running the utility.
19 Aaron's area of focus was on other things.

20 Q You worked with Melissa Dykes directly?

21 A Yes.

22 Q And I read in your transcript basically
23 that she was running the utility while Aaron was
24 doing strategic planning. Is that fair to say?

25 A She had the internal focus as chief

1 operating officer after Paul left. And Aaron was
2 doing more strategic public policy, you know,
3 working with government, more of an external
4 focus.

5 Q Okay. Fair to say she was mostly
6 running the shop while he was off doing other
7 stuff or how would you characterize it?

8 A Absolutely, yeah. It was her job as
9 chief operating officer to run the utility.

10 Q Gotcha.

11 A And she has a great team and is
12 continuing -- JEA had a great year in 2018 and a
13 great year in 2019 and so far they're having a
14 great year in 2020. And that's just a hats off
15 to, quite frankly, the team that Paul McElroy
16 built. It's still out there running even though
17 he left a year and a half ago.

18 Q I always think it's nice if you
19 compliment your former colleagues. I respect
20 that, I understand.

21 I want to flip to the very back of your
22 transcript, there is Exhibit 1, that's
23 JEA-000328. It says -- whenever you get there.

24 A What page are we on?

25 Q JEA-328. Right at the back of that

1 transcript that we have for you.

2 A The attachments?

3 Q Yeah, the attachments, FMPA update.

4 Just let me know when you get there.

5 A So I've got three exhibits.

6 Q Yeah, Exhibit 1.

7 A Exhibit 1, thank you.

8 Q Absolutely.

9 A What was the number at the bottom?

10 Q The one I'm starting with is JEA-000328,
11 and then we'll just kind of cruise through these.
12 Do you see that?

13 A I'm sorry. 328?

14 Q Yeah.

15 A I've got Exhibit 1.

16 Q Yeah, it looks like you have it. So
17 turn that page over, and it's the first page.

18 A Yeah.

19 Q What is FMPA?

20 A So you're on 330?

21 Q Yes, sir.

22 A So this is an excerpt of a presentation
23 from FMPA, the Florida Municipal Power Authority,
24 from September 19th. They have a -- you had Amy
25 Zubaly in earlier today and Sue Kelly from APPA,

1 so they -- Amy was from FMEA, and this is FMMPA,
2 it's a large wholesale power agency in the state
3 of Florida for municipal -- for public power
4 companies headquartered out of Orlando.

5 And they have about 30 members and their
6 board is made up of the city mayors representing
7 their membership, they have a board meeting once
8 a month. This particular material came out of
9 their September board meeting.

10 Q Do you remember why this material was
11 prepared?

12 A There was so much noise out there in the
13 industry and in the media regarding what's going
14 on in Jacksonville, one of the largest public
15 power companies in the country, certainly the
16 largest in the state of Florida. So the
17 30-member board members were worried about their
18 future and wondering if all of this bad stuff
19 that appears to be coming JEA's way was coming
20 their way soon, should they be equally concerned,
21 should they be putting an ITN out, you know, what
22 is going on in Jacksonville. It seemed to be
23 totally foreign to anything else going on in the
24 industry, certainly in the southeast and Florida.

25 So the FMMPA board asked their CEO, Jacob

1 Williams, to come in and do a presentation. They
2 hired a consultant. I was looking at this
3 earlier, I didn't see the name of the consultant
4 on there, so don't need to necessarily mention
5 them, other than I think it may have been in my
6 interview. I believe they used Burns & McDonnell
7 for this work.

8 Q That's what you stated in your
9 deposition.

10 A We'll stick with that.

11 Q Okay. Is that a reputable firm?

12 A I'm sorry?

13 Q Is that a reputable firm?

14 A Yes.

15 Q And had you used them at JEA in the
16 past?

17 A Burns & Mac?

18 Q Yes.

19 A They're like Black & Veatch. They're a
20 big reputable consulting firm in the industry.
21 JEA has used them off and on in the past.

22 So they basically came in. Jacob hired
23 them to do a, Tell us what's going on in
24 Jacksonville and can you validate it or do you
25 have a different point of view on what JEA is

1 saying. And you can look through here, it's
2 about ten pages. They pretty much refute 100
3 percent of what Aaron and company were telling
4 the board in the summer of 2019.

5 Q I think this probably stands on its own,
6 but I will just draw your attention to JEA-333,
7 it's a chart. I won't make you go through all of
8 these.

9 A Yes.

10 Q Have you looked at this before?

11 A Yes.

12 Q And basically, correct me if I'm wrong,
13 but it shows all of the different rates for these
14 different power entities near us, Beaches Energy,
15 Duke, Lakeland, Orlando. And it shows that JEA
16 residential rates are competitive and declining.

17 A Yes, correct.

18 Q Would you agree with that conclusion?

19 A Yes, absolutely.

20 Q Is there anything -- you've had a chance
21 to review this presentation. Is there anything
22 that you thought they just got wrong?

23 A No.

24 Q Okay.

25 A I don't know why they left FPL and Emera

1 off, but they've got Duke on here for some
2 reason. They got Beaches, and JEA, Lakeland,
3 Orlando. It's a good chart, good data. JEA's
4 rates are low and stable, and over the last
5 decade have been declining. And under good
6 leadership that's where they'll go in the future.

7 Q Okay. I just have a couple more wrap-up
8 questions for you, I'm sure my fellow Council
9 Members have others. On page 78, I won't make
10 you read it, I'm just going to read it out loud
11 for you, you indicated that you felt that the
12 entire ITN process was reverse engineered to get
13 to the result of selling JEA. Can you help us
14 understand what you mean by reverse engineered?

15 A I think it's more properly stated to say
16 that the, quote, supposed strategic planning work
17 that was going on in the first half of '19 was
18 reverse engineered to get to the ITN, and the ITN
19 is basically privatize JEA. The ITN says leave
20 the public power model that's worked well for 125
21 years, leave the consolidated government that's
22 worked well for 50 years, and privatize the
23 utility.

24 Now, they had six different options
25 under scenario three, but -- and the two

1 gentlemen from Nelson Mullins refuted the co-op,
2 they threw the co-op out there, but that's not
3 really viable. And they threw out an IPO, but
4 that's not really viable. I think they thought
5 they would get some offers from Amazon and
6 Google, and none of that -- it was basically FPL
7 and Emera and TECO and the big IOUs.

8 So the ITN was a solicitation, even
9 though it was very broad in the way it was
10 structured. From my perspective, it looked like
11 a way to get bidders in, investment-owned
12 utilities to take over the public-owned utility.

13 Q Did you --

14 A And the strategic planning work was
15 all -- set up a false narrative, a good work of
16 fiction to drive the board and drive the
17 community to that answer. So it's really more
18 about the ITN being the reverse engineered answer
19 of the, quote, strategic planning process, status
20 quo, doom and gloom, the sky is falling.
21 Traditional utility response, which was very
22 lame, very halfhearted. They could have done a
23 whole lot more, but they didn't want, in my
24 opinion, the answer to be JEA as a public utility
25 can do all of these things to remain viable and

1 to remain competitive, including everything in
2 the McKinsey report from pages 21 through 155.

3 Q Gotcha. Let me ask you just a couple of
4 wrap-up questions. The performance unit plan,
5 are you familiar with what that is?

6 A Only what I've read in the last couple
7 of months. It was not something that was
8 discussed when I was there.

9 Q Okay. That was my question.

10 A No.

11 Q Second issue, did you ever have a sense
12 that any of the bidders on JEA were being favored
13 or disfavored. Do you have any information like
14 that?

15 A I've heard the FPL rumors for years, but
16 it's just rumors. I don't have anything -- you
17 know, that was the story that was all set up to
18 be, was FPL -- I mean, I've been with JEA 35
19 years, and FPL was all around us. They're a
20 great company. I have the utmost respect for
21 them. There has always been this conspiracy
22 theory, if you will, locally or -- FPL, they
23 would love to buy JEA, JEA is a great company, it
24 would be good for their business.

25 So FPL taking over JEA story has been

1 out there for a number of -- I've never seen or
2 heard anything that showed it to be legitimate.

3 Q And that's my question. I think
4 everybody here doesn't have a lot of time for
5 conspiracy theories, but if you don't have the
6 evidence --

7 A No.

8 Q And then did you ever work with Morgan
9 Stanley or JP Morgan?

10 A No. I might have been in a meeting once
11 or twice, but nothing substantial.

12 CHAIRMAN DIAMOND: Okay. I will defer
13 to my Committee Members, our Committee
14 Members.

15 Councilwoman.

16 COUNCIL MEMBER DeFOOR: Thank you.

17 Thank you so much for being here. I
18 mean, we really appreciate that. And we
19 understand that you did not have to come and
20 you did not have to come under oath. So we
21 really appreciate it.

22 THE WITNESS: Thank you.

23 COUNCIL MEMBER DeFOOR: I'm looking at
24 your deposition on page 66, which is
25 JEA-000296. One of the things that struck

1 me when you describe your knowledge of the
2 July 23rd board meeting, as well as the June
3 board meeting, was your comment that stated,
4 "From my perspective, the lies were so
5 blatant and reminded me of extortion." Can
6 you fill me in on exactly what you meant by
7 that?

8 THE WITNESS: The prediction JEA painted
9 for the future of JEA remaining public power
10 was hard to fathom. It was such a stretch
11 to say that this is -- they threw so many
12 things out that were just not true, in my
13 opinion. Significant growth in energy
14 efficiency and continued growth and a
15 significant growth in distributed
16 generation, rooftop solar, all these things
17 are coming, but they just really stretched
18 the envelope to a great extent.

19 The notion that in five years we'll have
20 grid parody in Jacksonville, Florida, with
21 rooftop solar is ridiculous. It was a clear
22 and blatant -- you know, when you talk about
23 the future, it's -- you have to be careful
24 saying that it's a lie. I mean, who knows
25 what the future holds. But it just seemed

1 to be such a stretch, such a far stretch
2 from reality.

3 And then what I call a halfhearted
4 attempt at the, quote, traditional utility
5 response as though that's the only way that
6 JEA as a public utility can remain in place.

7 The work done by Vinyard about the
8 charter changes, I mean, that was just --
9 the lawyers last time, if you read that
10 report, they talked about short shrift, they
11 talk about superficial. They basically just
12 glossed over it and it did not do justice to
13 that topic.

14 I know Melissa Dykes was interviewed by
15 a City Council committee recently. And she
16 was asked, Okay, how many charter changes
17 have you brought us. And, of course, the
18 answer was none. And they asked her, What
19 charter changes would JEA like for us to
20 make? And she -- the comment from Melissa
21 was, That's a very good question, I'll work
22 on that.

23 So they didn't do a good job dealing
24 with the challenges. They certainly didn't
25 do a good job with what they call the

1 traditional utility response. And that was
2 all behind door number one. So the board,
3 okay, you can pick layoffs, rate increases,
4 moving out of downtown, all this bad stuff,
5 and that's only ten years out, and then
6 we'll be going after the city contribution,
7 or you can go talk behind door number two,
8 which is everything is wonderful, we'll
9 privatize, we'll sell to an investor-owned
10 utility, and all the problems magically go
11 away, which of course they don't.

12 So that's kind of what I meant by -- and
13 here is some money for all the customers and
14 here is some money for the employees. And
15 so maybe that is where the comment came
16 from.

17 COUNCIL MEMBER DeFOOR: I have just
18 three or four more. But kind of along those
19 lines, you in your testimony, and I don't
20 have it right in front of me, you said, Any
21 challenges that JEA had would be the same
22 challenges FP&L or any other successful
23 bidder would have; is that correct?

24 THE WITNESS: Absolutely. Now, there is
25 differences in the model, there's no

1 question there's differences in the model.
2 JEA and public power generally have a long
3 history of meeting challenges in the
4 headwinds head on and being successful.

5 We all are -- so if all this threat to
6 the business is coming and that's the
7 utility of the future, it's going to be here
8 whether it's FPL or JEA.

9 COUNCIL MEMBER DeFOOR: You hit on it a
10 little bit when you mentioned Mr. Vinyard
11 and the charter changes. One of the things
12 you mentioned on page 75 of your deposition,
13 and that is JEA-000298, was the fact that we
14 already have the ability to sell gas and you
15 question why we don't. Can you discuss that
16 a little bit?

17 THE WITNESS: Back in the '90s I believe
18 the Charter was modified to give JEA gas
19 capability. And actually, it might go back
20 even farther than that. But there is per
21 Charter JEA can be a natural gas provider to
22 Jacksonville today. And after three our
23 four attempts over the last 30 or 40 years,
24 it simply hasn't come to pass. In
25 Jacksonville you have TECO Peoples, a very

1 good company, very solid company. And they
2 have lobbyists. And any time there is a
3 threat to their business, they go on the
4 offensive to try to avoid losing business,
5 which it's not surprising, it's normal.

6 But JEA has the ability to be a gas
7 provider today. I know it's as recently as
8 2014 Paul McElroy took the case forward, the
9 franchise was up for renewal, and we were
10 attempting to make the case that we can take
11 that franchise over and it would be good for
12 JEA and it would be good for the City.

13 There is also the ability -- TECO
14 doesn't serve 100 percent of Duval County.
15 So JEA could be a co-franchisee in the
16 county. TECO doesn't have an exclusive
17 franchise to the county. And unlike
18 electric, the gas business doesn't have PSC
19 sanction territories where only one company
20 can be. So JEA electric has a designated
21 proved service territory. Similar for water
22 sewer, that does not come into play in the
23 business. And TECO's franchise is not
24 exclusive, so JEA could have been an
25 additional.

1 And it's just a business opportunity
2 that makes an awful lot of sense that JEA
3 has tried in the past unsuccessfully to get
4 into.

5 By the way, we buy a lot of gas from the
6 interstate pipeline and bring it into
7 Jacksonville for our power plants. So we're
8 already technically in the gas business.
9 What we're talking about here is the retail
10 level, LGC, local gas distributor.

11 COUNCIL MEMBER DeFOOR: Certainly
12 something I think we should be looking at in
13 the future. I'm going to change gears a
14 little bit and talk about Plant Vogtle.
15 It's something that we haven't discussed at
16 great length. I want to get -- with your
17 experience and your 35 years in the
18 business, what is your thoughts on Plant
19 Vogtle and the liability?

20 THE WITNESS: I don't know if you caught
21 Sue Kelly's comment earlier today, but I
22 certainly think she hit the nail on the head
23 when she said things have a way of changing
24 from good to bad and good again, things come
25 full circle in our business.

1 Nuclear unit is a 60-year, maybe an
2 80-year investment. I graduated high school
3 in '79. Three Mile Island, as an electrical
4 engineer, utility guy, I was glad to see the
5 nuclear renaissance come along, 10, 15 years
6 ago.

7 JEA likes diversity in its generating
8 fleet and has zero nuclear. Carbon is still
9 out there as an issue of risk. So for a
10 variety of reasons the board 15 years ago
11 put a policy in place for JEA to diversify
12 and get some nuclear. And the nuclear
13 renaissance was coming.

14 So for the first time in 40 years we
15 were beginning to look at building projects.
16 There were four being built to the north.
17 And MEAG, George Power was involved in the
18 Vogtle project.

19 Paul and the team negotiated a deal to
20 get us 10 percent of the project, 200
21 megawatts, as a purchase power deal. We're
22 not an equity owner. JEA is not an equity
23 owner. And it will last for 20 years. So
24 10 percent of the project for 20 years out
25 of a 60-year life, maybe an 80-year life.

1 I think it was -- given everything we
2 knew at the time, it was the right decision.
3 Things have certainly turned around with
4 respect to cost and schedule, there is no
5 question, but it was a good decision. And
6 Sue Kelly made the comment that in ten years
7 JEA, they will be grateful they made that
8 decision even though it doesn't look like
9 that today. JEA has zero liability.

10 And the units are moving forward.
11 They're going to load fuel, nuclear fuel,
12 later this year. They're late, they're more
13 expensive. And Westinghouse went bankrupt
14 in the process. It's been a tough, tough
15 project.

16 I think personally, from a JEA
17 perspective, it's not a huge, huge problem.
18 It's been made into a huge problem. I'm not
19 currently the most knowledgeable,
20 up-to-speed person on that. I wouldn't
21 believe anything Aaron and others at JEA
22 have to say. My advice on Vogtle is to get
23 the new board in and to get leadership
24 reconstituted and to spend a good hour or
25 two getting into the nuts and bolts on

1 Vogtle. It's definitely expensive and it's
2 over budget and it's late.

3 It's 200 megawatts. People talk about
4 how much it's going to cost, and it's a big
5 number, I know that. But it's not for
6 nothing. You get 200 megawatts of base load
7 low cost on the dispatch cost. The costs
8 are fixed, not the fuel. Fuel for nuclear
9 is still cheap. But it's zero carbon. And
10 it's a good perk.

11 JEA is a 3,000 megawatt company on the
12 peak, 3,000, 3,200. This is 200 megawatts
13 for 20 years.

14 COUNCIL MEMBER DeFOOR: And that's
15 really what I wanted you to say, is that
16 there is a strong possibility that this
17 really isn't a bad thing. And, you know, I
18 think it may have been used along with
19 everything else to create this death spiral.

20 THE WITNESS: I agree.

21 COUNCIL MEMBER DeFOOR: Along with that,
22 my final is page 104, JEA-00305, where you
23 state this whole thing, in your opinion, you
24 perceive it as significant dishonesty and
25 gamesmanship and negativity biasing reality

1 and the future to prop up a case to sell.

2 And you stand by that.

3 THE WITNESS: I stand by that,

4 absolutely.

5 COUNCIL MEMBER DeFOOR: Thank you.

6 CHAIRMAN DIAMOND: Councilwoman Priestly

7 Jackson.

8 COUNCIL MEMBER PRIESTLY JACKSON:

9 Through the Chair, thank you so much,
10 Mr. Brost, for taking the time to come talk
11 with us.

12 THE WITNESS: Thank you.

13 COUNCIL MEMBER PRIESTLY JACKSON: I want
14 to just have an opportunity to just ask you
15 some questions based on your 35-year tenure
16 and historically how JEA operated outside of
17 the last few years.

18 And so the first question I have, you
19 shared that there were certain factors that
20 are used to determine rates. So there was
21 exclusion of fuel which had gone down, which
22 made the rates look accelerated. What would
23 those factors have usually been -- or
24 usually considered to determine the rates?

25 THE WITNESS: I'm sorry. To determine

1 the rates?

2 COUNCIL MEMBER PRIESTLY JACKSON: Rates.
3 You were talking about the tariff sheets and
4 the rates for JEA. You said when they said
5 there was a 71 percent increase --

6 THE WITNESS: Yeah.

7 COUNCIL MEMBER PRIESTLY JACKSON: -- it
8 excluded fuel, you said, which had gone
9 down. So my question to you: What are the
10 usual factors that should be considered, not
11 what they considered to get the information
12 to support their position, what are the
13 factors usually considered?

14 THE WITNESS: Yeah. They looked at part
15 of the rate, which is the base rate, they
16 left fuel off. JEA's rates are basically in
17 two parts: The fuel for the power plants,
18 and that's about 30, 35 percent; and base,
19 which is recovery of the fixed cost. It's
20 everything else. It's the cost to install,
21 own, operate, maintain the system, the
22 generators and the assets. And it drives
23 the base rate.

24 COUNCIL MEMBER PRIESTLY JACKSON: And I
25 ask that because a part of what we're doing

1 is making sure we have accurate information
2 going forward and consistent information.
3 So I thank you for that.

4 So based on exclusion of fuel rates,
5 that's about a third; right?

6 THE WITNESS: A third, yes.

7 COUNCIL MEMBER PRIESTLY JACKSON: Yeah,
8 a third of it that was excluded.

9 The other question I have for you, the
10 IRP, the integrated resource plan, when was
11 the last time you recall in your 35 years
12 that JEA submitted and completed an IRP?

13 THE WITNESS: We did one most recently,
14 I'm going to say it was in 2008 and it
15 preceded the Vogtle decision. There may
16 have been one additional done, but there was
17 certainly one done about ten years ago
18 around Vogtle. It was time in 2017 and 2018
19 to do it again, so about ten years.

20 COUNCIL MEMBER PRIESTLY JACKSON: So
21 when you do that, you usually use the
22 information from that or submit that to
23 whom? To what entity do you give the IRP or
24 do you just use it internally?

25 THE WITNESS: It's an internal planning

1 document. It feeds our long-term plans. It
2 generally is not filed with the PSC. One of
3 the primary reasons for doing a plan is to
4 go to Tallahassee with the need for power.
5 So if you go -- the PSC and the governor's
6 cabinet and the DEP, a lot of folks have to
7 approve new generation. So you have to
8 demonstrate a need and you have to go
9 through a process. And the IRP is a
10 significant input to that.

11 In a few years JEA will need to build
12 more generation, and this was an attempt to
13 get that ball moving so we would be ready to
14 hit the ground running when it's time to go
15 ahead and fill out that need for power
16 application in Tallahassee.

17 COUNCIL MEMBER PRIESTLY JACKSON: Okay.
18 Thank you for that. So that was a part of
19 your due diligence before the decision was
20 made on Plant Vogtle; correct?

21 THE WITNESS: Yes, yes.

22 COUNCIL MEMBER PRIESTLY JACKSON: The
23 other, have you participated in JEA's
24 strategic planning during your 35 years that
25 you were with the company; if so, what times

1 do you recall you participated in it?

2 THE WITNESS: Yes. Multiple times, not
3 so much as an employee. I moved into
4 management in '93. Royce Lyles was CEO.
5 When he retired and Walt Bussells took over,
6 '96, '97 we did a lot of strategic planning
7 work. It's often -- and we've gone through
8 CEOs on about an eight-to-ten-year cycle.
9 So almost always when the new CEO comes
10 onboard, it's time -- it's been five, ten
11 years since the last one, so you tend to do
12 another one. So I've been involved in
13 probably a half a dozen strategic planning
14 processes over the years.

15 COUNCIL MEMBER PRIESTLY JACKSON: Okay.
16 And so is that -- was the process during the
17 times you were involved, can you kind of
18 share who else at JEA might have been
19 involved in those strategic planning
20 processes when you got a new CEO onboard?

21 THE WITNESS: Yeah. It would certainly
22 be the senior team, the top dozen or so at a
23 minimum. And then as you go through the
24 process, you would often reach down into
25 other levels of management getting input and

1 buy-in, as well as input to some suggested
2 initiatives and projects to move forward.

3 The last one we did -- one of the last
4 ones we did was 2012/2013, and we involved
5 probably 250, 300 managers in the
6 development of the strategic plan. There
7 was -- if I could add to that, there was
8 some additional work done a few years ago by
9 Deloitte and a company called Xtensible, and
10 I would say that was in '16 or '17, good
11 work.

12 We were working on implementing --
13 strategic planning is fun until they leave
14 and you have all this work to do, right.
15 And it just dawned on me the other day, it's
16 like, whatever happened to that. It just
17 kind of fizzled out and went away when Paul
18 left and Aaron came on. And it took a
19 backseat to the McKinsey work.

20 COUNCIL MEMBER PRIESTLY JACKSON: Would
21 you state that company? You said Deloitte
22 and Xtensible, is that the name? What was
23 the name of the one in 2016 that did some
24 strategic planning work? Could you restate
25 the name for us?

1 THE WITNESS: Deloitte, D-e-l-o-i-t-t-e,
2 they're big, well-known; and Xtensible, the
3 letter X, X-t-e-n-s-i-b-l-e roughly. Their
4 input was a lot of IT asset management,
5 automation, digitization, that kind of
6 stuff. Deloitte was more run the business
7 smarter, get costs out of your business.

8 It's interesting, I saw a lot of the
9 Deloitte recommendations in the McKinsey
10 recommendations. So a lot of them are still
11 around and were valid and ought to be picked
12 up and pursued by JEA moving forward.

13 COUNCIL MEMBER PRIESTLY JACKSON:
14 Follow-up question to that, did you
15 participate in any of the strategic planning
16 process under Aaron Zahn?

17 THE WITNESS: No. And let me clarify,
18 Aaron, when he first came in, did some
19 high-level, I forget what he called it,
20 strategic framework, what are the buckets of
21 value, who are our key owners and
22 stakeholders, financial, remember there are
23 four buckets, financial, customers,
24 environment and one more, community. So
25 Aaron was planting the seeds and doing some

1 additional strategy work in 2018 when I was
2 there. They brought in McKinsey towards the
3 end of 2018, and I never met with them.

4 COUNCIL MEMBER PRIESTLY JACKSON: Okay.
5 So was that those strategic conversations or
6 was that actually the start of strategic
7 planning when they brought the four buckets.

8 THE WITNESS: McKinsey --

9 COUNCIL MEMBER PRIESTLY JACKSON: Not
10 McKinsey, I'm not at McKinsey yet. Before
11 that?

12 THE WITNESS: Before that was really
13 preliminary. You know, you look at your
14 company's mission statement and it's very
15 high-level strategy, vision and strategy and
16 core values and very, very high level. Who
17 are your stakeholders? How do they define
18 value? Doing that kind of -- you're doing
19 the groundwork for the next phase, which is
20 coming up with the strategic plan that's
21 based on that framework. And Aaron went
22 around and got the Council to sign off on
23 this work and -- at least I was told that he
24 did -- and some others.

25 So trying to get everybody in the

1 community to support the foundational work
2 for the new JEA before you bring in McKinsey
3 to start doing the nuts and bolts.

4 COUNCIL MEMBER PRIESTLY JACKSON: But
5 you did not work on strategic planning with
6 Aaron Zahn --

7 THE WITNESS: I did not work with
8 McKinsey.

9 COUNCIL MEMBER PRIESTLY JACKSON: But
10 you had worked on it prior, previously,
11 strategic planning with every other CEO, you
12 were a part of that process with the others
13 that did it?

14 THE WITNESS: Yes, but in this case I
15 was retiring about the time they were coming
16 onboard, so.

17 COUNCIL MEMBER PRIESTLY JACKSON: And
18 you stated earlier that you were of the
19 opinion it was reverse engineering, so they
20 knew what they wanted to get to so they
21 designed a strategic planning process to
22 support ultimately where they wanted to go?

23 THE WITNESS: That's my read, yes.

24 COUNCIL MEMBER PRIESTLY JACKSON: My
25 read too.

1 THE WITNESS: That's my read too.

2 COUNCIL MEMBER PRIESTLY JACKSON: So I
3 ask those questions. And I appreciate you
4 sharing, because I think a part of our work
5 is really to make certain that those best
6 practices that JEA had prior to the last two
7 years are reinstituted and maintained. And
8 so I appreciate you sharing that information
9 with us and taking the time to come down
10 here today.

11 THE WITNESS: Thank you, Councilwoman.

12 CHAIRMAN DIAMOND: Councilman Salem.

13 COUNCIL MEMBER SALEM: Thank you,
14 Mr. Chair. I just have a couple questions.

15 Mr. Brost, if you'll turn to page 56,
16 JEA-293, at the bottom of there. I'm going
17 to just read this, "And what happened, of
18 course, in '19 when Aaron came in is when
19 the pro forma began to take on more of a
20 pessimistic view, more of the status quo,
21 bad stuff is coming, contraction in
22 revenues." "And were those things that you
23 were being told by consultants or internally
24 that there was this really downward slope
25 that was coming?" And your comment was, "It

1 was all coming from Aaron, it was all
2 Aaron."

3 A few minutes ago you commented it was
4 Aaron and his team that were putting this
5 together.

6 THE WITNESS: Aaron and who?

7 COUNCIL MEMBER SALEM: That's what I'm
8 asking you.

9 THE WITNESS: I think Aaron had help,
10 certainly, on it, I believe he relied
11 heavily internally on the finance group to
12 do a lot of the spreadsheet work and
13 analysis, and they likely had outside help,
14 consultants.

15 COUNCIL MEMBER SALEM: I'm more
16 interested in the names you think were
17 involved internally. Are you prepared to
18 give me some names?

19 THE WITNESS: I think it's Ryan
20 Wannemacher.

21 COUNCIL MEMBER SALEM: Okay.

22 THE WITNESS: And potentially his team.
23 I wouldn't know beyond -- my involvement
24 with JEA since I've left has primarily been
25 watching board meetings. So I saw Aaron and

1 Ryan Wannemacher come in doing the bulk of
2 the presentations around this topic of the
3 strategic planning.

4 COUNCIL MEMBER SALEM: Anyone else other
5 than below Ryan, anyone else on the senior
6 leadership team that you think was
7 intimately involved in these numbers and
8 such?

9 THE WITNESS: No, not on the numbers.

10 COUNCIL MEMBER SALEM: Okay.

11 THE WITNESS: Strategy maybe.

12 COUNCIL MEMBER SALEM: On page -- my
13 second question, on page 58, midway down,
14 line 15, "So I would -- even Melissa, I
15 would provide some feedback, and there were
16 some assumptions they were making in some of
17 the spreadsheets I pushed back on."

18 Sounds like you were having quite a bit
19 of dialogue with Melissa disagreeing with
20 some of the assumptions she was making. Can
21 you comment on that?

22 THE WITNESS: Sure. This was early on,
23 some preliminary spreadsheets. They had
24 developed some work -- Aaron was very
25 focused in on private generation, rooftop

1 solar. And we had, prior to Aaron coming
2 onboard, Steve McInall was actually helpful
3 in developing some spreadsheets tracking
4 penetration in the area. Aaron got ahold of
5 that spreadsheet and took control of it and
6 began working on it, from my perspective,
7 significantly biasing the future -- he was
8 trying to talk about how much JEA would lose
9 in the next five or ten years to distributed
10 generation, rooftop solar.

11 They also went a step further and
12 projected the financial implications of such
13 solar penetration. So both the -- I
14 questioned the growth and the magnitude, as
15 well as the internal financial impact of
16 distributed generation.

17 COUNCIL MEMBER SALEM: I'm sorry. I'm
18 particularly interested in the dialogue
19 between you and Melissa Dykes there, in your
20 comment that you were pushing back on her.
21 And it doesn't sound like you were being
22 successful.

23 THE WITNESS: Correct. I agree with
24 that. And I may have -- may have used
25 Melissa's name as just a surrogate for the

1 broader -- would include Ryan and Aaron in
2 some of the work. So Melissa and I had some
3 good debate and discussion on a lot of this.

4 COUNCIL MEMBER SALEM: Because you have
5 been very complimentary of Melissa in this
6 testimony today --

7 THE WITNESS: Yes.

8 COUNCIL MEMBER SALEM: -- versus some of
9 the other senior leadership team members.

10 THE WITNESS: Yes.

11 COUNCIL MEMBER SALEM: Thank you,
12 Mr. Chair.

13 CHAIRMAN DIAMOND: Councilman Dennis had
14 a question, sir, so I'll ask it for him. It
15 was the north side plant -- no, the
16 Jacksonville plant, the one that was
17 imploded on the north side.

18 THE WITNESS: Yes, sir.

19 CHAIRMAN DIAMOND: Appreciate it. His
20 question generally was just a curious one,
21 whether or not you thought that was a good
22 idea to take down that plant.

23 THE WITNESS: I think it was in the 2010
24 to 2020 decade, one of the smartest and best
25 decisions JEA has made. I'll give Paul

1 McElroy the credit, he and Melissa and Ryan,
2 it was a team effort. As an engineer and a
3 utility guy, I hate to blow up power plants
4 and tear down. In my career we've shut down
5 Kennedy Generating Station on Talleyrand,
6 we've shut down Southside Generating
7 Station, we've torn down units at north side
8 and re-powered them. It's -- I much prefer
9 to build units, not tear units down.

10 But it was absolutely positively the
11 right decision at the right time for JEA,
12 strictly financial. It saved our customers
13 millions of dollars and that's -- I can go
14 into the five or six reasons.

15 CHAIRMAN DIAMOND: No, that's okay.
16 That probably answers the question for him.

17 THE WITNESS: It was the right decision.
18 Painful, but the right decision.

19 CHAIRMAN DIAMOND: It was fun to watch,
20 I won't lie.

21 THE WITNESS: Of course, the cooling
22 tower implosion was only a small, small part
23 of the work. There is still work going on
24 out there as we speak.

25 CHAIRMAN DIAMOND: I did not know that.

1 Councilwoman Morgan, then we have
2 Councilman Ferraro, then we'll move on.

3 COUNCILWOMAN MORGAN: Thank you so much.

4 Through the Chair to Mr. Brost,
5 Mr. Brost, I just have to tell you thank you
6 so much. Again, after this morning's
7 meeting and then hearing from you, you
8 definitely shed a lot of light on what was
9 going on.

10 So one of the first things I want to ask
11 you is, after listening to you and seeing
12 what you said in your deposition, I just
13 want to know, from your 35 years of
14 experience, is when do you know a utility
15 company, a public utility company like JEA
16 is truly in trouble?

17 THE WITNESS: That's a great question.
18 A number of primary leading indicators would
19 be financial health, bond rating, agency
20 ratings, rates going up out of control.
21 Seeing the utility on the news every night
22 with the word scandal attached is certainly
23 a bad thing. So there is the whole PR media
24 reputation aspect, but financial health,
25 rates, customer satisfaction.

1 JEA went from worst to first under Paul
2 McElroy from 2012 to 2016 or 2017 on JD
3 Power's. Customer satisfaction is another
4 key indicator.

5 COUNCILWOMAN MORGAN: So through the
6 Chair, in your estimation, did we have that
7 in July of 2019 when this board meeting
8 started?

9 THE WITNESS: No, of course not. No, of
10 course not. JEA was never in trouble. I
11 think if you look at JEA's financials and
12 operating results and general financial
13 health over the last couple years, it's
14 continued to be very, very strong. The only
15 sign of trouble was the story out of Aaron
16 and Ryan at the May, June, and July board
17 meeting predicting this terrible future for
18 the utility, headwinds bordering cat five
19 hurricanes and layoffs and increase in rates
20 and decrease in -- it was all a false
21 narrative in my opinion. None of it was
22 true. And JEA is not in trouble today. It
23 remains what I found when I came to work
24 here in the '80s, one of the best utilities
25 in the country, public or private.

1 COUNCILWOMAN MORGAN: Also, I just want
2 to follow up on Council Member Salem. He
3 was asking about people who could have been
4 involved in this. You talked about the
5 senior team. You talked about strategic
6 planning. So who do you put or who do you
7 characterize as being part of, quote, the
8 senior team who would have been involved in
9 strategic planning and putting things
10 together, looking over these, making the
11 case for JEA?

12 THE WITNESS: I have read a lot of the
13 depositions out of this Committee and
14 others. There is a huge amount of
15 information out on the website. My
16 takeaway, use the PUP as an analogy. Nobody
17 seems to know who did anything. It just
18 kind of took on a life of its own.

19 And I think something similar for the
20 strategic plan, some -- they hired a
21 gentleman, Julio Romero, he was in charge of
22 the strategic plan development for a couple
23 months with McKinsey and then he left
24 suddenly. Clearly, Aaron was involved.
25 Clearly, Ryan Wannemacher out of the finance

1 group was involved. Everybody else involved
2 may have been outside consultants and
3 entities. I don't know -- now, they all
4 knew, they all went to meetings. They were
5 down at Club Continental in Ponte Vedra,
6 they saw what was going on.

7 I feel, for the position they were in,
8 I'm fortunate to have left in January of
9 2019. I can't imagine having to be there
10 and watch what was going on and not be in a
11 position to leave. A lot of people are at
12 JEA for a career and a pension. You can't
13 just up and leave because you're not happy,
14 like a lot of companies. So a lot of folks
15 have hung in there, including folks on T16,
16 and I feel badly for them and, of course,
17 the 2,000 employees who have been through
18 hell for the last year or two.

19 But I'd put an awful lot of the senior
20 leadership team personally in that category.
21 They're friends of mine and colleagues, and
22 I'd be shocked if they were in the driver
23 seat on any of this. They were along for
24 the ride, so to speak. And we can look back
25 and maybe be critical, Well, you should have

1 stood up and said something. It's easy for
2 me to do because I wasn't there. It's a
3 hard position to be in when your boss is
4 heading you down a certain path that you're
5 uncomfortable about.

6 CHAIRMAN DIAMOND: I'm going to try to
7 keep us on course here.

8 COUNCILWOMAN MORGAN: Just one really
9 final question.

10 CHAIRMAN DIAMOND: Of course.

11 COUNCILWOMAN MORGAN: Through the Chair,
12 after 35 years were you going to retire or
13 did it just happen like that?

14 THE WITNESS: No, thank you. I had
15 retirement plans actually earlier. I was
16 going to leave in '17, hung around another
17 year or two. Honestly, with all of the
18 shake-up and the change going on, I wanted
19 to hang around and help with the transition.
20 I wanted to help establish Melissa as the
21 chief operating officer. And I was there
22 when they were recruiting for the new CEO
23 and had a couple of months after they
24 selected Aaron. So I was there to help
25 Aaron come up to speed and learn the ropes

1 and learn the business, and just to support
2 the transition for the team. So I stayed
3 that long for that reason. I left on good
4 terms.

5 COUNCILWOMAN MORGAN: Okay. Good.
6 Thank you so much. We appreciate you,
7 again.

8 CHAIRMAN DIAMOND: That's a good
9 question you had.

10 Councilman Ferraro and then Ms. Priestly
11 Jackson.

12 COUNCIL MEMBER FERRARO: Thank you,
13 through the Chair.

14 Thank you for being out here. And thank
15 you for your dedications of service to us.

16 I want to go down that path of the
17 reverse engineering that you were talking
18 about and the St. Johns River Power Plant.
19 I was surprised hearing you say that was in
20 the process for a long time of tearing that
21 down.

22 When I was head of transportation
23 utilities energy, it sounded like it was
24 something new that came up and it was a real
25 speed to get this thing torn down. So would

1 people like Florida Power & Light be able to
2 bid on the ITN if they were still in
3 ownership of the St. Johns Power Plant?

4 THE WITNESS: Yes. I'm not a lawyer,
5 but I don't believe that would have --

6 COUNCIL MEMBER FERRARO: Changed
7 anything.

8 THE WITNESS: -- changed anything for
9 FP&L.

10 COUNCIL MEMBER FERRARO: I was surprised
11 when you said that, because that seemed like
12 it was really quick. I did not realize it
13 had been around that long.

14 THE WITNESS: I'm not totally following
15 they had been around a while. We were
16 really looking at it in the 2016/'17 time
17 frame. It wasn't around longer than that.
18 It was something -- the SJRPP existed under
19 a 40-year joint ownership agreement between
20 JEA and Florida Power & Light, which
21 expires -- expired, it's gone now, but in
22 2022. So it had its termination date coming
23 up anyway.

24 COUNCIL MEMBER FERRARO: So everything
25 we heard about it -- okay. That -- because

1 I didn't believe a lot of stuff I was
2 hearing about it. I'm glad to hear that was
3 true.

4 I want to just bring you over for a
5 minute to Herschel Vinyard and Sherry Hall.
6 Back in August 5th I had a small
7 neighborhood community meeting, and they
8 came out there to speak about where JEA was
9 at at that point. I know you were out at
10 that time.

11 But when do you think they may have got
12 the information about the 71 percent
13 increase? Because that's kind of the -- of
14 what we're -- because the rates have been
15 going up and things, because they were
16 talking a little bit about that. And in
17 that meeting there were JEA employees who
18 were basically just saying that this is not
19 true and then we also had some federal
20 prosecutors in there when they were bringing
21 up things like they were going to be giving
22 people rebates on their bills and things.
23 Do you know where any of that came from,
24 that they got that information?

25 THE WITNESS: This was August of '19?

1 COUNCIL MEMBER FERRARO: August of '19.

2 THE WITNESS: In the board meetings and
3 the board presentations about -- in July and
4 maybe in June, the statement was made and
5 reiterated a number of times by board
6 members and the media and others, that it
7 was a statement of fact that JEA had raised
8 rates by 71 percent over the last decade.
9 And it's just not true. And I can dig into
10 the math and where they came up with that
11 and why it's wrong, but --

12 COUNCIL MEMBER FERRARO: You've never
13 heard of this while you were working until
14 all this came out?

15 THE WITNESS: No, no.

16 COUNCIL MEMBER FERRARO: Okay. I just
17 wanted to make sure. Thank you again for
18 your --

19 THE WITNESS: We lowered rates.

20 COUNCIL MEMBER FERRARO: Yes. Thank you
21 again for your service and dedication to our
22 city.

23 THE WITNESS: Thank you, Councilman,
24 appreciate it.

25 CHAIRMAN DIAMOND: Ms. Priestly Jackson.

1 COUNCIL MEMBER PRIESTLY JACKSON:

2 Through the Chair, just one follow-up
3 question. Mr. Brost, is it possible for the
4 regulatory documents that are supplied by
5 JEA, you said the ten-year site plan, the
6 IRP, and the others, is there any way that
7 there can be a requirement for a degree of
8 uniformity or consistency in those
9 documents? Is that something that is
10 internally driven by the leadership team or
11 is that something that can be included in
12 JEA board policies and procedures or through
13 the Charter?

14 Basically, what I'm trying to get at, if
15 they're leaving out fuel, right, so it
16 supports the 71 percent increase, so that's
17 a different measure, there is a traditional
18 way we measure things and information that
19 we get. What we have found is information
20 has been selective, so selective that it's
21 misleading, so it's inconsistent. So we
22 need uniformity in the information that's
23 put out by JEA to talk about the health and
24 viability of independent authority.

25 Is there a way to your -- that you may

1 think that we can have language or a method
2 of requiring uniformity in information
3 that's disseminated, so whether it's the
4 Florida PSC or whether it's an IRP or
5 anything else, that the same language can be
6 used or same factors considered in releasing
7 that information so we don't get
8 inconsistent and often conflicting
9 information?

10 THE WITNESS: I like data and facts and
11 history and charts. And you just have to be
12 honest with it. And rates are way better
13 than -- I honestly had never heard of yield
14 until this past year when I was trying to
15 figure out where they came up with 71
16 percent. So I think it's a legitimate
17 number that has some value as long as you
18 know what it is you're looking at.

19 When it comes to rates, talk about the
20 total rate. And if you want to break fuel
21 out, that's fine, but don't just tell half
22 the story, much like load had contracted
23 over the last decade because we no longer
24 had the wholesale contract to Fernandina.
25 Tell the whole story and be honest with the

1 numbers in the data. Don't play games.

2 Rates is a good number to watch. It's
3 very important. It's ultimately the final
4 measure of the financial health of JEA from
5 a customer's perspective. JEA recovers its
6 costs in the rates, so it's a reflection of
7 the costs. And if JEA is doing a good job,
8 the rates will be low and competitive and
9 stable.

10 COUNCIL MEMBER PRIESTLY JACKSON: Thank
11 you.

12 CHAIRMAN DIAMOND: And then Ms. DeFoor
13 and we will --

14 COUNCIL MEMBER DeFOOR: Just very
15 quickly. Through the Chair, along those
16 lines, one of the things you mentioned on
17 page 67 of your deposition, which was
18 JEA-000296, was that the JEA had recently
19 done a significant job, a great job, in
20 fact, of paying down their debt; is that
21 correct?

22 THE WITNESS: I'm sorry, Councilwoman?

23 COUNCIL MEMBER DeFOOR: The fact that
24 JEA had paid down significant debt.

25 THE WITNESS: Yes, correct.

1 COUNCIL MEMBER DeFOOR: And that the
2 payment of the debt -- payment of debt was
3 one of the largest expense items; correct?

4 THE WITNESS: Yes.

5 COUNCIL MEMBER DeFOOR: If we're paying
6 down the debt at a significant rate, as a
7 matter of fact, I think they had a billion
8 dollars in cash and a lot of that cash has
9 been used to pay down debt.

10 THE WITNESS: Right.

11 COUNCIL MEMBER DeFOOR: Wouldn't it
12 then, the impact of that, be lower rates?

13 THE WITNESS: Yes, over time. So every
14 year JEA has net cash flows. It has
15 revenues and expenses. And what's left
16 over, what are you going to do with it. And
17 it's after the city contribution is paid.
18 You have to make a decision about do you
19 want to pay down your debt and have less
20 debt on the balance sheet and be less
21 leveraged or do you want to lower rates or
22 do you want to do some other investments.
23 So you have, at the end of the day, some
24 decisions to make.

25 And for the last 10 or 15 years, JEA's

1 strategic focus and leadership from the
2 board was to push hard on getting the debt
3 paid down. We felt like the debt ratio,
4 debt to asset was higher than it should be,
5 higher than PEER's, higher than similar
6 triple A rated companies. So that was a
7 focus, paying the debt down.

8 Eventually, so if it's a third of the
9 base rates and you didn't have any debt,
10 obviously, your rates would be very, very
11 low, so.

12 COUNCIL MEMBER DeFOOR: Thank you.
13 That's really where I was going. So that's
14 another indication that the rates were
15 actually going down.

16 THE WITNESS: Right, yes. It takes a
17 long time to get there.

18 CHAIRMAN DIAMOND: JEA might be worth
19 more too to a potential bidder.

20 THE WITNESS: The net would be
21 increased.

22 CHAIRMAN DIAMOND: All right. So you
23 survived. We're done. Three things, first
24 of all, appreciate you being here and for
25 your candor. Second, your service to the

1 City of Jacksonville through JEA over these
2 years is just so evident as you read through
3 this deposition transcript, so thank you for
4 that too, genuinely. We love our asset.
5 And clearly, you were a big piece of
6 building it over the years, so thank you for
7 that, genuinely.

8 And third, I would say this, because of
9 all of your expertise, your understanding of
10 what was good in the Deloitte analysis and
11 what was good in the McKinsey report and
12 clearly you're following these things,
13 please don't be shy to let whoever the new
14 CEO of JEA is going to be kind of what you
15 gleaned over the years. I think a smart CEO
16 would chat with you, because I'm not sure
17 anybody else knows the business quite as
18 well as you.

19 Finally, you're not an employee of JEA
20 anymore, but if it ever happens that anyone
21 does anything at all untoward to you or
22 strange, it seems as though you're being
23 threatened or your life is somehow not the
24 way it was because of your testimony here, I
25 don't want you to be shy. One, dial 911; or

1 two, let us know, because this Committee
2 will find it unacceptable, intimidation or
3 retribution against any witness. So with
4 that, thank you, sir. I appreciate you.

5 THE WITNESS: Thank you for the work
6 you're doing. Thank you.

7 CHAIRMAN DIAMOND: We're on it.

8 All right. Let's go ahead and keep
9 going. And we can -- I think we can
10 probably finish on time.

11 Mr. McInall, if you want to come up and
12 be sworn.

13 **STEVEN McINALL,**
14 having been produced and first duly sworn as a
15 witness on behalf of the City, then testified as
16 follows:

17 **EXAMINATION**

18 BY CHAIRMAN DIAMOND:

19 Q Is that microphone working?

20 A Yeah, I think so.

21 Q If you could, state your name for the
22 record, please.

23 A Steve McInall, Vice President of Energy
24 and Water Planning with JEA.

25 Q Okay. And just to reiterate, I want to

1 make sure I got your name, McInall?

2 A McInall, yes.

3 Q And then, two, can you give us an idea
4 how long you've been at JEA? What is your job
5 there, some of that background information?

6 A Sure. I've been with JEA for -- it will
7 be nine years in April. I am the Vice President
8 of Energy and Water Planning. And prior to that
9 I worked under Mike as the Director of Electric
10 Production Resource Planning. And that was for a
11 period of approximately six years. And prior to
12 that I was the Nuclear Commercial Business
13 Manager for about two years. And that was under
14 our retired director. And then the finance
15 department, that was under corporate planning
16 when it was all part of the finance function.

17 Q Who do you report to now?

18 A I report to Melissa Dykes.

19 Q Okay. And how long have you reported to
20 Ms. Dykes?

21 A For the year that I've been a VP, first
22 as the COO and now as interim CEO.

23 Q Okay. And my understanding, based on
24 the transcript -- and there is a deposition
25 transcript in front of you. Have you had a

1 chance to look at that?

2 A Yes, I have.

3 Q And for the record, it starts at
4 JEA-000351. It's not a super long transcript.
5 And I don't think you will be here as long as
6 Mr. Brost, but I'll target some questions in your
7 direction.

8 First of all, my understanding is that
9 you're in charge of long-term planning, you're
10 the guy that does the plans. Is that fair?

11 A Yes, it is.

12 Q So walk me through the different plans.
13 The ten-year plan, you would be involved with
14 that?

15 A Yes.

16 Q What would your involvement be with the
17 ten-year plan?

18 A My generation planning team produces the
19 report. They produce the forecast and come up
20 with the generation plan. And I review it and
21 have questions for them. They resolve them. And
22 if the report gets issued, in the past as the
23 director, I have presented the ten-year site plan
24 to the board.

25 Q And it's March 9th. So it's my

1 understanding the ten-year plan is due in a
2 couple weeks; is that right?

3 A Yeah. It's running towards completion.

4 Q All right. So I appreciate your time in
5 this probably very busy month.

6 The IRP, were you involved in the last
7 IRP?

8 A Yes.

9 Q What was your involvement for that?

10 A Similar. The generation planning team
11 runs that. The IRP is a longer term report, as
12 Mike mentioned. So we started that back in 2018.
13 Mike is right, it was due in 2019, but the --
14 really just got the first written draft a couple
15 weeks ago. We did tap the brakes on it as far as
16 the getting that out. And I'm sure you'll ask
17 follow-ups on that.

18 Q Yeah, I will.

19 A Yeah, little premonition there.

20 But you know -- and Mike covered a lot
21 of this. We look through an IRP when it's time
22 for a big decision. And in this case, that was
23 the potential retirement of Northside Three.

24 Q Okay. And then just so I understand, so
25 we've got these kind of three reports out there.

1 We got the ten-year plan, the IRP, and then what
2 McKinsey produced. And you were involved with
3 working with McKinsey; correct?

4 A Yes. We provided input to McKinsey and
5 then reviewed what they came up with.

6 Q So what it says in the transcript here
7 is that you were, quote, feeding McKinsey. So
8 help me understand that. Is that basically
9 you've got the data and you're providing it to
10 them, or is it more of a back-and-forth where
11 you're giving them ideas and we're exchanging
12 ideas, or was it just data?

13 A It was largely data where they would
14 just come in with very specific questions about
15 what is the -- you know, what forecast are you
16 seeing, what are you using here. Pretty much
17 breaking down the ten-year site plan for them.
18 They wanted to understand our generation mix,
19 what plans we had. So it was just 95 percent of
20 data going towards them. Then they went away and
21 came up with some plans. And they'd come back to
22 us and say, How does this look? And then there
23 would be some back-and-forth.

24 Q Gotcha. And you've read the final
25 McKinsey report from last year?

1 A I've seen parts of it. I haven't sat
2 down and read the whole thing.

3 Q What is your impression of the parts you
4 read?

5 A There is, I think, a lot of good
6 information in there. I think, like I said in my
7 transcript, I haven't really had a chance to go
8 through and pull out what we can use in the
9 future, but there is certainly -- they brought a
10 level of expertise as far as some of the
11 projections that we don't have or haven't had.
12 So I think there is some good information there.

13 Q And then just looking at the ten-year
14 plan that was filed last year, in your
15 understanding of the business, can you give me a
16 sense of where you think JEA, how we did the
17 last, say, ten years?

18 A As far as?

19 Q The entire entity, its fiscal health.

20 A Okay. So I should point out the
21 ten-year site plan doesn't have anything to do
22 really with fiscal health, the rates, anything.
23 It's strictly -- the purpose of the ten-year site
24 plan is to make sure, as Mike said, we've got
25 enough capacity to meet our generation needs.

1 Part of that does look at what is the total
2 energy that is consumed by the utility.

3 So from that basis, over the past ten
4 years there has been a decline. There is an
5 eight percent overall decline, which includes
6 FPU, the Florida Public Utilities, the loss of
7 that contract. But even without including that
8 part, sales dropped four percent. And I think
9 what gets missed a lot is the FPU contract itself
10 had declined 62 percent during the time that we
11 held the contract, and that was due to a lot of
12 the same pressures that we see, a little more so
13 because they have a couple big paper mills up
14 there that build combined heat and power plants
15 that they then self-produced a lot of power and
16 didn't need to buy it from us anymore.

17 Q On the solar front, you say in this
18 deposition transcript that you thought that
19 McKinsey's view of the adoption of solar was,
20 quote, aggressive and that they were perhaps
21 overstating how much solar would eat into the --
22 or would create efficiencies that would lower our
23 rate or usage. Do you still agree with that? Or
24 what do you think of their view of the solar, if
25 you recall?

1 A So there were two components to their
2 plan as far as solar. And I kind of thought they
3 were both aggressive. The first is on the
4 residential front as far as the time to grid
5 parity. And grid parity is a concept where it's
6 as cheap for somebody to generate power
7 themselves as to be connected to the grid. And
8 at that point people are free to leave the grid
9 and generate their own power. So really it's
10 more of a solar plus battery. And they were
11 seeing the parity point there in 2025.

12 You know, I thought that seemed a little
13 aggressive, like maybe it would be later than
14 that, 2028, 2030, '32. But from a long range
15 planning point of view, five years or so, in my
16 world, it wasn't really significant. You know,
17 if we have a plan in place five years earlier
18 than we need it, you know, that's an exceeds. So
19 I did think that was aggressive.

20 And then when they came back with their
21 generation plans, they had a lot of solar in the
22 utility scale generation. We're already
23 currently in the process of building 250
24 megawatts of solar. And I think they were adding
25 hundreds more megawatts. And that's great from a

1 fuel mix stability point of view, like a price
2 stability, but from a system control, it becomes
3 problematic to have that much solar on just
4 because it's not firm, you can't call it when you
5 need it. It's there when the sun is out.

6 So really, as a result of us kind of
7 pushing back on how much solar was in, they added
8 a lot more batteries, which did kind of push out
9 the time frame for when that would be
10 implemented, because the price curve on batteries
11 is a little slower -- or isn't as far along as
12 the price curve on solar. And by price curve I
13 mean, you know, time versus cost per kilowatt,
14 and it's dropping over time.

15 Q And I was told you were one of the
16 smartest guys in any room. So I bet you know the
17 price curve on batteries much better than I do.

18 A Well, I haven't seen who is in the room
19 yet.

20 Q Fair. I appreciate your precision.

21 Let me take you to page 39 of your
22 transcript if you don't mind, and that's
23 JEA-000360. Just let me know when you get there.

24 A Page 39, was that?

25 Q Correct.

1 A All right. I'm there.

2 Q If you'll look, you all are having a
3 discussion about the IRP. In the previous page
4 you're talking about that you had started it.
5 And then it says on line five: I tapped the
6 brakes on it because I wanted to -- well, for
7 one, there was a couple reasons. There was a lot
8 of public statements by Aaron about maybe not
9 needing a combined cycle, maybe having batteries
10 and solar instead, part of that licensing process
11 and public statement -- sworn testimony, that
12 this is what we need. So I mentioned to Melissa
13 that what's going on -- pardon me -- that's going
14 to be really hard to say with our CEO making
15 statements essentially to the contrary.

16 Can you help me understand this back and
17 forth about why you're tapping -- we'll start
18 there, why you're tapping the brakes on the IRP?

19 A Okay. So the integrated resource plan,
20 like I said, it is intended to identify what's
21 the optimal solution for when there is a big
22 change coming up. So in this case, potential
23 retirement of a 500-megawatt gas unit.

24 So we had preliminary results,
25 presentation was all ready and knew pretty much

1 that the answer that was going to be developed in
2 the IRP was a new combined cycle either down at
3 Greenland Energy Center or possibly somewhere at
4 the north side St. Johns River Power Park
5 complex. So we had choices of location.

6 So the IRP, what it does is it
7 develops the solution to say, okay, there is the
8 best solution for this upcoming need. And from
9 that you would develop a need for power
10 application to go to the PSC, at the Public
11 Service Commission, and use the IRP as evidence
12 that this is the optimal solution for this need.

13 Q It's almost like a permitting process?

14 A It is the permitting process. The PSC
15 has this Power Plant Siting Act, it's required
16 for any steam unit or solar of 75 megawatts.
17 That's why so many solar farms are 74.9
18 megawatts. Steam units don't scale that way, so
19 in this case the steam component would have been
20 200 megawatts and certainly would have fallen
21 into the Power Plant Siting Act.

22 So with Aaron -- and I think it was at a
23 Jax USA event, you know, the quarterly luncheon,
24 and he's on the panel and says, Oh, you know,
25 we're not going to need a combined cycle, we're

1 going to build solar batteries instead. So I
2 just hit my head on the table. And I didn't
3 knock anything over, though.

4 And later that day, you know, went to
5 Melissa and told her that either Aaron has to
6 stop saying those things or we should really hold
7 off on the IRP. And she told me, Well, he's not
8 going to stop saying those things, so.

9 Q So she said he's not going to -- what
10 was your impression? What did you walk away
11 with? Did you change the IRP?

12 A No, we didn't change it. So given that
13 there was -- it was at that point sort of
14 premature to complete it and have a document that
15 says something that the CEO says is not our plan.
16 So rather than have a document that would be
17 instantaneously useless, just slowed it down,
18 kind of a wait and see what happens.

19 Q I'm going to ask you to use a different
20 level of thinking here, though, and you're a
21 smart guy. Did that seem reasonable to you to
22 stop working on this because he was saying
23 something?

24 A That's a good question. It certainly
25 wasn't the time. And the -- there was -- you

1 know, I think it was right about May, so the --
2 there was already -- the McKinsey work was well
3 in hand and even the McKinsey work at that time
4 was not really supportive of a new combined
5 cycle.

6 And I might mention too that the --
7 nobody wants to be the last person to build a
8 large unit and then have it not be needed. A new
9 combined cycle that we were looking at was about
10 a \$530 million unit. So that's a lot of money to
11 build and then not use if indeed something else
12 is more cost effective.

13 Q Let me ask you this: Was the new
14 combined cycle at that time your recommendation
15 for what we needed for the future?

16 A It would have been, yes.

17 Q So you're using your best judgment, your
18 job there saying the new combined cycle makes
19 sense, the CEO is over here saying we're going to
20 do batteries and this other stuff that's new.
21 Did you voice your concern that your better idea
22 or your idea was in conflict?

23 A So I don't remember any direct
24 conversations with Aaron about it.

25 Q What about Ms. Dykes?

1 A Except the conversation we had. And
2 certainly within the McKinsey work I've been
3 identifying a new combined cycle as our
4 recommendation. So it was in the mix. And, in
5 fact, the final McKinsey report has that as one
6 of the components. So somewhere between the
7 summer and the fall, they kind of came in line
8 with a new combined cycle.

9 Q Okay. Let me ask kind of a 50,000-foot
10 question. You're kind of -- tell me if this
11 sounds reasonable -- the guy that does most of
12 the major planning for these plants and the IRP
13 and the ten-year plan, you're the planner; right?

14 A If I'm allowed to take credit for all my
15 team's work, then, yes.

16 Q Fair enough. We'll give you the pass
17 for this question. You're the main planner.
18 Aaron Zahn was spending a lot of time planning
19 also; is that fair to say?

20 A Yes, yes.

21 Q What was he doing, to the best of your
22 knowledge, as far as planning?

23 A He wasn't talking to me about it.

24 Q Here is my question: You're the chief
25 planner, it's your job to do the planning, the

1 CEO is planning, and he's not involving you at
2 all?

3 A Not besides through the McKinsey effort,
4 no.

5 Q So is it fair to say that McKinsey was
6 the one Aaron Zahn was using to do the planning
7 along with your assistance to McKinsey?

8 A Yes, that's reasonable.

9 Q Yeah. There is no gotcha here. I'm
10 just trying to understand what's going on. So
11 McKinsey comes out with their report and that's
12 basically what everyone was relying on for the
13 future planning?

14 A So from a strategic point of view as far
15 as, like, overall direction, yeah, I think so.
16 When it gets down to a little more granular and
17 exactly what does this mean, then, I believe, we
18 still would have had to go back and rely on the
19 ten-year site plan and the IRP.

20 Q Okay. And that makes sense to me.
21 You're a smart guy, you have a great team. Did
22 it seem reasonable to you to be using McKinsey as
23 the main driver for planning instead of your
24 team?

25 A I think it would have been better if we

1 had been more involved, but McKinsey has a lot of
2 smart people too, so.

3 Q Let me jump to a couple of other bigger
4 issues that are unrelated to this planning, and
5 I'll let my colleagues kind of nail some of the
6 finer points. The performance unit plan you're
7 familiar with?

8 A Yes.

9 Q Do you remember the first time you heard
10 about the performance unit plan?

11 A That was one of the Ponte Vedra
12 meetings --

13 Q And -- shoot. Go ahead.

14 A And it was really first introduced as
15 just a generic long-term incentive plan.

16 Q So do you remember who brought it up to
17 you?

18 A In the meeting it would have been either
19 Ryan or Aaron, I imagine.

20 Q Ryan Wannemacher or Aaron Zahn?

21 A Correct.

22 Q Okay. And then they're bringing it up
23 as long-term incentive plan. Did they describe
24 it as stock option plan or do you remember how it
25 was dressed up?

1 A Yeah. It was like a stock option plan.

2 Q Okay. Do you remember about when that
3 was?

4 A I want to say the meeting maybe right
5 before the July board meeting, so maybe June.

6 Q So June. Besides Aaron and Ryan
7 Wannemacher talking, did anybody else talk to you
8 about it at that time in June, a long-term
9 incentive plan?

10 A No. There wasn't a lot of discussion
11 about it.

12 Q So you have a bunch of, like, friends, I
13 assume, you work with, colleagues in other places
14 who were maybe also invited to these meetings.
15 Did you guys have cross-chitchat about this
16 performance unit plan or long-term incentive
17 plan?

18 A There were several of us that had some
19 cross-chitchat about it, yes.

20 Q Can you just give me a sense of what the
21 discussions were like?

22 A It was on the lines of, I don't get it,
23 and how many of those do you think we have to buy
24 to seem like a team player?

25 Q Tell me more. You know I have to know.

1 Who said that?

2 A So I probably said a couple of those
3 things.

4 Q So all right. Let me ask the easier
5 question. Why did you feel like you had to buy
6 performance units to be a team player?

7 A So, you know, and I know it's in my
8 transcript already, but similar to a public
9 company, if you have stock ownership plan and
10 you're senior management, owning stock is really
11 a bet on the success of the company. And if you
12 don't own stock, then it's akin to saying, I
13 don't believe the company is going to be
14 successful long-term, in which case why would we
15 be on the senior management team.

16 Q Did anybody tell you that you were
17 expected to buy these?

18 A No, no. I don't think the conversations
19 had developed to that point yet.

20 Q Gotcha. And I think the answer is no,
21 but let me just check: Did you ever hear about
22 there being a schedule of how many might be
23 available to you?

24 A All I heard was that there was going to
25 be individual meetings with Aaron and people

1 to -- that he would tell them how many units
2 would be available to them. And I don't think
3 anybody had those meetings; I know I didn't.

4 Q I mean, so the idea was that he had some
5 schedule somewhere and he would tell you one on
6 one how many you got to buy or you had available?

7 A I don't know, but that was the
8 implication.

9 Q Okay. Tell me more about these Ponte
10 Vedra meetings. How many of those did you go to?

11 A I think there were three.

12 Q Did you go to all three?

13 A Yes.

14 Q Can you give me a sense of how long they
15 were?

16 A How long each one was?

17 Q Sure. Was it a whole day?

18 A It was an all-day event.

19 Q All-day event?

20 A Typically from about 8:00 a.m. to maybe
21 4:00.

22 Q And what was the purpose of these
23 meetings?

24 A It was -- really it was a lot of the
25 McKinsey work. McKinsey was there a couple

1 times. That was where the entire senior
2 leadership team was together and they presented
3 here is where we are and got our initial feedback
4 on what we were thinking. Sometimes there was
5 much more presentation from McKinsey and less our
6 input back to them.

7 Q I'm trying to understand the ITN piece
8 of this. As you're having these meetings down in
9 Ponte Vedra, did you get the impression that the
10 driver of a lot of this was the ITN process and
11 eventually selling JEA or did you think it was
12 just more like open general planning?

13 A I couldn't really tell. Certainly
14 Aaron's background was mergers and acquisitions,
15 so -- but, you know, he did seem interested in
16 determining what the right course of the utility
17 was.

18 Q Did you all ever discuss selling JEA?

19 A I think, once the scenarios were
20 developed -- so scenario one was don't do
21 anything; scenario two was the traditional
22 utility approach; and scenario three had a lot of
23 components to it, one of which was the ITN
24 process. And within the ITN process it -- you
25 know, there was always acknowledgment that there

1 was going to be review and approval by City
2 Council and the voters and everybody else.

3 So I think most of us viewed it as
4 getting information, because really, if you want
5 to talk about a sale, the first question is
6 what's it worth. And I remember in the prior
7 sale conversations an awful lot of conversations
8 about is it a valuation or an evaluation, and I
9 still don't know the difference. And really
10 anything is worth whatever somebody is willing to
11 pay for it.

12 Q Did you work with any of the bidders at
13 all, have any interaction with bidders?

14 A As part of the ITN process?

15 Q Right.

16 A No.

17 Q Are you aware if any of the bidders had
18 access to JEA's assets prior to submitting a bid?

19 A Once the ITN process started, no.

20 Q What about before it started?

21 A Well, of course, we're co-owners with
22 FPL on a formerly owned power park and currently
23 on Plant Scherer up in Georgia, so they would
24 have access to those facilities.

25 Q Do you know if Florida Power & Light had

1 access to any other facilities?

2 A I don't know.

3 Q Let me go back to the PUPs real fast.
4 Did you ever meet with Melissa Dykes to discuss
5 the performance unit plan?

6 A No.

7 Q Were you ever supposed to meet with her
8 about the performance unit plan?

9 A No.

10 Q And she does your evaluations?

11 A Yes.

12 Q Does the ITN ever come up -- well, tell
13 me about this evaluation. How long is it? I
14 won't get into the nitty-gritty of it, just
15 getting a sense of how long it was.

16 A This year I think it was maybe ten
17 minutes.

18 Q And the year before?

19 A The year before it was with Mike.

20 Q And how long was that?

21 A Probably a little longer than ten
22 minutes.

23 Q Fair enough. I've got some wrap-up
24 questions for you and then I'll pitch to my
25 colleagues. One second.

1 Did you have any interactions with JP
2 Morgan or Morgan Stanley?

3 A As part of the ITN process or prior?

4 Q Either or.

5 A I believe JP may have made some
6 presentations to us related to some natural gas
7 products.

8 Q When was that, do you remember?

9 A It would have been years prior. Both
10 Ryan and Melissa used to work for JP Morgan, so
11 they knew people there.

12 Q So they -- can you give me like a year
13 range before or after --

14 A 2017, 2018, it was when I was still a
15 director.

16 Q Okay. And what was the product they
17 were selling, do you remember?

18 A Prepaid gas or -- it was probably
19 prepaid gas deals.

20 Q Gotcha. And we've already covered
21 McKinsey. Outside of JEA, outside of McKinsey,
22 did you ever work with any of the law firms
23 related to the ITN process?

24 A I think our original nuclear attorney
25 that we had for Plant Vogtle negotiations had

1 originally worked for Pillsbury, but is now with
2 a different firm, Gibson Dunn. But apart from
3 that, no.

4 Q That was all Plant Vogtle related?

5 A Yes.

6 Q Okay. We'll skip Plant Vogtle.

7 A Thank you.

8 Q Agreed, at least for this portion.

9 Did you have a chance to listen to
10 Nelson Mullins' presentation two weeks ago?

11 A I did hear some of it, yes.

12 Q The parts that you heard, did you
13 generally agree or disagree with their
14 conclusions?

15 A I think their conclusions were skewed.
16 There were certainly some elements of their
17 presentation that were, I think, misleading. It
18 would have been, I think, more impactful if they
19 had actually talked to us before they came up
20 with those.

21 Q Did you discuss the Nelson Mullins
22 presentation with Melissa Dykes?

23 A I did.

24 Q What was her impression of the Nelson
25 Mullins investigation -- or presentation?

1 A She was not a fan.

2 Q Can you tell me more of what she said
3 precisely?

4 A I would be happy to. She came up with
5 some talking points around some of the findings
6 from Nelson Mullins, one of which is the FPU
7 discussion that even with excluding FPU and to
8 her point, sales are sales, whether it's a large
9 wholesale contract or residential sales, was
10 probably deserving of a footnote, but the fact
11 that 62 percent of the FPU sales had already gone
12 before we lost the contract.

13 One of the key points was that Nelson
14 Mullins said the departure from the ten-year site
15 plan as a sales projection had just happened this
16 past year. In fact, the sales projections as far
17 as rating agencies are concerned, so the
18 financial projections which go out five years,
19 that departure happened in 2014 when Melissa was
20 the CFO under Paul. And at that time they had
21 been going to the rating agency with a forecast,
22 a financial forecast, based on the ten-year site
23 plan forecast, and they were always high, they
24 were always overly optimistic. And the rating
25 agencies were, you know, not believing the

1 forecast.

2 So in 2014 Melissa made the call to
3 switch to 12 million megawatt hours flat forecast
4 for the five-year period. So that departure was
5 made. And actually, I think it was Fitch had a
6 very positive response to that. They come up
7 with findings and do reports and they had -- they
8 viewed the departure from the optimistic forecast
9 to a realistic flat forecast as a very positive
10 step from a rating point of view. There were a
11 couple other things, but those were really the
12 key points.

13 Q And generally speaking, do you think
14 their conclusion that the board had a
15 misunderstanding or a skewed view of the health
16 of JEA was correct?

17 A Could you say that again?

18 Q Sure.

19 A There were a couple negatives in there.

20 Q Yeah, yeah. I used to be a lawyer.

21 These gentlemen concluded the board
22 didn't really understand what the health of JEA
23 was because they were misled by senior
24 leadership that they got select data and not the
25 full view. Knowing what you know, do you think

1 that's a fair conclusion?

2 A I can't really speak to what the board
3 did or didn't understand. I do think that there
4 are a lot of challenges to our business model, to
5 our business. And I think other people -- Mike,
6 in particularly, in his testimony, spoke to a lot
7 of them.

8 One of the points in the presentations
9 is the attribution of how much the decline is
10 from energy efficiency. And I've been looking
11 into that. And part of what that is that gets
12 overlooked or blended in because we don't have
13 any transparency through it is how much -- how
14 many sales we're losing to natural gas. A lot of
15 the new neighborhoods that are being developed
16 are natural gas neighborhoods. And the numbers
17 I've seen, our sales are about 30 to 40 percent
18 lower to a house that has natural gas hooked up
19 to it than they are to the same or similar sized
20 house that's all electric.

21 Q Do you think we should be in the natural
22 gas business?

23 A I do, and I have for a long time.

24 Q Do you know why we're not?

25 A Because Peoples Gas has the franchise.

1 Q What do you think about that decision, I
2 guess, is a better way of asking?

3 A About the decision that Peoples Gas has
4 the franchise?

5 Q Right.

6 A I'm against it.

7 CHAIRMAN DIAMOND: All right. I will
8 allow my colleagues to go next. Go ahead,
9 Ms. DeFoor -- actually, I don't have anybody
10 on the queue.

11 COUNCIL MEMBER SALEM: I'm on the queue.

12 COUNCIL MEMBER DeFOOR: Yes.

13 CHAIRMAN DIAMOND: I have to defer to
14 committee members, but I gotcha.

15 COUNCIL MEMBER SALEM: Okay.

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

18 And through the Chair to Mr. McInall,
19 Mr. McInall, based on what you just
20 described as some of the challenges, would
21 you say that the public -- do you believe
22 the public utilities are doomed?

23 THE WITNESS: I don't think doomed is
24 the right word. I think needs a change or
25 have to be ready to change, so --

1 COUNCIL MEMBER DeFOOR: Isn't that -- I
2 didn't mean to interrupt you, but hasn't --
3 in the course of 100 years, hasn't there
4 been a lot of change?

5 THE WITNESS: There has been. I have
6 been here for most of it.

7 COUNCIL MEMBER DeFOOR: I'm beginning to
8 feel the same way.

9 Okay. Looking at your deposition on
10 page, let's see, 64, and that's JEA-000366,
11 on page 64 you talk about water side of the
12 business and you describe it as to scale.
13 What do you mean by that?

14 THE WITNESS: So what I was doing there
15 was drawing a distinction between the
16 electric side of the business and the water
17 side. On the electric side we're the eighth
18 largest municipal utility in the country,
19 but we're small compared to the
20 investor-owned utilities.

21 Tampa Electric Company was a little
22 larger than us, and their board decided they
23 were too small to compete with the larger
24 IOUs, investor-owned utilities, and put the
25 company up for sale. And so TECO also owns

1 Peoples Gas and that's how TECO was bought
2 by Emera, a Canadian company. So there is,
3 I think, if not half or like some -- even
4 compared to five years ago, there is like
5 half as many investor-owned utilities as
6 there used to be because of constant mergers
7 and acquisitions.

8 Obviously, that hasn't happened in the
9 municipal space because we're tied to the
10 territory we're at. So we're large for a
11 muni, but we're small for an IOU, and
12 really, for a lot of the things we need to
13 do.

14 So FPL's rates are lower than ours,
15 whether it's base rate or base and fuel.
16 And that's because they've made the
17 investments that they -- they've got the
18 newest units, the most efficient.

19 I would say the municipal government
20 utilities, we're like the guy on the block
21 who is still driving the car from the '80s
22 because it runs, so we're not going to make
23 a new investment in a plant just because
24 there is a better one out there. We're
25 going to run the one we have until it

1 doesn't make sense anymore.

2 But that means there is a long period of
3 time where somebody else, if they bought a
4 new more efficient unit, or car in my
5 analogy, would be saving money on gas and
6 fuel and everything. And over the long
7 term, that could be more cost effective than
8 continuing to run an old unit, but the
9 capital --

10 COUNCIL MEMBER DeFOOR: I'm going to
11 stop you there because my question was about
12 the water side.

13 THE WITNESS: Sorry.

14 COUNCIL MEMBER DeFOOR: So how does the
15 water side compare to other water companies
16 in the United States?

17 THE WITNESS: We're pretty large.
18 Certainly from a municipal point of view,
19 we're one of the larger water companies.
20 There aren't that many water investor-owned
21 utilities. And I think even compared to
22 them we're larger than a few of those.

23 So we do have scale, that's what I was
24 referring to, we're large for a water
25 company. And the water company is -- the

1 water side of the business is a lot less
2 susceptible to some of the influences that
3 the electric side has seen.

4 There is not really a comparison to
5 natural gas or solar on the water side.
6 Most people can't go out and put in their
7 own well; the HOA won't allow it. People,
8 you know, unless they're in a rural area,
9 they can't put in their own septic system to
10 get off the sewer. And once somebody is
11 hooked up, they're not going to do that. So
12 there is a lot more stability on the water
13 side as far as customer interactions.

14 And the other big difference between the
15 water and the sewer side is the rate
16 structure. So on the electric side, the --

17 COUNCIL MEMBER DeFOOR: I'm going to
18 keep you on the water side. So how -- in
19 terms of the water side, would you say it's
20 extremely healthy?

21 THE WITNESS: Yes. Yes, I would.

22 COUNCIL MEMBER DeFOOR: And how about
23 its future, is it a healthy future?

24 THE WITNESS: As far as I can see.

25 COUNCIL MEMBER DeFOOR: Well, you're the

1 head of it, I mean, the planning guy.

2 So was it ever in the best interest of
3 Jacksonville to sell the water side of the
4 business?

5 THE WITNESS: I don't know. I don't
6 know what the offers were.

7 COUNCIL MEMBER DeFOOR: That's not the
8 question. The question is would it ever
9 have been in our best interest.

10 THE WITNESS: And I really can't --
11 without knowing both sides of the equation,
12 I can't tell which side is better.

13 COUNCIL MEMBER DeFOOR: As an expert in
14 the area of water and a planner, would you
15 ever think -- and based on what you
16 described as a very healthy product, there
17 was no challenges, there was no death
18 spiral, what would there be -- why would we
19 ever sell our water? I'm asking you as an
20 expert.

21 THE WITNESS: So I'm trying to think of
22 how to put this. The -- there is a -- there
23 is -- a lot of the utilities that the
24 investor-owned utilities take over on the
25 water side are in disrepair. It's almost

1 like a flint situation where the water
2 system has degraded, there hasn't been
3 investments. They're literally gasping
4 because they're -- you know, the systems are
5 on the verge of collapse. And the
6 investor-owned utility swoops in and pumps
7 so much money into it and fixes everything.

8 So if there was going to be a sale, they
9 certainly get more value for it when they
10 don't have to do that, instead of when the
11 business is healthy.

12 COUNCIL MEMBER DeFOOR: But wouldn't the
13 customer end up paying that price?

14 THE WITNESS: I don't think -- I don't
15 think the customers would have paid any more
16 than they pay now.

17 COUNCIL MEMBER DeFOOR: That's not what
18 my data shows.

19 Did you feel under duress under Aaron
20 Zahn leadership?

21 THE WITNESS: Not directly, no.

22 COUNCIL MEMBER DeFOOR: Did Aaron Zahn
23 understand the day-to-day business?

24 THE WITNESS: I couldn't say.

25 COUNCIL MEMBER DeFOOR: You don't have

1 any idea?

2 THE WITNESS: I mean, all signs point to
3 no, but --

4 COUNCIL MEMBER DeFOOR: I'm just trying
5 to figure out how he wasn't relying on your
6 expertise if he didn't have any of his own.

7 THE WITNESS: Well, he had some amount
8 of expertise on the wastewater side. He
9 owned a small wastewater company.

10 COUNCIL MEMBER DeFOOR: I don't think it
11 turned out very well.

12 Do you have an employment contract?

13 THE WITNESS: I do.

14 COUNCIL MEMBER DeFOOR: Who negotiated
15 that contract?

16 THE WITNESS: It would just pretty much
17 appear -- from -- after the board meeting.

18 COUNCIL MEMBER DeFOOR: Have you been
19 asked to withdraw it?

20 THE WITNESS: I believe that was the
21 essence of Carla Miller's letter.

22 COUNCIL MEMBER DeFOOR: Have you?

23 THE WITNESS: I have not.

24 COUNCIL MEMBER DeFOOR: Ten-year site
25 plan is going to be filed April 1st. Can

1 you tell us whether it projects any growth?

2 THE WITNESS: It projects a slight
3 amount of growth, less than last year. It's
4 flattening out.

5 COUNCIL MEMBER DeFOOR: That's all I
6 have. Thanks.

7 CHAIRMAN DIAMOND: Councilwoman Priestly
8 Jackson.

9 COUNCIL MEMBER PRIESTLY JACKSON: I just
10 have a few quick questions. My colleagues
11 have covered the most integral ones for me.

12 You said that Aaron Zahn's background
13 was in mergers and acquisitions. So why do
14 you think -- based on that knowledge, why do
15 you think he was selected to be the CEO for
16 JEA?

17 THE WITNESS: I really can't speculate
18 on that.

19 COUNCIL MEMBER PRIESTLY JACKSON: But he
20 had no prior utility experience.

21 THE WITNESS: Not that I'm aware of,
22 except for his being CEO of BCR
23 Technologies.

24 COUNCIL MEMBER PRIESTLY JACKSON: But
25 the reputation that preceded him was in

1 mergers and acquisitions; right?

2 THE WITNESS: Yes.

3 COUNCIL MEMBER PRIESTLY JACKSON: Second
4 question: On page 50 of your transcript,
5 which is page JEA-363, you go into some
6 conversations about the long-term plan or
7 long-term incentive plan. And then you
8 said, what came back from that was the PUP.
9 Earlier today you said that investment in
10 the PUP or the performance units was deemed
11 to be a team player or relief in the
12 company.

13 My question is what exactly did you
14 think you were buying into? What were you
15 buying? What was your understanding of what
16 you would be buying into?

17 THE WITNESS: That's one of the things
18 that wasn't clear, because with a share of
19 stock, there is -- whatever you've purchased
20 is at risk, and the company invests that
21 money and does something with it. It wasn't
22 clear to me at all where this \$10 went and
23 what happened to it. I don't think that's
24 what was being invested in something to come
25 up with a new product or anything. So it

1 was definitely one of the holes that was
2 never clear to me.

3 COUNCIL MEMBER PRIESTLY JACKSON: So you
4 were given \$10 in your understanding for
5 what exactly?

6 THE WITNESS: For a share of a PUP.

7 COUNCIL MEMBER PRIESTLY JACKSON: And a
8 share of a PUP of what, JEA as it currently
9 existed or a future entity that was
10 recapitalized and JEA was absorbed into?

11 THE WITNESS: Again, I think that's one
12 of the details that hadn't been fully
13 flushed out. My understanding is the share
14 was of the current JEA.

15 COUNCIL MEMBER PRIESTLY JACKSON: So
16 would it surprise you to know that there are
17 no equity shares in a municipally owned
18 utility? Would it surprise you to know that
19 doesn't exist?

20 THE WITNESS: It would not since I've
21 read that.

22 COUNCIL MEMBER PRIESTLY JACKSON: So
23 you're a very knowledgeable man in this
24 arena. And you shared earlier about buying
25 stocks, and more of a corporate comparison.

1 Do you think it would be fair to say then
2 the PUP was basically a future or phantom
3 interest in whatever JEA became at some
4 other point when it was no longer
5 municipally owned?

6 THE WITNESS: That's possible.

7 COUNCIL MEMBER PRIESTLY JACKSON: Okay.
8 No further questions.

9 CHAIRMAN DIAMOND: I actually have one
10 quick question. I'll get to you, Councilman
11 Salem.

12 CHAIRMAN DIAMOND:

13 Q Those meetings back in Ponte Vedra, you
14 said you went to three of them; is that right?

15 A Yeah.

16 Q Do you remember what years those were
17 in?

18 A They were all last year, 2019.

19 Q All 2019. And so all the senior
20 leadership was there?

21 A There were some people that were absent
22 for other meetings.

23 Q Sure. I'm kind of interested in who was
24 there. Let's assume some members of the senior
25 leadership; right?

1 A Right.

2 Q And somebody from McKinsey or some teams
3 from McKinsey?

4 A Sometimes there was quite a few people
5 from McKinsey, correct.

6 Q So excluding senior leadership and
7 excluding anyone from McKinsey, who else might
8 have been there?

9 A I don't recall anyone else besides those
10 people.

11 Q None of the law firms, no consultants?

12 A Yeah. I mean, there were times you
13 couldn't throw a rock without hitting at least a
14 couple lawyers.

15 Q Do you remember if there were any
16 lobbyists in those rooms?

17 A I don't remember seeing a lobbyist.

18 Q Okay. Would you know if you had?

19 A Maybe not. I know a couple. I knew
20 Deno, but that's about it.

21 Q How did you know Mr. Hicks?

22 A Through one of my areas that I'm in
23 charge of is the real estate area, and he
24 represents several entities that are interested
25 in either buying or selling real estate.

1 Q So that's through JEA?

2 A Yes.

3 Q What entities were those?

4 A Johnson and Johnson is the most recent
5 one.

6 Q Okay. And you know who Herschel Vinyard
7 is; correct?

8 A Yes.

9 Q Have you had any discussions with
10 Herschel Vinyard since the ITN was put out back
11 in July?

12 A Sure.

13 Q How many conversations have you had with
14 Herschel Vinyard about that?

15 A About what?

16 Q The ITN process.

17 A About the ITN process, probably not that
18 many. I thought you asked just conversations in
19 general with him.

20 Q Sure. We'll start there. Conversations
21 in general, how many?

22 A Fifteen, 20.

23 Q And what are the general topics that you
24 would cover with Mr. Vineyard?

25 A Typically a lot of stuff on the

1 alternative water supply, it's one of the
2 projects we're working on as far as purified
3 water systems to further treat the reclaimed
4 water to a portable standard.

5 Q Okay. And let me ask you this, maybe
6 hurry us along, because we are going to run out
7 of time: Up to the moment the ITN was withdrawn,
8 did you ever discuss with Mr. Herschel the ITN
9 process?

10 A Not really. I had specific tasks I was
11 doing as part of the ITN process and it really --
12 inasmuch as I needed information from him for
13 those, then we interacted, but otherwise, no.

14 Q And what were your tasks generally?

15 A The independent engineer report and the
16 filling of the data room.

17 Q I'm going to ask you about the data room
18 in one quick second. Since the ITN was
19 withdrawn, have you had any discussions with
20 Mr. Vineyard about the ITN process?

21 A No, no.

22 Q Have you had any discussions with
23 Ms. Dykes about the ITN process since it was
24 withdrawn?

25 A Only inasmuch as the Nelson Mullins

1 report and things of that. I wouldn't really
2 construe that as the ITN process.

3 Q And then the data room, that's the data
4 room held by Pillsbury Winthrop?

5 A Yeah, run by Intralinks.

6 Q Gotcha. And then you had access to
7 that?

8 A Yes.

9 Q At some point were you aware that it
10 was, quote, unquote, cleaned up or reorganized in
11 some way?

12 A Yes.

13 Q Do you know when that happened?

14 A I want to say mid to late October.

15 Q Mid to late October. Why did that
16 happen, do you know?

17 A So can I just describe the process we
18 were going through?

19 Q Sure, please.

20 A So there was a number of folders set up
21 by the data room company. And those were just
22 general topics, long-term contracts, HR,
23 electric, water, and then subfolders within that.
24 My job was to coordinate everybody in the company
25 to fill up their information that belonged in

1 each of those folders, so did that. And then was
2 keeping Melissa Dykes apprised of our progress on
3 that.

4 And reached the point, I think -- and we
5 were aiming for November -- or actually December
6 completion. So probably -- so then in
7 mid-October, maybe it was into November, there
8 wasn't the same progress being reflected in what
9 she was seeing and what I knew we put in.

10 And what it was, was the law firms were
11 taking the information out of the general folders
12 and putting them in what they call a clean team
13 folder and then reviewing each of the documents
14 for privilege for antitrust exceptions, a couple
15 other reviews that were going through. And once
16 they were cleared, they were going back into the
17 general population essentially.

18 Q Okay. And are you aware if any of those
19 documents were deleted?

20 A Some probably were if they were
21 privileged, but --

22 Q When you say privileged, whose privilege
23 are you talking about, do you know?

24 A I wasn't part of the review process to
25 determine what the -- I don't know exactly what

1 criteria they were using.

2 Q Can you give me kind of a cast of
3 characters, who would have been involved in that?

4 A It was Foley, Pillsbury, there may have
5 been a category for OGC to look at, I don't
6 recall. But there was -- once the data --
7 getting in the data room was the first step and
8 then review, review, review, final. Sounds kind
9 of familiar.

10 Q So somebody from Pillsbury is pulling
11 documents out of the data room, reviewing them
12 for some sort of privilege and then deciding
13 whether or not they go back?

14 A Right.

15 Q So if it didn't go back, do you have
16 knowledge of any database or place we can look to
17 find those documents?

18 A I believe the report we got from
19 Intralinks indicates what happened to each file.
20 I haven't seen that report, but that's my
21 understanding, that they tracked every touch,
22 essentially, of the document.

23 Q Okay. And then so you've got Pillsbury,
24 Foley, OGC. Who at JEA had access to the data
25 room?

1 A A bunch of people. I had access, but
2 then everybody -- there was somebody in every
3 department had access in order to populate the
4 room.

5 Q Did Aaron Zahn have access?

6 A If he did, he didn't have -- I think he
7 had read access, I don't think he had delete
8 access.

9 Q So who do you know had delete access?

10 A I did.

11 Q You did. Who else?

12 A The people at JP and -- JP Morgan, that
13 is, and Pillsbury.

14 Q So the investment bank had delete access
15 of the data room?

16 A I think so.

17 Q And then your supervisor, Melissa Dykes,
18 did she have delete access?

19 A I don't think so, no. Again, whatever
20 level of rights, that's all memorialized by
21 Intralinks.

22 Q Did you ever delete any documents out of
23 the data room?

24 A Yeah. I deleted like a duplicate of
25 something and one that was unreadable as the

1 format that it was in and reinserted it in a
2 different format.

3 Q Are these the only documents you
4 deleted?

5 A Yeah, because I didn't have delete
6 privileges until pretty late in the game.

7 Q Do you know if anybody else at JEA
8 deleted documents?

9 A I don't know.

10 Q You have no knowledge if they did?

11 A I don't have any knowledge of that.

12 Q Okay.

13 A I know very few people at JEA had that
14 level of access.

15 Q Okay. Let me just ask you a couple of
16 quick questions here. Mr. Vinyard, what was his
17 position at JEA -- what is his position, pardon
18 me?

19 A Chief administrative officer.

20 Q In that role did you work with him day
21 to day?

22 A No.

23 Q How often did you work with him?

24 A As needed, you know, it could vary from
25 two to three times a week to not for two or three

1 weeks.

2 Q Did you ever discuss with him your issue
3 relating tapping on the brakes with the IRP?

4 A No. That wasn't one of the things I
5 would have talked to him about.

6 Q Since the ITN was withdrawn, have you
7 had any meetings with Mr. Vinyard?

8 A Yes.

9 Q What were the topics of those meetings?

10 A As I said, the alternative water supply.
11 You mean since the ITN stopped?

12 Q Yeah, correct.

13 A Again, still the alternative water
14 supply project, we've met about that. And we did
15 have a meeting today about development, but
16 that's attorney-client privilege.

17 Q Help me out, who is the attorney, who is
18 the client?

19 A Radey Law Firm out in Tallahassee, it's
20 a PSC matter.

21 Q Gotcha. It's related to JEA business?

22 A Yes.

23 Q Unrelated to the ITN?

24 A Correct.

25 CHAIRMAN DIAMOND. I will pitch to you,

1 Councilman Salem.

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

4 Just a couple, three, four questions.
5 Mr. McInall, would you turn to page 53, JEA
6 document 364. This is the setting on one of
7 your Ponte Vedra meetings. And I was very
8 interested when Ted Hobson stood up
9 apparently or expressed concern about the
10 PUP. And there was some dialogue here
11 whether Aaron Zahn was present or not.

12 Are you aware of any other senior
13 leadership team members at any time
14 expressing concern about the PUP?

15 THE WITNESS: To Mr. Zahn or to each
16 other?

17 COUNCIL MEMBER SALEM: To each other
18 first of all and anyone that took it beyond
19 that.

20 THE WITNESS: So, sure. Myself, Ted,
21 Darryl, Karen, all -- and that's pretty much
22 just the group of people that get in to work
23 early, which is when we have the offhand
24 discussions -- all expressed concern about
25 it. Ted had just expressed some level of

1 skepticism at the Ponte Vedra meeting.

2 COUNCIL MEMBER SALEM: To my knowledge,
3 he was the only person that ever said
4 something publicly in front of a group like
5 that. Are you aware of anyone else?

6 THE WITNESS: I'm not.

7 COUNCIL MEMBER SALEM: Did anyone in
8 that small group, to your knowledge, take
9 those concerns to anyone outside JEA to
10 express those concerns?

11 THE WITNESS: I'm not aware of that. I
12 know for my part I was kind of waiting to
13 see how things developed, and then it all
14 fell apart. So it kind of became a moot
15 point.

16 COUNCIL MEMBER SALEM: Let me move on to
17 page 59 and page 60. I was very interested
18 in this evaluation. This is JEA document
19 365. Melissa Dykes -- you're discussing
20 your evaluation with Melissa Dykes, and I'm
21 going to read you this comment. This was
22 the question to you: Do you remember any
23 part of your review, including a discussion
24 in which she shared any information about
25 the performance incentive plan as it related

1 to your review?

2 And your answer was: I think there was
3 a part where everybody got a meets because
4 the level of participation in the
5 performance incentive plan, or I guess the
6 PUPs, was going to be -- your rating was
7 going to be factored in that.

8 Now, that would suggest to me that
9 Melissa Dykes was very informed of the plan
10 and she knew what evaluation to give you so
11 that you could participate in the plan.
12 Would you not agree with that?

13 THE WITNESS: So the fact that the -- an
14 individual's rating was going to be a factor
15 in their PUP allocation was part of the,
16 essentially, information that we had gotten.
17 And then I believe in one of the meetings
18 they just said, you know, everybody will get
19 a meets, so that's not really a
20 discriminator. So --

21 COUNCIL MEMBER SALEM: But you mentioned
22 here that part of your review was a
23 discussion of you getting a meets so that
24 you could participate in the plan. That was
25 a discussion between you and her during the

1 evaluation. I want to make sure we're real
2 clear here. I'm talking about lines 11
3 through 14.

4 THE WITNESS: So that was part of
5 the PUPs. I don't recall it being part of
6 the actual conversation with Melissa. We
7 didn't discuss the PUPs as part of it. That
8 was just known from the overall discussion
9 of the PUPs, like, oh, your level that you
10 get is going to be based on your rating and
11 then in the actual review, there wasn't any
12 discussion of PUPs.

13 COUNCIL MEMBER SALEM: Well, what you
14 just said conflicts with what's in this
15 document, because you said, I think there
16 was a part where everybody got a meets
17 because the level of participation, due to
18 that question.

19 So I'm just trying to establish there
20 was a discussion there and you and her had a
21 discussion about the PUP, and the meets
22 evaluation entitled you to buy PUPs.

23 THE WITNESS: Right. I understand the
24 question. I think the -- I think I possibly
25 just mixed in what we knew beforehand, which

1 is that I was part of the determination of
2 how many PUPs somebody would be eligible
3 for, is what was their rating with -- and
4 then Melissa said you're getting a meets.
5 That was clearly part of -- that is why that
6 was, because as I then added, she said I was
7 doing a really good job. So I maybe would
8 have expected an exceeds.

9 COUNCIL MEMBER SALEM: From that
10 discussion, do you believe she had knowledge
11 of the plan, the specifics of the plan, and
12 knew to give you a meet so that you could be
13 entitled to purchasing PUPs?

14 THE WITNESS: She certainly knew that
15 part of the determination of the -- what
16 somebody could get from PUPs depended on
17 their annual rating. I can't say how much
18 more than that she knew.

19 COUNCIL MEMBER SALEM: Okay. Let me
20 move on.

21 CHAIRMAN DIAMOND: Councilman Salem, not
22 to interrupt you, we're at 8:01. Give me an
23 idea, what do you got?

24 COUNCIL MEMBER SALEM: Two quick
25 questions.

1 CHAIRMAN DIAMOND: All right.

2 COUNCIL MEMBER SALEM: Thank you.

3 Part of the plan was to allow
4 nonemployees to buy into the -- to buy PUPs.
5 Are you aware of any discussion within JEA
6 where there was a discussion of which
7 nonemployees would be eligible to purchase
8 PUPs?

9 THE WITNESS: I don't recall the exact
10 discussion, but I was led to believe that
11 was referring to our OGC attorneys.

12 COUNCIL MEMBER SALEM: Anybody outside
13 of OGC?

14 THE WITNESS: Not that I'm aware of.

15 COUNCIL MEMBER SALEM: Last question,
16 Mr. Chair.

17 You mentioned your employee contract
18 that you've got. So you didn't request an
19 employee contract, that employee contract
20 was brought to you; is that correct?

21 THE WITNESS: Correct.

22 COUNCIL MEMBER SALEM: And did you have
23 anybody review that contract, your personal
24 attorney or anything or did you just sign
25 it?

1 THE WITNESS: I read it first and then I
2 signed it.

3 COUNCIL MEMBER SALEM: You didn't have
4 anyone from the outside review it?

5 THE WITNESS: No.

6 COUNCIL MEMBER SALEM: Were there any
7 parts of it that concerned you when you read
8 it?

9 THE WITNESS: No.

10 COUNCIL MEMBER SALEM: Thank you,
11 Mr. Chair.

12 CHAIRMAN DIAMOND: Okay. Councilwoman
13 Priestly Jackson, Councilman Ferraro, and
14 then we have business to take care of back
15 here and we can adjourn.

16 COUNCIL MEMBER PRIESTLY JACKSON: Thank
17 you, Mr. Chairman.

18 I just have one follow-up question.
19 Mr. McInall, you mentioned earlier that docs
20 in the data room at JEA had access -- some
21 had access to read only and some had access
22 to delete and read access. And you
23 mentioned that two outside consultants, JP
24 Morgan and Pillsbury, had this access, and
25 some at JEA.

1 Who determined the level and rights and
2 access in the data room? Who determined who
3 had read only? Who determined who had read
4 and delete? Who determined who just may
5 have had delete?

6 THE WITNESS: So just to clarify, a lot
7 of people had read. A smaller subset of
8 people also had write, because the whole
9 purpose was to fill up the data room, so
10 they had to have permission to insert a
11 document.

12 And then as far as delete privileges at
13 JEA, I know nobody had it, because people
14 would put in a document that was maybe the
15 wrong one or somebody -- the wrong format,
16 like it was in a CAD format that couldn't be
17 read outside our system, and nobody could
18 delete it. We had to email JP Morgan or
19 somebody to, Could you remove this document?

20 And it was late in the process, I think
21 it was after the data room was opened up for
22 the bidders and -- that I got a higher level
23 of access as far as read, write, and delete,
24 because that's what I had to have in order
25 to be able to -- there was a switch in there

1 where you could, like, see the data room as
2 somebody else sees it, so like view as
3 somebody from one of the bidders, and so to
4 make sure that a bidder wasn't seeing
5 documents that hadn't been open to the
6 bidders yet.

7 COUNCIL MEMBER PRIESTLY JACKSON: So let
8 me understand. You earlier stated before us
9 that you had read and delete access and
10 write?

11 THE WITNESS: And write, yes.

12 COUNCIL MEMBER PRIESTLY JACKSON: And
13 now write, you're adding. So my question
14 goes back to who determined who had read,
15 write, and delete access in the data room?
16 Who?

17 THE WITNESS: Probably me.

18 COUNCIL MEMBER PRIESTLY JACKSON: Thank
19 you.

20 THE WITNESS: Sure.

21 CHAIRMAN DIAMOND: Okay. Councilman
22 Ferraro, we're really late on time.

23 COUNCIL MEMBER FERRARO: I'm going to
24 stay right with the same questioning there.

25 So I wanted to know on the deleting

1 part, how can you tell if something has been
2 deleted?

3 THE WITNESS: Intralinks -- and I
4 haven't actually seen the report, but
5 Intralinks is supposed to have a report of
6 every document that went in and every touch
7 on it. And if a document used to exist in
8 there and was deleted, they have a record of
9 it.

10 COUNCIL MEMBER FERRARO: Is there a code
11 that you can track back to who deleted what?

12 THE WITNESS: Probably. I think every
13 touch is associated with a user.

14 COUNCIL MEMBER FERRARO: So you could
15 tell if you made a mistake on deleting
16 something that maybe went too far, you could
17 tell that you did that and you can go back
18 and fix it or you can tell if somebody else
19 did something; right?

20 THE WITNESS: Theoretically.

21 COUNCIL MEMBER FERRARO: Thank you.

22 CHAIRMAN DIAMOND: Councilman Dennis,
23 quickly please.

24 COUNCIL MEMBER DENNIS: Yes. Through
25 the Chair, so if you granted access, who all

1 did you give access to delete, write, and
2 read, if you were the grantor.

3 THE WITNESS: So --

4 COUNCIL MEMBER DENNIS: Let me be
5 specific: In the senior leadership team.

6 THE WITNESS: I think -- so I had it. I
7 would have to check -- I don't think anybody
8 else had it on the senior leadership team.
9 But, you know, the banks could also grant
10 access, and I don't know if they did it or
11 not. But I'm pretty sure I was the only one
12 as far as the higher level that could delete
13 documents and have that ability to kind of
14 look at what's in the data room as if you
15 were a different user.

16 And that was really the purpose. We
17 were trying to verify that nothing was being
18 released to the bidders that shouldn't be,
19 that was the reason for that level of
20 access.

21 CHAIRMAN DIAMOND: Maybe a good question
22 is, Is there a document that says who has
23 access, who had access, when it was granted,
24 that kind of thing?

25 THE WITNESS: It's a report that you can

1 run on the Intralinks site. Sean Eades (ph)
2 has all the Intralinks information now.

3 CHAIRMAN DIAMOND: I'll talk to our
4 special counsel. That's a request we need
5 to make to figure that out.

6 Okay. Mr. McInall, I have no one else
7 in the queue. We will end the hearing
8 today. Thank you for appearing, appreciate
9 your service to the city. Again, as I've
10 said to every witness, but in particular
11 those ones working at JEA, if ever you feel
12 that, because of your testimony here today,
13 you're not being treated fairly, you have
14 many rights outside of this Committee, but
15 we would like to know because we find that
16 totally unacceptable. Does that make sense?

17 THE WITNESS: Yes. Thank you.

18 CHAIRMAN DIAMOND: Thank you for your
19 time.

20 And if we have nothing else, I'll call
21 this meeting adjourned.

22 (Meeting adjourned at 8:08 p.m.)

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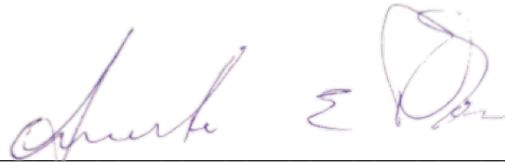
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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Amanda E. Robinson, Registered Professional Reporter, Notary Public, State of Florida certify that Michael Brost and Steven McInall personally appeared before me on this 9th of March, 2020, and was duly sworn.

WITNESS my hand and official seal this 20th day of April, 2020.



Amanda E. Robinson, Registered Professional Reporter, and Notary Public, State of Florida
My Commission No.: GG288898
Expires: January 6, 2023

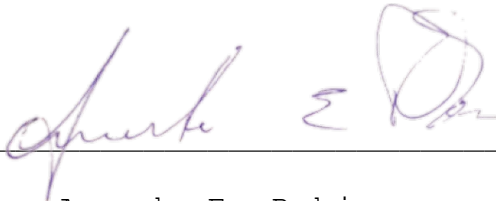
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CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF DUVAL

I, Amanda E. Robinson, Registered
Professional Reporter, do hereby certify that I
was authorized to and did report the foregoing
proceedings; and that the transcript, pages 1
through 173, is a true record of my stenographic
notes.

DATED this 20th day of April, 2020.



Amanda E. Robinson,
Registered Professional Reporter