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JACKSONVILLE CITY COUNCIL
SPECIAL INVESTIGATORY COMMITTEE ON JEA MATTER

INTERVIEW OF
G. ALAN HOWARD

DATE TAKEN: Tuesday, August 18, 2020

TIME: 10:01 a.m. to 4:51 p.m.

LOCATION: Smith Hulsey & Busey
One Independent Drive
Suite 3300
Jacksonville, Florida 32202

Examination of the witness taken before:
Terrie L. Cook, RPR, CRR, FPR, and a Notary Public

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1 before we start, just to confirm about the
2 attorney/client privilege waiver?

3 MR. BUSEY: Yes. Go ahead.

4 MR. LINDSEY: My name's Warren Lindsey. I
5 represent Alan Howard. Your office had graciously
6 previously provided us a written waiver
7 attorney/client privilege for any communications or
8 correspondence or anything that would constitute
9 attorney/client work product privilege for JEA
10 concerning Alan Howard.

11 And I just wanted to confirm that that applies
12 to all the attorneys, all the questions, all of the
13 communications here today.

14 MR. BUSEY: That's correct.

15 MR. LINDSEY: Thank you. Thank you for
16 allowing me to do that.

17 A I believe --

18 Q Go ahead.

19 A I believe I was appointed in -- in 2017,
20 perhaps the spring or summer.

21 Q By whom?

22 A At -- my name was submitted by Mayor Lenny
23 Curry and then approved by city council.

24 Q And what was the first conversation you recall
25 you had with him regarding your service or prospective

1 service on the JEA?

2 A I received a telephone call from Tom Petway,
3 who is a longtime client and personal friend of mine.
4 He asked if I could hold while he conferenced in
5 Mayor Curry. I said, Yes. He did.

6 And my recollection is that Mayor Curry said
7 something to the effect of Mr. Petway had suggested I
8 would be a good candidate to serve on the board of JEA
9 and would I be willing to do so. And I answered in the
10 affirmative.

11 Q When was that call?

12 A It would have been spring of '17, immediately
13 prior to the mayor submitting my name to city council.

14 Q Spring of 2017?

15 A That's my recollection.

16 Q And you think that your appointment was roughly
17 in the spring of 2017?

18 A That's my recollection.

19 Q Had you ever talked to the mayor prior to that
20 telephone conversation?

21 A Yes, but not about JEA.

22 Q In what kind of circumstance?

23 A He and his partner and their business were also
24 clients of my firm.

25 Q Who is his partner to whom you're referring?

1 A Todd Froats, F-r-o-a-t-s.

2 Q And what business was that?

3 A ICX. They provided services in IT technology,
4 workers, on a contract basis and maybe some consulting
5 as well.

6 Q The name of the company, was that ICX?

7 A ICX.

8 Q And who are the principals to your knowledge?

9 A The shareholders were Mayor Curry and Todd
10 Froats.

11 Q And how long -- when did you begin that
12 representation?

13 A I -- I do not recall. Prior to the mayoral
14 election where Mr. Curry became mayor.

15 Q In '15?

16 A I -- I don't recall. Longer than that. It
17 would have been two or three years, three or four years
18 prior to the mayoral election.

19 Q And was your contact with ICX principally with
20 Todd or principally with the mayor?

21 A Principally Todd. And then after the
22 election, but before he took office, I worked with both
23 the mayor and Mr. Froats on a redemption of the mayor's
24 interest.

25 Q In ICX?

1 A In ICX, yes.

2 Q And so by the time he got elected, just give me
3 some feel for how -- how close a relationship you had
4 with the mayor. Personal, business, how close you were,
5 how often you talked to him, give me an idea.

6 A Mostly business. We were not personal friends.
7 We did attend the same church; Southside United
8 Methodist. And so we would see each other there. We
9 knew each other well enough to speak, but we didn't go
10 out to dinner with one another.

11 My wife and his wife did mission trips together
12 and perhaps a women's Bible study together.

13 Q And so when Tom Petway mentioned your name to
14 Mayor Curry as a potential nominee to JEA, the mayor
15 would have known who you were?

16 A Yes. I believe so.

17 Q And when was the first time that you recall
18 having any discussion with Tom Petway or Mayor Curry
19 regarding the sale or privatization of JEA?

20 A It would have been prior to my becoming Chair
21 so fall of '17 perhaps. And I became aware of it as a
22 result of being summoned to a meeting with Sam Mousa
23 and Mike Weinstein, also attended by Paul McElroy. I
24 believe it was just the four of us. I don't believe
25 the mayor was in attendance. And being advised that

1 Exelon had expressed an unsolicited interest in
2 acquiring JEA.

3 Q When was that meeting?

4 A I -- I don't have any notes of that meeting.
5 There was no calendar invite, so I'm purely going by
6 recollection. It would have been in the fall of '17.

7 Q And what happened at that meeting?

8 A Well, I think I was just advised about the
9 discussions taking place at -- I never saw a written
10 letter of intent, if there indeed was one. And it -- it
11 was a brief meeting. I don't -- I don't recall that
12 there were any decisions made at the meeting. I think
13 it was more in the nature of apprising Mr. McElroy and
14 myself of the unsolicited interest from Exelon.

15 Q So Sam Mousa and Mike Weinstein were apprising
16 you and Paul of that interest?

17 A Yes.

18 Q And so what came of the meeting?

19 A To my knowledge, nothing. If there were
20 further discussions with Exelon, I was unaware of them,
21 but -- but I never heard anymore about it.

22 Q Did -- in that meeting, did you perceive -- or
23 what did you perceive regarding Sam or Mike's interest
24 in Exelon's offer?

25 A Purely my perception, I'm not sure that they

1 stated any active support for the unsolicited offer, but
2 my perception was that it was something they were
3 receptive to, interested in continuing the discussions
4 perhaps.

5 Q And -- and I think in -- this is in response to
6 my question, this is the first time you remember having
7 any discussion with anybody about the sale of JEA?

8 A Yes.

9 Q Okay. When did you become Chair of JEA?

10 A Again, I should have refreshed my recollection.
11 I've got a nice little plaque in my office that sets
12 forth all of these dates and I simply don't recall. It
13 would have been in the early spring of -- or early in
14 2018, I believe. Maybe it was December of '17. I don't
15 have a precise recollection.

16 Q And I forget, did I ask you this question:
17 When did that meeting with Sam and Mike about Exelon
18 occur?

19 A It would have been in the fall of '17. I was
20 not Chair yet, I don't believe.

21 Q If you weren't Chair yet, do you recall why you
22 were asked to go to that meeting?

23 A I think I had been tabbed as the successor. My
24 recollection is that the Chair was Tom Petway. He
25 announced that he was stepping down as Chair. The vice

1 Chair was Ed Burr. Mr. Burr may have governed for one
2 meeting or had a very limited tour as Chair. And a
3 question was raised about whether or not he was in
4 breach of some state statute that prohibited service
5 with two different state agencies. And he was also
6 Chair of the board of trustees at Florida State
7 University.

8 Not sure I agree with that legal analysis, but
9 in any event, Mr. Burr said between service on the JEA
10 board and service on the FSU board of trustees, I'll
11 resign from JEA.

12 Q True Seminole.

13 A I wish I would have been given that
14 opportunity.

15 Q True Seminole, huh.

16 A Yes. I think he -- and his son was --
17 graduates with extra assignments diploma. It's a sweet
18 moment.

19 At some point thereabouts, I was tapped to be
20 the -- the vice Chair and I believe it was in that
21 connection with that that I was invited to the meeting
22 with Paul.

23 Q And you say "thereabouts," we're talking about
24 in the fall or late '17?

25 A Mr. Busey, I wish that I had gone back and

1 refreshed my recollection on the exact timeline of my
2 tenure in various positions, but that is my best
3 recollection.

4 Q Okay. And that's all we can do this morning.
5 These are all knowable dates.

6 A They are.

7 Q And I'm just trying to get a context.

8 A Sure.

9 Q Did you talk to Tom Petway regarding your
10 meeting with Sam and Michael about Exelon?

11 A I did not. We were both on the board at that
12 time. And that would have been a violation of the
13 sunshine law, as I understand it.

14 Q So you don't have -- okay. Do you have any
15 recollection at any time of talking to Tom Petway about
16 the sale of JEA?

17 A None.

18 Q The meeting with Sam and Michael regarding
19 Exelon, where did the meeting occur?

20 A Let me amend my prior statement. I believe I
21 had a discussion with Mr. Petway after he was off the
22 board and after the mayor, in March or April of '18,
23 said he wasn't going to submit any legislation to city
24 council on a privatization.

25 At some point thereafter because I also served

1 as counsel to Mr. Petway's company here in town, or
2 several of his companies, he and I had a discussion.
3 And in passing, lamented the fact that there had not
4 been a more thorough discussion regarding the sale.

5 So that would have been the only occasion that
6 he and I had a direct discussion regarding the sale of
7 JEA. And it was after the mayor sort of put a period on
8 that first round of discussions.

9 I'm sorry, in answer to your second question
10 regarding where the meeting took place, it was in the
11 offices of -- I can walk to it in the mayor's office, it
12 was either Sam Mousa's office or Mike Weinstein's
13 office. It's currently Brian Hughes' office so it's
14 that -- that room.

15 Q But it was -- it was in City Hall?

16 A It was.

17 Q You're telling me about your conversation with
18 you and Tom after he was no longer on the board and that
19 you were lamenting. What were you lamenting?

20 A I'm sorry, he was lamenting.

21 Q What was he lamenting?

22 A The fact that there had not been a more robust
23 discussion of the opportunity, to my recollection.

24 Q Is it fair to infer from that that he thought
25 that the sale of JEA was a good idea?

1 A Well, I think his statement to the board in
2 November of '17 that it was time to have the discussion
3 would lead to the inference that he certainly -- not
4 inference, he said, I think we should have this
5 discussion. And he lamented that the discussion -- a
6 more robust discussion did not take place.

7 Q And your conversation with him to that effect
8 was in -- when, in what context?

9 A It would have been after he was off the board,
10 after the mayor had, again, put a period on the
11 discussion regarding privatization. And my recollection
12 was that was March of '18, perhaps April of '18. A
13 knowable date when the mayor made his statement.

14 Q Well, do you recall -- we'll get to that.
15 We'll have the dates.

16 But do you recall that there was a meeting of
17 the board of JEA in May in which the board resolved not
18 to pursue privatization?

19 A I do recall. It would have been after the
20 mayor's statement and I think in attempt to calm some
21 unrest amongst the employees. There had been a robust
22 effort or -- or showing of opposition to any sale by the
23 unionized work force of JEA. And so I -- I thought it
24 was appropriate, I believe, on a motion by Husein Cumber
25 to have the board say the same, that they would -- they

1 were not entertaining discussions around the sale,
2 whatever the wording of that motion was.

3 Q And that was passed unanimously by the board?

4 A To my recollection, yes.

5 Q In the minutes of the November 28, 2017, board
6 meeting, under the portion that says Chair's report,
7 the -- it says, The Chair -- Chair, that's you -- in
8 November of '17 --

9 A Oh, my gosh.

10 Q -- yielded his time to Mr. Petway. Mr. Petway
11 announced that this meeting would be his last and shared
12 thoughts on his time with JEA, including it was then one
13 of the best experiences of his life. Mr. Petway offered
14 observations and one recommendation for review.

15 The observations are as follows: Number 1,
16 JEA is at or very near the peak performance.

17 Do you agree with that statement in November of
18 '17?

19 A Yes. I -- I think I still agree with that
20 statement.

21 Q Number 2, JEA has great assets which are
22 operated by exceptionally talented people.

23 Do you agree with that?

24 A I do.

25 Q Number 3, JEA has significantly improved the

1 balance sheet over the past year.

2 A I agree.

3 Q Let me show you a document, which we'll mark
4 for our purposes --

5 A I have it.

6 (Howard Exhibit 1 was marked for
7 identification.)

8 Q Oh, you have it. Well, here.

9 A A very efficient paralegal who has your
10 exhibits bound for me.

11 Q Which you only received yesterday. I'm
12 impressed. Can you give me her name?

13 A I don't want you hiring her away. You'd pay
14 her more.

15 Q What I'm showing you is a request for Proposals
16 to Provide Strategic Initiatives Financial Advisory
17 Services to the City of Jacksonville. And the issue
18 date of the RFP is December 20th, 2017. The proposal is
19 due January 15, 2018.

20 Are you familiar with this document?

21 A I don't believe I've ever seen it until
22 yesterday. If I had, I did not recall it.

23 Q Apart from having seen it, were you aware that
24 the City had issued such an RFP in December of '17?

25 A My -- I believe that following the November

1 2017 meeting where Mr. Petway made the remarks that you
2 previously noted, there was a direction given to the
3 management -- my letter, directing the management of
4 JEA, principally Mr. McElroy, to pursue an investigation
5 of -- of value so that we could have a discussion. I'm
6 not sure if that letter was in your exhibits. It was in
7 my production.

8 And I may have had some understanding that
9 there would be a request for proposal similar to this,
10 but I -- I can't say that I provided any direction or
11 knew exactly what would be in it. And I don't believe
12 I've ever seen it.

13 Q And you see that it came from the City, not
14 from JEA?

15 A I do see that.

16 Q And you -- you were Chair at this time, weren't
17 you?

18 A I was.

19 Q All right. And you're telling me, I'm taking
20 it from your conversation, that Mike Weinstein, who
21 issued this, did not ask you about it?

22 A We did not have any discussion about this RFP,
23 no, sir.

24 Q And look at page 3 of the RFP and under
25 submission requirements, it refers to two entities to

1 whom submission should be made. One is PFM Financial
2 Advisors, LLC. And the other is Public Financial
3 Management, Inc.

4 Are you aware of the distinction between those
5 two financial advisors?

6 A I am not. I'm familiar with PFM and one of
7 their directors, Michael Mace, but I am not aware of the
8 distinction between the two entities.

9 Q Are you aware that one was an advisor to the
10 City and one was an advisor to the JEA?

11 A I was not.

12 Q You see under the Roman numeral IV, under
13 questions, on that same page 3, any questions regarding
14 this request for proposal should be directed in writing
15 to the City's consultant, Public Financial Management.

16 A I see that. I was not aware of that.

17 Q Do you know why the City, in asking for
18 proposals, would have them submitted to an outside
19 advisor rather than to the City?

20 A I do not. I could speculate, maybe for
21 sunshine reasons.

22 Q Go ahead and speculate. I would invite your
23 speculation.

24 A I would speculate there was an effort to shield
25 the responses from sunshine being records producible

1 under Florida's sunshine laws and open reference laws.

2 Q And authored by Mr. Weinstein?

3 A I don't know who authored the RFP.

4 Q Or whoever authored the RFP?

5 A That would be my speculation.

6 Q And just so the record is clear, you -- if I
7 recall correctly your testimony, you don't have any
8 recollection of talking to anybody in the
9 administration, including Michael Weinstein, regarding
10 the City's issuance of this RFP in December of 2017?

11 A I have no such recollection.

12 Q Do you have this document, which we've marked
13 as Exhibit 3?

14 A I do.

15 (Howard Exhibit 3 was marked for
16 identification.)

17 Q Which is a payment request dated -- a payment
18 request on JEA letterhead, dated September 19, 2018.
19 And it's a payment request, payee -- proposed payee's
20 name is Public Financial Management, Inc. And it asks
21 for payment of \$86,000 for time devoted by Public
22 Financial Management personnel from December '17 --
23 December 2017 through February of 2018.

24 Have you seen this payment request before?

25 A I have not.

1 Q Do you know why Mr. Mace went to work for JEA
2 in December -- on December 20th, 2017?

3 A I -- I do not. I believe that it was in
4 response to initially the statement by Mr. Petway at the
5 November board meeting and my follow-up direction to
6 Mr. McElroy to engage in a valuation to facilitate a
7 discussion around the issues raised by Mr. Petway.

8 Q Well, you see that the RFP we've been referring
9 to was issued on December 20th?

10 A I do.

11 Q You see the first time entry for Michael Mace,
12 as managing director, was on December 20th?

13 A I do.

14 Q And on December 20th, he recorded two hours for
15 \$650 an hour. And the description for his time was
16 discuss potential JEA evaluation for the board.

17 Was that a discussion with you?

18 A It is not.

19 Q Do you know who it was?

20 A I -- no, sir.

21 Q And are you familiar with the services Public
22 Financial Management performed for JEA that are billed
23 for in this statement?

24 A I saw their work product, the -- the report
25 they produced and -- and I take it evidenced by these

1 time entries.

2 Q And the report they produced was the
3 valuation?

4 A Yes. I'm not sure of the exact title of their
5 report.

6 Q But it was a valuation that you-all requested
7 from Public Financial Management --

8 A Yes.

9 Q -- at the instance of Tom Petway?

10 A And my subsequent direction to Mr. McElroy,
11 yes.

12 Q Can you help me understand why the RFP was
13 issued by the City and the services were billed and paid
14 for by JEA?

15 A I cannot. I do not know why that was
16 structured as an RFP from the City.

17 Q And when you say you do not know why that was
18 structured as an RFP from the City, that refers to the
19 RFP that was dated December 20th, 2017 --

20 A Yes.

21 Q -- which you said you've never seen before?

22 A Correct.

23 Q And you don't recall talking to Mike Weinstein
24 about it?

25 A I do not.

1 Q But you were aware that Public Financial
2 Management performed these services and sent this bill?

3 A Well, I've never seen the bill. I knew that
4 they were performing the services and I assumed it was
5 not gratis.

6 Q With whom, if anyone, do you remember talking
7 about Public Financial Management services as reflected
8 in this bill?

9 A Mr. McElroy and I certainly discussed PFM and
10 the services they would provide. My recollection is
11 that Mr. McElroy told me PFM had done work for JEA
12 previously and perhaps was already an approved vendor
13 for JEA. I don't recall him saying that they also did
14 work for the City. He may have. I don't recall that.

15 And my recollection is that he described them
16 as not just a current vendor, but possessing the
17 expertise necessary to provide the valuation and could
18 do it most efficiently because they were already
19 familiar with JEA. Ms. Dykes may have participated in
20 those discussions. It was not unusual for me to meet
21 with Mr. McElroy and -- and others may join, for
22 example, Ms. Dykes or -- for financial matters or some
23 other member of the senior leadership team, depending on
24 the subject of our discussion. So I may have discussed
25 PFM with others at JEA besides Mr. McElroy, but I don't

1 recall any discussions with Mr. Weinstein about PFM.

2 Q You were Chair of JEA from approximately the
3 fall or late 2017 through July of 2018?

4 A No. I believe I stepped down as Chair February
5 of 2019. I stayed on the board for a few meetings after
6 that, but February, I believe, was my last meeting as
7 Chair.

8 Q We'll get to that.

9 A Knowable dates, that's -- that's my
10 recollection.

11 Q Do you have what we marked as Exhibit 6?
12 (Howard Exhibit 6 was marked for
13 identification.)

14 A I'm sorry. Can you tell me what that is?
15 Exclusive: Investigation.

16 Q Yes.

17 A Yes.

18 Q This is a news publication by First Coast News
19 in March of '18. And it reports that in March that in
20 interviews with First Coast News, Jacksonville mayor
21 Lenny Curry has made his message clear when it comes to
22 the potential sale of JEA, quote, "There is no deal to
23 sell JEA right now," closed quote, he said.

24 You would agree with that statement, wouldn't
25 you, at that time?

1 A Yes. At that time I do not think there was any
2 deal to sell JEA.

3 Q And so why are the city council members so
4 upset? They've been so concerned with transparency that
5 the special committee on JEA passed a motion Thursday to
6 require everybody to put under oath Sam Mousa, Chief
7 Administrative Officer for the mayor, and Paul McElroy,
8 the CEO of JEA, refused to be put under oath.

9 The council will now be serving Mr. McElroy
10 with a subpoena to appear before the committee on March
11 29th.

12 Do you recall your discussions with Paul
13 McElroy regarding his refusal to be put under oath by
14 city council?

15 A I don't have a specific recollection of any
16 discussion with McElroy regarding his objection to be
17 placed under subpoena. Of course I knew it was going
18 on, but I don't recall counseling him one way or the
19 other.

20 Q Do you remember if he told you why he did not
21 want to be put under oath?

22 A Mr. Busey, I -- I recall that we had a -- a
23 discussion around the issue at that time. I don't
24 recall if he articulated his reasons to me. I -- I
25 simply -- he may or may not have. I simply don't

1 recall.

2 Q Well, what -- what's your recollection of the
3 state of affairs in terms of the JEA and the city
4 council about the sale of JEA at this time in the spring
5 and March of 2018? There was a little turbulence going
6 on with the Crescimbin committee.

7 A Sure.

8 Q I'm just curious as to your perspective.

9 A I said earlier that after this initial effort,
10 November '17 to March of '18 regarding investigative
11 potential sale, that there was a lot of robust
12 opposition from the unionized work force. My
13 recollection at -- from -- from that time was we should
14 have had an opportunity to engage in a community
15 discussion regarding the merits of a potential
16 privatization and I don't think that ever happened. I
17 don't believe that ever happened.

18 I think that there was some animosity between
19 then City Council President Anna Brosche and the mayor's
20 office. I'm not sure I can speak to the source of that
21 animosity, but there was some very evident tension. I
22 think city council felt excluded from the discussion for
23 whatever reason. I think there was a large community --
24 together with the robust union opposition, there was a
25 large community outcry around the potential sale of a --

1 what some characterized as a prized community asset.

2 And I remember a sense of frustration that we
3 weren't able to control the narrative or steer the
4 narrative towards a -- a reason, discussion about pros
5 and cons. I believe Mr. McElroy shared that
6 frustration. That's just my recollection and perception
7 from our conversations. I think he felt unfairly
8 targeted in city council meetings. That's sort of my
9 recollection of the atmosphere surrounding the
10 discussion at that time.

11 Q On -- in that same exhibit we're talking about,
12 down on page 2, it says that, The mayor's office says
13 these RFP bids were for Jacksonville's infrastructure,
14 like, bridge, roadways, the seaport and airport.
15 However, the mayor's office says no public records exist
16 to support these claims.

17 The mayor's office is -- does emphasize that
18 the RFP was not meant for JEA, something council auditor
19 Kyle Billy contradicts in this e-mail to council staff.
20 Quote, "The RFP appears to request financial advisory
21 services that would be needed to solicit bids and
22 purchase JEA, evaluate those bids, assist City staff in
23 negotiations and to assist in bringing the transaction
24 to financial and commercial close."

25 That was Billy Kyle. And then the mayor's

1 office went on to contradict Billy Kyle's statement.

2 Are you aware of that dispute at the time?

3 A I had not seen the RFP so I wasn't really able
4 to discern who might have been more accurate in their
5 characterization of the RFP. I would have read about
6 this at the same time. I may have asked Mr. McElroy
7 about it, but I don't have a specific recollection.

8 Q And then on the fourth page of that same
9 article, it reports in January, Mace returns to JEA on
10 the 23rd of January and then again the 24th, but this
11 time he's joined by Mike Weinstein, the CFO for Mayor
12 Curry and a senior leadership team from a banking
13 investment firm called Moelis.

14 Immediately after their meeting, the Moelis
15 team heads over to City Hall for a meeting with Mayor
16 Curry.

17 Do you know who Moelis is?

18 A I don't recall that name, no.

19 Q You don't know who -- what that entity is?

20 A I do not.

21 Q You don't recall meeting with them?

22 A I do not. They may have been present at the
23 airport meeting on -- is it January 24th -- but I -- I
24 don't have a specific recollection of meeting anyone
25 from the Moelis firm.

1 Q And then it goes on to say, Two days after the
2 Moelis meeting, mayor's chief of staff, Brian Hughes,
3 meets with Greg Black, a government affairs consultant
4 lobbyist. His firm specializes in regulated industries
5 like utility companies.

6 After their meeting Hughes and Weinstein visit
7 JEA together to meet with JEA's chief financial officer.
8 One hour later they meet with JEA's Board Chair, Alan
9 Howard.

10 Do you recall that meeting?

11 A Not specifically, no. So the -- let me try and
12 follow the timeline. That would have been January 26,
13 two days after the Moelis meeting. Looks like it adds
14 up to January 26. I don't have a specific recollection
15 of that meeting, no.

16 Q Well, having Hughes and Weinstein come and
17 visit you as Chair of JEA in JEA's office two days after
18 the airport meeting would have been probably a pretty
19 significant meeting, wouldn't it?

20 A I -- I don't -- I don't recall this -- quite
21 frankly, I don't recall specifically sitting down with
22 Mr. Hughes and Mr. Weinstein in January of '18. I do
23 recall the airport meeting. And this would have been in
24 the midst of the PFM valuation efforts. I think they
25 issued their report in February of '18. So I'm not

1 surprised that we were having meetings or discussions.
2 I simply don't recall specifically meeting with them or
3 what would have been discussed.

4 Q Look at Exhibit 7, which is an e-mail from
5 Melissa --

6 A Uh-huh.

7 (Howard Exhibit 7 was marked for
8 identification.)

9 Q -- Charleroy.

10 A Yes.

11 Q Do you have that?

12 A I do.

13 Q And this talks about the meeting, a JEA
14 meeting, January 24th, at 12:00 p.m. Location is
15 Jacksonville International Airport.

16 What was the purpose of that -- first of all,
17 do you recall who was at that meeting?

18 A I do not recall specifically all of the
19 attendees. I do know that I was in attendance.
20 Mr. McElroy was in attendance. I believe Ms. Dykes was
21 in attendance. There were representatives from Morgan
22 Stanley. I believe Mr. Mace from PFM was in attendance.
23 There were probably a dozen people in the room. And
24 while introductions were made, I -- I didn't collect
25 business cards and I don't recall all the names. But I

1 do remember the meeting, yes.

2 Q What was the purpose of the meeting?

3 A Purpose of the meeting was to discuss, as I
4 recall, valuations around JEA and process and timelines
5 in the event a decision was made for the sale of JEA is
6 my rough recollection. I believe there were handouts,
7 but they were collected at the end of the meeting.

8 Q Who chaired the meeting or conducted the
9 meeting?

10 A I -- I don't know. It was a roundtable. I
11 don't know that there was anyone who was particularly in
12 charge. Mr. Mace or Mr. McElroy may have made the
13 introductions and yielded the floor to various
14 representatives, but I don't recall that anybody was
15 particularly in charge. Wasn't me.

16 Q Why was Morgan Stanley there?

17 A I believe there was a preexisting relationship
18 between JEA and Morgan Stanley is my recollection,
19 similar to the PFM relationship. I -- I seem to recall
20 that they were on our team of bankers. J.P. Morgan,
21 Morgan Stanley had previously provided services for JEA
22 is my recollection or understanding.

23 Q All right. You -- you see in that e-mail to
24 which I'm referring that it suggests on the second page
25 that there were five people from Moelis there at that

1 meeting.

2 A Get the members -- the names of the team
3 members. I see the e-mail where Mr. Mace is asking for
4 names of team members from Scott DeGhetto and he gives
5 team meeting -- team members' names. I -- I don't
6 specifically recall meeting any of those individuals,
7 but they certainly could have been present.

8 Q You just don't have any idea who Moelis is?

9 A No.

10 Q Even though they had five people at this
11 meeting?

12 A If they had five people -- or it looks like
13 four maybe, if the fifth one was attending by phone,
14 they didn't register. No offense to them. I don't
15 remember them.

16 Q Whose meeting was this? Was it the City's
17 meeting or JEA's meeting?

18 A Well, I don't know who called and organized the
19 meeting, if it was JEA or the City or PFM acting at the
20 direction of either JEA or the City. I do recall that I
21 think Mr. Weinstein was present at that. I don't recall
22 if Mr. Mousa was also present at that meeting.

23 Q Do you recall whether Brian Hughes was
24 present?

25 A I have no recollection.

1 Q Well, you see that Melissa Charleroy -- am I
2 pronouncing that right?

3 A I believe so. Charleroy.

4 Q Charleroy. She is Paul McElroy's assistant at
5 the time?

6 A She is -- was.

7 Q And so she -- and she was apparently organizing
8 this meeting?

9 A Well, she was certainly giving information out
10 about the meeting, yes.

11 Q And she works for Paul, who reported to you?

12 A He reported to the board, yes.

13 Q And you must have talked to him about this
14 meeting?

15 A I believe I was invited to the meeting. I'm
16 not sure that I -- I did not give direction to
17 organizing the meeting. And I don't know that we had
18 any discussions in advance of the meeting, other than to
19 ask if I could attend and this would be the general
20 topic of discussion.

21 Q Okay. Well, this -- it seems to me and I'm
22 curious of your reaction, if you're Chair of the JEA and
23 this is a meeting of pretty high level people from both
24 JEA and the City to meet with pretty high level outside
25 advisors regarding the sale of JEA, that you would

1 remember that meeting. It's a pretty significant
2 meeting, isn't it?

3 A I remember the meeting clearly.

4 Q Why was it offsite? Why was it at the
5 airport?

6 A I don't know that anyone ever stated that it
7 was offsite to -- for any particular reason, but I -- I
8 think I assumed that because people were flying in for
9 that meeting that day that it was easier to have it at
10 the airport than have people spend an hour of their time
11 traveling downtown and back.

12 Q That's an assumption on your part?

13 A It is.

14 Q Nobody asked you where the meeting should be?

15 A They did not.

16 Q Who do you think would have made that decision?

17 A I -- I don't know. I mean, I could speculate
18 it was Mr. McElroy or Mr. Weinstein.

19 Q Could have been either?

20 A Could have been either. Could have been
21 requested by the attendees who were flying in.

22 Q Look at what we've marked as Exhibit 8, which
23 is an e-mail from William Pedersen at Morgan Stanley.

24 A Yes.

25 (Howard Exhibit 8 was marked for

1 identification.)

2 Q And it sends a letter to -- an e-mail on the
3 25th, that was the day after the meeting at the
4 airport?

5 A Yes.

6 Q To Ryan Wannemacher, who was the director of
7 financial planning and analysis of JEA. And he says:
8 Ryan, great to meet you in person. Hopefully, your team
9 found the meeting helpful. From our side, it looked
10 like a constructive conversation. Will be interested to
11 see how the meeting -- whole situation shakes out.

12 On another note, I realize Paul asked if we had
13 completed a historical allowed equity to capitalization
14 and allowed ROE on water comps. We did not have
15 precedent rate increases for water so the 10.25 percent
16 was an assumption on our end. As he alluded to, it is
17 impossible -- it is possible if the JEA water were to go
18 in front of the PSC for a rate increase, they would get
19 a lower return, but we do feel that it would be in the
20 ballpark.

21 Have a great day and feel free to reach out.

22 Do you remember Morgan Stanley at the meeting?

23 A I do. I think I said that earlier.

24 Q And what was his role?

25 A I don't specifically recall Mr. Pedersen. He

1 may have been one of the presenters or speakers on
2 behalf of Morgan Stanley. But, again, my recollection
3 is that that meeting involved discussions around
4 valuation, process and timeline for possible sale of
5 JEA.

6 Q I'm -- I'm interested in your adding -- I got
7 the valuation and then you added process and sale for
8 the possible sale of the JEA. Where did that come from?
9 Was that simply Tom Petway's expression of interest at
10 the end of November or was there further discussion
11 since Tom left the board about selling JEA?

12 A Well, the comments from Mr. Petway were in the
13 vain of have we reached peak asset value and optimum
14 efficiency at JEA that would merit a sale of the
15 City-owned asset. So I think from the inception of the
16 discussions at that November meeting, it was not limited
17 to valuation, but valuation of the context of a
18 potential sale.

19 Q Look at Exhibit 9, which is another e-mail from
20 Melissa Charleroy, dated Tuesday, January 23.

21 A Uh-huh.

22 (Howard Exhibit 9 was marked for
23 identification.)

24 Q Attendees. Mousa, Hughes, Weinstein, Alan
25 Howard, Melissa, Paul.

1 Is it fair to assume that this is a list of the
2 people who are going to attend the meeting on the 24th
3 on behalf of JEA and the City?

4 A Yes, that was certainly the list of proposed
5 attendees as of the 23rd. I -- I have a clear
6 recollection that I was there, Ms. Dykes was there,
7 Mr. McElroy was there, Mr. Weinstein was there. I don't
8 have a specific recollection that Mr. Mousa and
9 Mr. Hughes were there, but they certainly could have
10 been. I just don't recall them.

11 Weinstein was CFO of the City so I think he
12 had a more active role. I don't recall the titles of
13 Mr. Hughes and Mr. Mousa at that time.

14 Q Just in case I forgot to ask you, at this
15 point in time on January 24th, had you ever had a
16 conversation with Mr. Mousa or Mr. Hughes regarding the
17 sale of JEA?

18 A Well, I would certainly have had a discussion
19 in '17 regarding the Exelon offer or expression of
20 interest. I don't know that it ever got to a -- a
21 dollar offer or letter of intent, but the expression of
22 interest. And I think we had previously -- no, the -- I
23 don't recall if there had been any prior discussions
24 with those individuals before January 24th, the airport
25 meeting.

1 Q By you, regarding the City?

2 A By me, I'm sorry. I don't recall if I had any
3 discussion with those individuals, other than the Exelon
4 meeting.

5 Q Do you recall what role Michael Weinstein
6 played at the meeting, what he said or did?

7 A I -- I don't have a specific recollection of
8 him leading the meeting, but I have a vague recollection
9 that he asked questions.

10 Q Was he -- did he appear to be interested in the
11 sale of JEA?

12 A I -- I couldn't say that. There -- there were
13 questions back and forth. It was -- it was definitely a
14 discussion. There were some presentations made by the
15 bankers. Had questions asked by the City and JEA
16 representatives.

17 Q Look at Exhibit 10 that we've showed you.

18 A February 1, '18.

19 (Howard Exhibit 10 was marked for
20 identification.)

21 Q Yes.

22 A Okay.

23 Q I want you to tell your paralegal how grateful
24 I am for her.

25 This is an e-mail from -- or a memorandum

1 from Joey Greive, Treasurer of the City of Jacksonville,
2 to Mike Weinstein, the Director of Finance and
3 Administration, CFO. And it's dated February 1, 2018,
4 or just shortly after the 24th meeting.

5 And it says, the City recently solicited
6 proposals from qualified firms to serve as financial
7 advisor for strategic initiative opportunities. The
8 purpose of the request for proposal was to select a team
9 of advisors qualified to serve complex advisory services
10 relating to market analysis and so forth.

11 The -- and the next paragraph, The RFP yielded
12 responses from seven firms. A committee of reviewers
13 independently scored each response in accordance with
14 the criteria set forth in the RFP. Based on the results
15 of the review and scoring, four firms were selected to
16 serve on the City's strategic initiatives financial
17 advisory team for a period of three years.

18 The four firms were J.P. Morgan, Golden
19 Sachs -- Goldman Sachs, Morgan Stanley and KPMG.

20 Were you aware that those four firms were
21 selected by the City in response to the December 20th,
22 2017, RFP?

23 A I -- I've never seen this document and -- and I
24 don't recall if the results of that RFP were ever shared
25 with me. It's possible, but I have no recollection of

1 it.

2 Q So I think you just said you -- you -- you are
3 unaware of these four firms being selected by the City
4 in response to the RFP?

5 A Pursuant to this RFP, that's correct. I do
6 know that Morgan Stanley was later engaged and I believe
7 J.P. Morgan later engaged by JEA. I thought,
8 understood, engaged by JEA to assist in the
9 privatization, recapitalization efforts.

10 Q And you know Morgan Stanley was at the January
11 24th meeting --

12 A Yes.

13 Q -- at the airport?

14 A Yes.

15 Q Ahead of the selection as the respondents to
16 the RFP?

17 A Yes. Well, I know that now. I don't know that
18 I knew that then.

19 Q You -- you said that the attendees at that
20 January 24th meeting, among other things, talked about
21 the process and timing of the sale of JEA. What did
22 they say about that? What was your takeaway?

23 A I -- I don't have any specific recollections of
24 the discussions of that meeting. There were no notes or
25 re- -- you know, sort of recaps of -- that -- that I

1 could use to refresh my memory. It's two-and-a-half
2 years ago. My recollection is that there was discussion
3 around valuation, but no one at the table was surprised
4 necessarily at the -- the large valuations that they
5 were projecting.

6 I recall some discussion regarding timeline --
7 timeline and it would be a long timeline. This is not a
8 transaction that could be accomplished quickly by -- by
9 Wall Street terms. I -- I don't recall any specifics
10 really. Those are my general recollections of that
11 meeting.

12 Q Look at Exhibit 11. It's an e-mail from Jody
13 Brooks, dated February 1, to Michael Mace and a copy to
14 Melissa. And subject is JEA Form NDA, nondisclosure
15 agreement.

16 A Yes, I see that.

17 (Howard Exhibit 11 was marked for
18 identification.)

19 Q Were you aware that Jody sent out NDAs on
20 February 1st, the same day that the four firms were
21 selected, to each of the four firms?

22 A I was not. I may have learned of it
23 subsequently, but I don't think I had any prior
24 knowledge.

25 Q Well, I'm -- I'm just surprised that you, as

1 the Chair of JEA, would not be informed if JEA was
2 engaging four pretty sophisticated financial firms to
3 assist it with the sale of the asset and you didn't know
4 about these engagements.

5 A Well, so we had talked either before or after
6 the airport meeting, we, meaning Mr. McElroy and I,
7 about PFM, about Morgan Stanley. So I certainly had an
8 understanding that we had a prior relationship with
9 certain of the financial advisors. I think I had some
10 understanding that we were looking to engage them,
11 again, they would not be providing their services
12 gratis, but I -- I don't find it surprising that the
13 chief legal officer would have taken what I believe is
14 an appropriate step to have a nondisclosure and
15 confidentiality agreement executed and I don't find it
16 surprising that she didn't involve the chairman of the
17 board on prior review of those NDAs.

18 This is perhaps an appropriate time for me to
19 stop and say something I've shared with others
20 expressing an interest in my service on the JEA board.
21 As you've all come to know, JEA is a large and complex
22 organization, a \$10 billion enterprise that has very
23 diverse and complex financial structure and operations.
24 It's true, I think of most larger companies and
25 certainly larger public companies, which while this is

1 not a company that has publicly-traded equity, it's very
2 much akin to a publicly-traded company.

3 In those situations, the board relies heavily
4 on staff and management to provide it information and
5 guidance regarding the industry and the company's
6 operations. And that was certainly true of JEA.

7 We as a board, and myself as Chair, relied
8 heavily on the senior leadership team to apprise us of
9 what was going on at JEA, what was going on in the
10 industry and what the future held. And so there was a
11 lot of reliance by the board on the information being
12 provided to us.

13 It was an impossible task to ask the board
14 to -- to micromanage this organization, to layer on top
15 of that complex organization an undertaking such as
16 this, which I think consumes -- such as this, meaning
17 consideration of privatization, either round one, which
18 is what I referred to as that November '17 through March
19 of '18 discussion, or round two, the subsequent
20 discussion in 2019.

21 When you layer on those efforts on top of
22 what's already a complex organization, it is difficult
23 for the board to -- and I don't think it's the board's
24 role. It would be difficult, if not impossible, to ask
25 the board to -- to manage that process. So you trust

1 them to keep -- trust the senior team to keep you
2 apprised of what you need to be apprised of and you try
3 and ask the right questions.

4 But in answer to your original question, I --
5 I'm not surprised that I didn't see the NDA Ms. Brooks
6 sent out. Sorry, that was a little bit of detour, but
7 it provides some context for how I regarded our role as
8 board members at JEA.

9 Q Well, thank you, Alan. I appreciate that. It
10 does give us insight into your perception. It really
11 goes to the heart of our investigation, which we've been
12 asked by the city council to look into the governance in
13 this particular incidence of the Jacksonville Electric
14 Authority, JEA, but it really goes to changes, we need
15 to look at the charter of the City of Jacksonville in
16 terms of how our independent authorities are governed.
17 And what you just said goes right to the heart of the
18 matter and I'm going to try to drill down on that now,
19 if I can, to build the record here.

20 A Sure.

21 Q And we see that Jody sent these NDAs out on
22 February 1st to the people who were selected in response
23 to the RFP of December 20th, 2017. And I want to -- I
24 believe we've already looked at Exhibit 11, which is one
25 of the NDAs. It was --

1 A I think it's the form, template NDA.

2 Q It's the form template. So let's look at
3 Exhibit 12, which is the one that she sent to J.P.
4 Morgan. And do you have that in front of you?

5 A I do.

6 (Howard Exhibit 12 was marked for
7 identification.)

8 Q And she -- it's an e-mail from the -- what
9 we've marked as Exhibit 12 is an e-mail from Michael
10 Mace of FPM -- of PFM to Jody, dated February 6,
11 returning to Jody, the J.P. Morgan NDA attached and
12 signed by J.P. Morgan and by Melissa Dykes.

13 And you'll see on the first page of the
14 nondisclosure agreement, J.P. Morgan Securities is
15 defined in the first paragraph as the company. And JEA
16 is defined as the disclosing party. And then they refer
17 to a transaction.

18 And on paragraph 3 -- on page 3 -- in
19 subparagraph 3, on page 3, it says: In the event that
20 the disclosing party -- and that's the defined term,
21 JEA -- determines to pursue a sale of all or a portion
22 of its assets, securities or businesses and if the
23 receiving party is not engaged to act as the disclosing
24 party's financial advisor, employees of the receiving
25 party and its affiliates who receive confidential

1 information may provide investment banking and
2 commercial banking services to potential purchasers.

3 So if JEA is a counter party to J.P. Morgan,
4 which was awarded the RFP, and responds to the December
5 20th, 2017, RFP that was issued by the City, I'm
6 confused, why is an RFP issued by the City and JEA is a
7 counter party on the NDA?

8 A I can't explain that except to say that
9 apparently JEA engaged J.P. Morgan Securities
10 eventually. And it was pursuant to that engagement,
11 regardless of the source of the RFP and their response,
12 the engagement led to the NDA.

13 Q We've -- well, you see that the -- these
14 responses of those four that were selected were
15 responses to the December 20th, 2017, RFP?

16 A I see that. Yes.

17 Q Apparently for the process of evaluating or
18 looking at the prospective sale of JEA?

19 A Yes.

20 Q And an RFP was issued by the City?

21 A Yes.

22 Q And you can't explain that?

23 A I cannot. To my way of thinking, the RFP
24 should have been issued by JEA, the engagement should
25 have been with JEA and the NDAs should have been with

1 JEA. But I'm just a dumb transactional lawyer, what do
2 I know?

3 Q Look at what we've marked as Exhibit 17, which
4 is an e-mail from Ryan Wannemacher, dated February the
5 8th --

6 A Uh-huh.

7 (Howard Exhibit 17 was marked for
8 identification.)

9 Q -- 2018. Do you see that?

10 A I do.

11 Q And it's a -- it's a string, but in the string
12 there's an e-mail from Ryan Wannemacher to Graeme Conway
13 and Macquarie, dated February 7th. And it says:
14 Graeme, per your request from our discussion today, I
15 have set up an inter -- Intralinks data room with some
16 information you may find useful in your analysis. You
17 may -- you should receive a notification, but if I -- if
18 not, I have provided a link to log in. We will be
19 adding additional information tomorrow. Please let me
20 know if you have additional members of your team that
21 you would like to be added to the data room.

22 Were you aware that Ryan Wannemacher, as the
23 director of financial planning, in February of 2018 set
24 up an Intralinks data room for prospective interested
25 parties in JEA?

1 A I was not.

2 Q When did you first become aware of that?

3 A When I saw this document produced by you
4 yesterday.

5 Q Do you know what an Intralinks data room is?

6 A Yes.

7 Q Can you explain it to me, please?

8 A In -- in large transactions, particularly
9 acquisitions, mergers or acquisitions, the target will
10 be required to produce information regarding its assets
11 and operations, financial statements, detailed
12 confidential and proprietary information that is
13 typically not publicly available and is provided to a
14 potential acquirer, typically under a nondisclosure
15 agreement.

16 And the method of providing that information is
17 through a secure digital data room. Most people are
18 familiar with Dropbox. Intralinks has a similar
19 architecture, but it's far more secure than Dropbox.

20 Q I assume that you're familiar with data rooms,
21 Intralink data rooms because of your experience in
22 mergers and transactions --

23 A Yes.

24 Q -- mergers and transactions?

25 A Yes. We use Intralinks data rooms in

1 transactions that I'm involved with.

2 Q But you didn't know JEA opened one up for the
3 JEA transaction in February of 2018?

4 A I did not.

5 Q And you didn't know it until you saw this
6 yesterday?

7 A Correct.

8 Q Aren't you surprised, as the chairman of JEA,
9 you wouldn't have been informed of that fact?

10 A I've been surprised by many things that I
11 learned after my tenure.

12 Q You want to share some of them with me?

13 A Well, this is one. I'm sure we'll get to
14 others.

15 Q You didn't have any discussion with Paul
16 McElroy or Melissa or Ryan they were setting up a data
17 room for the sale of JEA?

18 A I don't recall any discussions about setting up
19 a data room this early in the process, no. I -- I would
20 not have been surprised if certain information that
21 ended up in the data room had been provided to the
22 advisors, financial advisors similarly need access.

23 So if you told me that there was a data room
24 established for the benefit of Morgan Stanley and PFM
25 and other advisors we had engaged, that would make

1 perfect sense to me, but to my knowledge, Macquarie was
2 never engaged.

3 Q Look at what we've marked as Exhibit 18, which
4 is a memoranda from the Office of General Counsel.

5 Do you see that?

6 (Howard Exhibit 18 was marked for
7 identification.)

8 A I do.

9 Q Have you ever seen this before?

10 A It is entirely possible I was provided a copy
11 at some point in time. I read it last night in
12 preparation for this interview. I do not have a
13 specific recollection of having seen it in February of
14 '18.

15 Q It's dated February the 13th, which is the day
16 before a February 14th council meeting. Do you remember
17 that council meeting?

18 A I do.

19 Q We'll get to that.

20 So you don't have a recollection of seeing
21 this memoranda is what you just told me, before last
22 night?

23 A Mr. Busey, I may have seen it. I don't have a
24 specific recollection of having seen it at the time it
25 was circulated.

1 Q In the second paragraph of that memorandum, it
2 says -- this is the date -- this is February 13th, the
3 day before the council meeting on the 14th, In an effort
4 to respond to these inquiries, the current Board Chair,
5 Mr. Alan Howard --

6 That's you, right?

7 A Yes.

8 Q -- requested that JEA management engage a
9 qualified firm, quote, "to appraise the value of JEA's
10 constituent utilities, electric, water, wastewater and
11 district cooling," closed quote.

12 Is that an accurate statement?

13 A Yes, I believe that's an excerpt from my letter
14 to Mr. McElroy.

15 Q And the next sentence says, Public Financial
16 Management was engaged by JEA to prepare such a report
17 and is working to finalize and deliver the report to the
18 JEA board, city council and members of the
19 administration on or around February 14th.

20 Is that a correct statement?

21 A I'm not sure who signed the engagement contract
22 with PFM, but I know that Mr. McElroy advised me that
23 they were working with PFM to provide such a report.

24 Q They, being JEA?

25 A Sorry. JEA and its senior leadership team was

1 working with PFM to prepare such a report.

2 Q And, again, you can't explain why JEA was
3 contracting PFM to do that and Michael Weinstein had an
4 RFP in December 20th of 2017 that was issued by the City
5 as opposed to by JEA?

6 A I -- I cannot.

7 Q And the next -- third paragraph, The JEA and
8 city council members have inquired as the process for
9 exploring and considering the potential privatization of
10 JEA utility operations.

11 To your knowledge, is that right, is JEA and
12 the city council members have inquired about the process
13 of exploring privatization in February of '18?

14 A I don't know what inquiries would have been
15 made by city council members. I do know that the
16 question of valuation had been raised by JEA. And I
17 believe that Ms. Brooks had been working with apparently
18 Mr. Gabriel and others on the process for a potential
19 privatization.

20 Q And at this point in time, February 13th, the
21 day before the council meeting, with whom -- I'm trying
22 to go back over our conversation, with whom, if anybody,
23 had you discussed the privatization of JEA, as of
24 February 13th, 2018?

25 A So we talked about the fact that in the fall of

1 '17, I was in a meeting with Mr. Mousa and Mr. McElroy
2 and Mr. Weinstein about the Exelon interest.

3 Q Right.

4 A Mr. Petway then made his statement at the
5 November meeting. First week in December, I sent the
6 letter to Mr. McElroy saying, Following up on the board
7 meeting, please proceed with seeking a valuation. So
8 there would have been some discussions between
9 Mr. McElroy and I regarding that directive.

10 And I think I testified earlier that we spoke
11 about engaging existing vendors so Morgan Stanley, PFM.
12 He indicated PFM would be the preferred person so I'm
13 sure we had discussions around that engagement.

14 There was then the January 23rd or 24th meeting
15 at the airport where people were involved, as previously
16 discussed.

17 And in the three weeks between the 24th and the
18 14th of February, I'm certain that I would have spoken
19 with Mr. McElroy and/or other members of his team
20 regarding the PFM report, but no bidders. And I don't
21 recall any specific conversations with any members of
22 the city administration. I don't believe I was aware at
23 the time that there was an RFP issued by the City, other
24 than what later came out in the press.

25 Q We -- it was -- it was not among the exhibits

1 that we sent to you, but there is a letter that Anna
2 Lopez Brosche sent to Paul McElroy, dated February 12,
3 2018, that's the day before the general counsel e-mail.
4 And you are not copied on it. You haven't seen it
5 before, to my knowledge, but it's February 12th, from
6 the President of the City Council, Brosche, to Paul
7 McElroy.

8 And in the letter it says, In your letter and
9 our discussion, you suggested I consider scheduling the
10 form of meeting that would allow the city council to
11 take action upon hearing an executive summary
12 presentation from the consultant followed -- that's
13 PFM --

14 A Uh-huh.

15 Q -- followed by distribution of the report in
16 its complete and final version.

17 Your recommendation comes on the heels of
18 multiple meetings with the mayor, staff in which they
19 ask if I was open to hold in a joint meeting to hear the
20 presentation and if I would consider legislation to
21 approve next steps in the sale process at the very same
22 meeting.

23 Essentially the mayor's office is asking the
24 city council to consider passing legislation as an
25 emergency upon introduction, without the public

1 involvement afforded by normal legislative process and
2 without an appropriate analysis and response to the
3 final valuation report by the council auditor.

4 Were you aware of the issue between the mayor's
5 administration and the president of the city council
6 about the meeting that was going to take place on the
7 14th?

8 A I don't know that I was aware as of that date.
9 It -- it was certainly common knowledge that there was
10 some tension between the city council president and the
11 mayor. I wasn't aware of the administration's efforts
12 to expedite legislation so, no.

13 Q Okay. When you say you weren't aware of the
14 mayor's office request to expedite legislation, I think
15 you're referring to this sentence, Essentially the
16 mayor's office is asking the city council to consider
17 passing legislation as an emergency upon introduction.

18 Is that what you're referring to?

19 A That -- that's what I was referring to, yes.

20 Q Had -- were you aware that the City -- the
21 mayor's office had asked the city council on an
22 emergency basis to approve legislation regarding the
23 sale of JEA on February the 12th, 2018?

24 A No, I don't believe I was aware of any efforts
25 by the administration to expedite that legislation.

1 Q As chairman of the JEA, would you like to have
2 known about that?

3 A Yes, I will say that there was limited
4 coordination between -- limited coordination that
5 involved me between JEA and the administration on the
6 meeting of February 14th. I -- I was working with
7 Mr. McElroy and Mr. Mace on the presentation by JEA to
8 the city council. I was coordinating with them on a
9 joint so that it would be a joint JEA board meeting and
10 city council meeting. I know we had some concerns about
11 getting a quorum for the JEA meeting. It may have been
12 a late arriving member there.

13 I recall that there was a request made to me
14 either just prior to or at the city council meeting to
15 request that I -- this was from the administration to me
16 that I yield the floor to the mayor for remarks.

17 Q You said from the administration, from whom?

18 A It would have been from Mr. Mousa or Mr. Hughes
19 or Mr. Weinstein. It wasn't from the mayor, but someone
20 came up to me and said, After you conclude your remarks,
21 would you yield the balance of your time to the mayor
22 for remarks? But that was about the only coordination,
23 in quotes, air quotes, that -- that I personally had
24 with the administration. I was not involved in any
25 discussions about expedited legislation. To my

1 recollection, I -- I don't recall ever hearing that.

2 Q And what did you say in response to that
3 request if you'd yield the floor to the mayor?

4 A I thought it was innocuous and agreed. So
5 after Mr. Mace made his remarks, Mr. McElroy and I made
6 remarks and I believe I said something to the effect of
7 with madam president speaking to City Council President
8 Brosche, madam president's permission, I would like to
9 yield the balance of my time to the mayor. She said,
10 No.

11 Q What was the essence of the presentation by
12 PFM, McElroy and you before you got to that point?

13 A I think it was a high level review of the
14 report and that you've included in your exhibits and --

15 Q As Exhibit 19?

16 A Yes. High level review of that presentation
17 and then responses to questions.

18 Q And the presentation had to deal with -- well,
19 let's talk about Exhibit 19 for a minute and I'll get
20 back to where we were.

21 Did you see this report? Exhibit 19, as you've
22 seen it, is simply an excerpt of that report. It's 27
23 pages. I've given you a few pages, plus the index.

24 A Yes.

25 (Howard Exhibit 19 was marked for

1 identification.)

2 Q When did you first see this report?

3 A I believe I would have seen a draft prior to
4 February 14th. To my recollection, there were one or
5 more meetings with Mr. McElroy prior to the February
6 14th meeting just to discuss sort of the format of our
7 presentation, Mr. Mace, Mr. McElroy and myself.

8 Q And what was that presentation, what the value
9 of the JEA was?

10 A Yes, it was in response to the request for a
11 valuation.

12 Q And on page 19 of that Exhibit 19 of that -- of
13 the excerpt, it says, Based upon, and it has the
14 predicates, the sale of JEA could produce roughly 4.1
15 billion to 7.6 billion net proceeds to the City. If JEA
16 and the City elected to use a portion of the proceeds to
17 remediate the Vogtle contract for an assumed cost of
18 \$1.2 billion, then the net proceeds to the City could
19 range from 2.9 billion to 6.4 billion.

20 Were you aware that that was the value that was
21 being presented to the city council on the 14th --

22 A Yes.

23 Q -- by PFM?

24 A Yes. I had seen those numbers before and they
25 were consistent with the valuations that were discussed

1 at the airport meeting January 24th.

2 Q So not a surprise to you?

3 A They were not.

4 Q And so why, to your understanding, you were
5 there, did the president of the city council not permit
6 the mayor to speak after you spoke?

7 A I -- I don't know.

8 Q She didn't say?

9 A She may have made remarks on the record, but
10 it was clear to me that she didn't want to give the
11 mayor a platform for speaking to the issue of a
12 potential sale.

13 Q Why? Do you have any idea why?

14 A I -- I don't know why. My sense is -- my
15 impression at the time and my impression today is that
16 she was opposed to it and used the sale of JEA as a -- a
17 bright line in the sand between she and the Republican
18 mayor.

19 Q I -- I read you that paragraph out of her
20 letter --

21 A Yes.

22 Q -- dated February 12th, when she said that the
23 mayor wanted to treat it as an emergency.

24 Is it your understanding the mayor wanted to
25 get a vote on the council? Here's what -- let me start

1 that question over again.

2 It appears from the totality of what I've shown
3 you so far that the mayor was, through the efforts of
4 JEA and PFM, was presenting to the city council for the
5 first time that perspective sale could yield as much as
6 \$6.4 billion for the City. It sounds like to me that
7 the mayor was thinking that specifically large carat
8 that the council would be sufficiently impressed on the
9 14th to want to proceed with the sale of the JEA and
10 that's why he was asking that the process be approved on
11 an emergency basis on the February 14th meeting.

12 Does that make sense to you?

13 A I can't tell you that I had any specific
14 discussions with the mayor or any of his representatives
15 where that was conveyed, but, yes, that has the ring of
16 truth to it.

17 Q And did you have any discussions with anybody
18 after the meeting about what the mayor was going to do
19 about his disappointment that that didn't happen?

20 A I don't recall any specific discussions.
21 The -- the process continued to generate significant
22 community resistance.

23 Q When you --

24 A I'm sorry.

25 Q Excuse me. When you say the process --

1 A Oh, the discussion around a potential sale.
2 The city council had appointed a special committee led
3 by Councilman Crescimbinì. I think there were some
4 continued discussions with the outside advisors and I
5 may or may not have participated in any of those or been
6 made aware of them. I don't recall any specific
7 meetings or conversations with members of the
8 administration in response to the February 14 city
9 council meeting.

10 Q Okay. We've marked as Exhibit 20, I think you
11 have it, as the special meeting of the council on
12 February 14th?

13 A Yes.

14 (Howard Exhibit 20 was marked for
15 identification.)

16 Q And it shows you were in attendance?

17 A Yes.

18 Q At the bottom of the first page, it says,
19 Chair Howard introduced Mr. Michael Mace, managing
20 director, Public Financial Management. Mr. Mace briefly
21 reviewed PFM's charge from JEA.

22 What was PFM's charge from JEA?

23 A My understanding was that they were charged to
24 prepare valuation of JEA's assets and operations in a
25 potential market sale as set forth in their February

1 14th presentation.

2 Q And that was a charge from JEA, not from the
3 City?

4 A That was always my understanding, yes, having
5 not been privy to the RFP issued by the City.

6 Q Well, given what we've talked about so far, as
7 of February 2018, who -- who's pushing the sale? Is it
8 JEA or is it the City of Jacksonville?

9 A Well, I don't know that anyone was pushing a
10 sale. Certainly from my perspective, as Chair of the
11 board of JEA, we were interested in a discussion around
12 the value and the opportunity and whether or not this is
13 something that the community should entertain, city
14 council and the community should entertain. I don't
15 think that our board ever took an action to push the
16 sale, but to push for a valuation and discussion. If
17 the City was taking action to push for a sale, I was not
18 a party to that.

19 Q Well, referring again to President Brosche's
20 letter to McElroy of February 12th, she said,
21 Essentially the mayor's office is asking the city
22 council to consider passing legislation as an emergency.
23 Wouldn't you consider that pushing?

24 A Well, she certainly did. I -- I don't know the
25 extent of which -- I do have that, by the way. You had

1 provided it to me as your Exhibit 18A.

2 Q Let me show you or look at Exhibit 21.

3 A Are we moving past the February 14 meeting?

4 Q Yes.

5 THE WITNESS: Can we take a break?

6 MR. BUSEY: Of course.

7 THE WITNESS: Thank you.

8 (Recess taken.)

9 BY MR. BUSEY:

10 Q We're going to look at Exhibit 21, which we've
11 marked as -- and it's Morgan Stanley's discussion
12 materials from JEA, dated February 15th, 2018. And the
13 entire document is 67 pages long.

14 And the -- on page 3, it says, Morgan Stanley
15 Team for Jacksonville Electric Authority. And it has a
16 JEA heading on it and a JEA heading on the cover page.
17 It says, Morgan Stanley welcomes the opportunity to work
18 with the Jacksonville Electric Authority and the City of
19 Jacksonville to consider potential strategic
20 alternatives for both electric and water utility.

21 And it has a picture of their Morgan Stanley
22 team members, which all together, on pages 3 and 4,
23 total 19 team members to work on the transaction.

24 And the -- and this was the Morgan Stanley
25 response to the RFP of December 20th, 2017. And then

1 the executive summary, it says --

2 Well, first of all, let me ask you, Alan, have
3 you seen this before?

4 A Mr. Busey, I'm sure I have, but I can't swear
5 to it and can't tell you that I have read it in any
6 great detail when it came across.

7 (Howard Exhibit 21 was marked for
8 identification.)

9 Q But you may have seen it, you just don't
10 recall?

11 A I may have seen it. I don't recall.

12 Q And on page 5, it says, Given our vast
13 experience and expertise, we believe Morgan Stanley is
14 uniquely qualified to execute the potential
15 privatization of JEA.

16 Does that suggest that it's pretty clear to
17 you, Alan, that the December 20th, 2017, RFP which
18 resulted in the 64-page response on February 15th, 2018,
19 was designed to solicit advisors regarding the sale of
20 JEA?

21 A It certainly suggests to me that that was
22 Morgan Stanley's understanding. I -- I don't see where
23 this is stated that it's given in response to the RFP.
24 I'll -- I'll take your word for that.

25 Q Do you see the timing of it?

1 A I do see the timing of it. It also follows --

2 Q It's within 60 days after the RFP?

3 A Yes. And it followed that January 24 airport
4 meeting.

5 Q At which Morgan Stanley was present?

6 A Correct.

7 Q Which you said was there to talk about the
8 value and the process?

9 A Yes.

10 Q And you see, again, on page 5, enlisting the
11 executive summary, it says, Morgan Stanley is world
12 leader in privatization transactions. We're confident
13 JEA can execute a sale transaction in 12 months.

14 Were you mindful that in February of '18
15 somebody was looking forward to the sale of JEA within
16 12 months?

17 A Well, I know that that -- my recollection is
18 that the timing was discussed at the January 24 airport
19 meeting, which if I didn't say this before, was really
20 the first extensive discussion that I had ever been a
21 party to regarding the potential sale, valuation,
22 timeline process.

23 And my recollection from that meeting was that
24 it was a -- a relatively long timeline process. There
25 had been a recent experience of a sale of a municipal

1 utility in Vero Beach that had actually gone on for
2 several years. And I seem to recall that. I was made
3 aware of that -- that example sometime in that same time
4 frame.

5 So, no, as of February 2018, was I aware that
6 someone was trying to execute a sale of JEA within 12
7 months? No.

8 Q Well, where do you think Morgan Stanley was
9 coming from in putting this together?

10 A I -- I don't know. They were getting
11 information from someone, not me.

12 Q Presumptively somebody that was associated with
13 the City of Jacksonville?

14 A And/or JEA.

15 Q Either the City or JEA?

16 A I believe so.

17 Q And you don't know which?

18 A No.

19 Q Then another bullet point on page 5, We
20 recommend that in order to maximize the value of
21 electric utility, that the operation be sold as a clean
22 company, i.e., without exposure to Project J, closed
23 paren.

24 A Yes.

25 Q Do you know what that means?

1 A Yes. Project J refers to the Vogtle debt layer
2 that was financed for the benefit of JEA.

3 Q So Morgan Stanley is recommending in February
4 of '18 that the -- that JEA be sold, but having the City
5 retain the Vogtle liability?

6 A As you may recall, there was a great deal of
7 uncertainty regard- -- and continues to be a great deal
8 of uncertainty around the timing of COD for those two
9 new reactors, 3 and 4, at Plant Vogtle and the final
10 ultimate cost of construction, which is linked to the
11 final ultimate price of the energy.

12 So it doesn't surprise me, but I don't have a
13 specific recollection of that statement at that time.

14 Q You see on page 6 that Morgan Stanley
15 presents JEA with the four pillars for successful
16 privatization?

17 A Yes.

18 Q And on that page, it says, Benefits to the City
19 and residents of Jacksonville will -- initial rate
20 reduction, over \$5 billion with excess proceeds to the
21 City of Jacksonville, no involuntary job cuts.

22 A Yes.

23 Q Were you aware that was the definition of
24 successful privatization in February of '18?

25 A I -- I don't have a specific recollection of

1 discussing those goals with Mr. McElroy or other
2 members of the senior leadership team, but I have an
3 understanding that those were parameters that were
4 discussed in either in the April 24th airport
5 meeting or --

6 Q January?

7 A Sorry.

8 -- January 24th airport meeting or thereafter.

9 Q Do you recall a January 24th meeting at the
10 airport, any discussion with Morgan Stanley that
11 suggested that Morgan Stanley would, within the period
12 of a couple weeks, produce these discussion materials
13 that we marked as Exhibit 21?

14 A I don't have that recollection, but it wouldn't
15 surprise me if they said they would be getting something
16 in the short order.

17 Q Do you have what we marked as Exhibit 22, which
18 is a Nate Monroe column, dated August 12th, 2020?

19 A I do.

20 (Howard Exhibit 22 was marked for
21 identification.)

22 Q Have you read it?

23 A I did read it.

24 Q The article is -- regards a memorandum that
25 a -- a Holland & Knight associate wrote in February of

1 '18. And it quotes the memorandum, if I may read from
2 the article. But the February 18 memoranda, written
3 before Zahn took over as interim CEO, makes it clear
4 privatization was front and center as JEA began planning
5 ways to walk away from Plant Vogtle, even as it went
6 unmentioned in JEA's court filings and as the City
7 officials -- City and utility officials denied they were
8 planning to privatize the agency. Quote -- and I'm
9 quoting from this lawyer's memorandum -- "Jacksonville's
10 new young Republican mayor is out to shrink government
11 and wants to privatize JEA quickly, while the market is
12 right. He says within three to five months," closed
13 quote.

14 Allen Maines, a lawyer with the firm of Holland
15 & Knight wrote to a JEA official in a memo detailing
16 possible legal strategy. Quote, "Obviously, Plant
17 Vogtle and the agreement greatly affect valuation,"
18 closed quote.

19 Were you -- were you aware of the JEA's
20 decision to bring a lawsuit challenging the
21 enforceability of its Vogtle contract?

22 A Yes.

23 Q When was that decision made to institute
24 litigation to challenge the contract?

25 A I -- I can't pinpoint the exact date. There

1 were several discussions at JEA and with Mr. Gabriel
2 from the Office of General Counsel and with Holland &
3 Knight evaluating potential bases for attacking the
4 Vogtle contract, but I do not recall the exact date the
5 decision was made to move forward with the -- with the
6 complaint.

7 Q Whose decision was it?

8 A Because it became clear upon advice of counsel,
9 Holland & Knight, that the best chance for success would
10 require both JEA and the City of Jacksonville to be
11 plaintiffs in the dec action. I believe it was a joint
12 decision between the City of Jacksonville, Mr. Gabriel
13 and the mayor and JEA senior leadership, with my
14 participation, to make that joint decision to move
15 forward.

16 Q You have Exhibit 23 --

17 A Yes, sir.

18 (Howard Exhibit 23 was marked for
19 identification.)

20 Q -- which is a resolution of the city council
21 confirming the mayor's appointment of Aaron Zahn as a
22 member of the JEA board. And that was approved by the
23 mayor on February 28th. What conversation did you have
24 with anyone regarding Aaron Zahn being appointed by the
25 mayor at this time?

1 A None.

2 Q None. When -- when did the first -- when did
3 you first learn that Aaron Zahn was going to be
4 appointed by the mayor to the board?

5 A I think Mr. McElroy called and asked me if I
6 knew Mr. Zahn and told me that he was the mayor's
7 proposed appointment. I don't recall anyone else.

8 Q Do you recall when that -- when you had that
9 call from Mr. McElroy?

10 A It would have been prior to this date, but I'm
11 not certain. It might have been prior to February 28th.

12 Q Okay. And -- and what did you say in response
13 to Mr. McElroy's question?

14 A I told him that I had met Mr. Zahn, but didn't
15 know him.

16 Q Where had you met him?

17 A Mr. Zahn -- I'm sorry. Mr. Zahn was a, perhaps
18 still is, a member of YPO. I'm not sure what that
19 stands for exactly.

20 Q Young Presidents Organization?

21 A Young Presidents Organization.

22 I had another client, acquaintance, who is a
23 member of that organization, who put together a dinner
24 that my law partner, Paul Renner, and I attended.

25 Mr. Zahn was also in attendance so that's where I met

1 him.

2 Q Was that before or after he was appointed by
3 the mayor?

4 A Before. Perhaps a year before.

5 Q Mr. Zahn attend your church?

6 A I don't recall ever seeing him at -- at
7 Southside United Methodist, but I should also note that
8 my wife and I relocated from San Marco to Glen Kernan
9 and changed churches so he may have started attending
10 that church after we left.

11 Q What point in time did you leave?

12 A 2014, '15. Can't recall the exact date.

13 Q Well before 2017?

14 A Oh, yes, yes. We moved from San Marco to
15 Glen Kernan somewhere around '14.

16 Q I mean, had you heard subsequently that -- that
17 Aaron Zahn was attending Southside United Methodist
18 Church?

19 A I think the first I heard of that was when a
20 reporter asked Mr. -- asked the mayor about it, but I
21 didn't know that previously. The church had several
22 services. It's possible that Mr. Zahn attended it at
23 the same time we attended it and he and his family went
24 to a different service.

25 Q And, I'm sorry, what did you tell Paul, Paul

1 McElroy, as to whether or not you knew -- you said, yes,
2 you met him?

3 A I think I had met him. What I said to Paul is,
4 yeah, I met him, but I do not know him -- did not know
5 him.

6 Q Did you have any questions regarding his
7 qualifications to serve on the board?

8 A No, I didn't know his background.

9 Q One way or the other?

10 A No.

11 Q Let me ask you about Exhibit 24. Do you have
12 that in front of you?

13 A Yes, sir.

14 (Howard Exhibit 24 was marked for
15 identification.)

16 Q Which is a JEA Privatization Discussion
17 Materials for the Board of Directors Workshop, dated
18 March 20 of 2018.

19 Who prepared this document?

20 A It would have been internally prepared at JEA.
21 I'm not sure who the primary authors were.

22 Q Have you seen it before?

23 A I would have seen it prior to or at that
24 workshop meeting.

25 Q And what was your understanding of the purpose

1 of that meeting?

2 A A discussion around the issues of valuation and
3 possible privatization of JEA.

4 Q Well, where did the term "privatization" come
5 from?

6 A I don't know who first used it.

7 Q What is your understanding of what it means?

8 A That it would have resulted in JEA's seizing to
9 be a municipal subdivision of the City of Jacksonville
10 and instead privately owned.

11 Q In essence, a sale of JEA by the City?

12 A Although -- potentially. Although, not
13 discussed at length in the '17, '18 privatization
14 discussion. There could be other options for being a
15 nongovernmental entity, so there could have been a
16 concession agreement or operations and maintenance
17 agreement, franchise grant, an IPO. There were other
18 structures available, co-op, other than just an outright
19 sale of assets for cash.

20 Q On page 3 of that Exhibit 24, the discussion
21 materials for privatization, there's a timeline. It
22 says December 12th, JEA Board Chair discussion on the
23 need for an expedited evaluation -- evaluation of the
24 privatization of JEA.

25 Does that refer to you, JEA Board Chair?

1 A I would have been Chair at that point in time,
2 yes.

3 Q What did you ask for?

4 A I -- I don't know specifically what that is
5 relating to. Was there a board meeting on December
6 12th? It may have been comments made at a board
7 meeting.

8 Q Did you feel in December there was a need for
9 an expedited evaluation for the privatization of JEA?

10 A I believed that there should be an expedited
11 valuation to provide the information to city council and
12 the community to facilitate a discussion, yes. I was
13 not speaking in favor of an expedited privatization, but
14 valuation.

15 Q On page 4, there's a framework outline for
16 privatization. And then on the list, on page 32,
17 challenges -- challenges to privatization. Do you
18 recall who prepared these challenges?

19 A I do not. It would have been JEA staff, senior
20 staff.

21 Q Do you understand -- can you tell me why this
22 workshop was called?

23 A Yes. I suspect I called it as Chair because
24 there had not been an opportunity for the board to
25 engage in an open discussion regarding the valuation and

1 potential privatization or recapitalization.

2 Q Following the February 14th council meeting --

3 A Correct.

4 Q -- which was pretty acrimonious?

5 A You could characterize it that way. The --
6 the -- the reality was that there -- there was this
7 false narrative in the press that the JEA board had gone
8 rogue in an effort to sell the JEA. And, in fact, the
9 board had never taken any formal action in that regard.

10 There had been a statement made at the
11 conclusion of the November meeting that it was time to
12 engage in at least a valuation. And the staff at JEA
13 engaged PFM to provide that valuation, but the board of
14 JEA had never had an open discussion or voted to pursue
15 privatization. So that was the motivation for the March
16 18 -- March 2018 workshop.

17 Q That was the motivation -- that was your
18 motivation? You called for it?

19 A That's right. I thought there needed to be an
20 open discussion among the board members.

21 Q Is it fair to say that as part of your
22 leadership for the JEA board, you thought that was
23 appropriate given the fact that there was -- what
24 happened on the 14th of February was not the appropriate
25 way to proceed?

1 A It's fair to say that I felt the board should
2 have an opportunity to weigh in and had not had that
3 opportunity previously.

4 Q Prior to the mayor trying to put through the
5 sale of JEA on an emergency basis on February 14th?

6 A Well, prior to whatever efforts the mayor made.
7 We didn't have an opportunity, either prior to or
8 subsequent to that February 14 council meeting, to have
9 an open dialog.

10 Q We, meaning the board of JEA?

11 A Correct.

12 Q So what happened in that meeting, that
13 workshop?

14 A Well, there would be minutes, if not video
15 recording of the workshop, but there was discussion
16 around the materials presented by JEA staff. So you --
17 you've got the discussion materials here. There would
18 have been questions raised by board members and
19 discussion around, but no action taken. It was not
20 called for the purpose of an action item.

21 Q What was -- can you recall what Paul McElroy's
22 general attitude was about privatization as he expressed
23 it at the workshop on March 20th?

24 A I don't know what Mr. McElroy's ultimate
25 opinion on privatization was. My recollection of my

1 impressions at the time were that he was looking to
2 facilitate a discussion and provide the information
3 necessary to facilitate that discussion.

4 Q Was he in favor of it or against it or did he
5 simply objectively weigh the pros and the cons, or do
6 you recall?

7 A I don't recall that he ever expressed an
8 opinion.

9 Q One way or the other?

10 A One way or the other.

11 Q Do you recall Mr. Zahn speaking up at that
12 meeting?

13 A I believe there were only a couple of meetings
14 that Mr. Zahn attended and I recall that he was an
15 active participant in each of the meetings he attended
16 as a board member.

17 Q Okay. Well, let's see if we can drill down on
18 that.

19 My understanding is this workshop of the 20th
20 of March, 2018, was his first meeting attending as a
21 board meeting.

22 A Okay. That would seem to line up with his
23 appointment and confirmation on February 28th, yes.

24 Q And we watched the video and it appears at the
25 end of that meeting that he stood up and gave a pretty

1 sharp review to Paul McElroy and suggested it was time
2 to change directions for the JEA. And he was pretty
3 sharp in his comments. Do you recall that?

4 A I don't recall the exact comments, but I do
5 recall that he was a passionate and active participant
6 in the -- I believe there were two board meetings that
7 he participated in.

8 Q Before he became interim CEO?

9 A Before he resigned as a board member.

10 Q Passionate towards what end?

11 A I -- I can't speak to his motivations. I -- it
12 was just my recollection that he was a forceful
13 questioner board member, but, frankly, I was happy to
14 have him on there as a -- as a forceful board member.
15 I -- I believed the organization is best served by
16 someone who challenges management and asks questions.

17 Q And did he do that on March 20th?

18 A I don't have a specific recollection. And I've
19 not gone back and reviewed the video of the two meetings
20 where he served as a director, but -- but my
21 recollection is that he was an energetic participant in
22 both of those meetings. I think there were only two.

23 Q Did you see what we marked as Exhibit 25?

24 A *Times-Union* editorial, yes.

25 (Howard Exhibit 25 was marked for

1 identification.)

2 Q Of March 25th, 2018?

3 A Yes.

4 Q It refers to the board meeting of which you
5 were just talking about?

6 A Yes.

7 Q And it says, JEA board for the first time
8 Tuesday discussed the possible sale of the utility.

9 A Yes, that would have been the workshop, March
10 20th.

11 Q And on the third page of that article, it says,
12 Board Chairman Alan Howard said the JEA is in the midst
13 of, quote, "historic change," closed quote, in a, quote,
14 "dynamic market," closed quote. "Selling JEA could be
15 the right move at the right time with potentially
16 transformative consequences for this City," closed
17 quote.

18 Did you say that?

19 A I must have. I was quoted.

20 Q Well, you don't find the newspaper ever
21 inaccurate, do you?

22 A I decline to -- decline to answer that.

23 Q Did you feel that way at the time of that
24 workshop?

25 A I did.

1 Q Why?

2 A Well, based on all of the information available
3 to me and -- and as I indicated earlier, JEA's a very
4 complex organization in a very complex and rapidly
5 changing industry. I referred to it as a dynamic market
6 in that meeting. If you read some of the materials that
7 were provided to us as directors or -- or engage in your
8 own independent study, which I tried to do, I tried to
9 do a good job as a member of the board at JEA, read
10 board materials and prepare for meetings and ask
11 appropriate questions, you got a sense of the fact that
12 the utility industry is in the midst of historic change.

13 Historically, municipal utilities had a pricing
14 advantage in the marketplace because they could issue
15 tax exempt bonds, but the PD ratios for the IOUs
16 investor on utilities had reached a point where they
17 were now able to borrow at a rate lower than municipals.

18 It gave them a great -- a great deal more
19 capital to invest in growing their footprint as
20 exemplified by the sale of TECO a few years ago for an
21 astronomical number, at that time perceived to be an
22 astronomical valuation.

23 There are challenges in the form of technology,
24 so I'm sure we can talk at length about solar energy,
25 but it is a fact that JEA has more than 50 percent of

1 its revenue derived from commercial and industry
2 customers. And while you and I may not invest the
3 capital necessary to disconnect from the grid and
4 install solar to supply our energy needs, all of those
5 commercial and industrial customers have indicated that
6 they're investigating that possibility. So you face the
7 possibility of -- or likelihood of losing a significant
8 portion of your revenue in the near future.

9 I think all of those things point to a very
10 dynamic marketplace that requires some examination for
11 any responsible utility. I refer to it as potentially
12 transformative because any time you put \$5 billion in
13 the hands of the City, I think you could do traumatic
14 things with that money. It's 50 times our annual
15 contribution.

16 Q Okay. Then it's clear to me, from what you
17 just said, that at least by March 20th, you and Aaron
18 Zahn thought it was time to consider selling the JEA.
19 Had you had any -- I'm curious, I thought I had asked
20 this question up to now, but I want to make sure the
21 record's clear, up until this point in time of the
22 workshop, had you had the discussion with anybody else
23 in the mayor's administration regarding the fact that
24 you felt it was time to consider selling JEA? Anybody
25 in the mayor's administration?

1 A Well, let's be clear, the only persons I ever
2 spoke to in the administration about anything would have
3 been the mayor and Mr. Weinstein, Mr. Mousa and
4 Mr. Hughes. I never had interaction with anyone in the
5 administration other than those individuals. And as
6 we've already discussed, some of those individuals were
7 present at the original discussion about the expression
8 of interest by Exelon. Some of those individuals were
9 present at the airport meeting on January 24th. And I
10 suspect there may have been one or more interactions
11 after that January 24th meeting, before March 20th
12 because there was an ongoing discussion.

13 I don't have a specific recollection of that,
14 but, you know, there may be some evidence of me speaking
15 or meeting with Mr. Mousa or Mr. Weinstein. It wouldn't
16 surprise me if there had been such a meeting.

17 Q Why wouldn't it surprise you?

18 A Because there was so much activity and
19 discussion going on around the February 14th city
20 council meeting and the entire topic.

21 Q Did you feel like you were pretty much in sync
22 with the administration regarding the fact that this may
23 be a good thing to consider?

24 A I don't know that I ever expressed it in those
25 words or that anyone ever asked me or expressed those

1 sentiments in my presence to give me an opportunity to
2 get in sync with whatever their predisposition might be.

3 I was very much of the opinion then, and,
4 again, later in the '19 and '20, that this was a
5 discussion that should be had, that the time was right
6 to have the community examine, in a nonpartisan,
7 objective manner.

8 And so I -- I never personally felt that this
9 is something that was my job as chair -- chairman of the
10 board of JEA to advocate for a sale. I didn't think
11 that was my job. I thought it was our job, as a board,
12 to facilitate the discussion and provide the information
13 because we didn't own the asset of JEA, the City owned
14 the asset. And so I thought it was incumbent upon us to
15 facilitate that discussion.

16 Q Do you see Exhibit 26?

17 A Yes.

18 (Howard Exhibit 26 was marked for
19 identification.)

20 Q That's an agenda for a special committee on the
21 potential sale of the JEA of a meeting of the
22 Crescimbin committee to which you referred earlier.

23 Were you at that meeting?

24 A I don't recall attending this meeting. It's
25 possible I was there, if they invited me to be there,

1 but I don't recall specifically being there.

2 Q And the agenda, it says, on item 3, reports
3 from the JEA, Paul McElroy. The first bullet point is
4 JEA's strategic plan to offset declining revenue trend.

5 What do you know about a declining revenue
6 trend in March of 2018?

7 A I think we had been provided reports, which
8 demonstrated that there was a declining revenue trend.
9 The workshop materials for the March 20 meeting
10 included, on page 10, a graph that illustrates the
11 decline in revenue.

12 Q What exhibit is that?

13 A I'm sorry, it's your Exhibit 24, page 10. And
14 that was not used for us. I think I had heard that
15 since I had joined the board.

16 Q Let's look at that page 10 of Exhibit 24.

17 A Yes.

18 Q Tell me what you say this shows.

19 A So this demonstrates the growth in sales of --
20 by megawatt energy sold by JEA and its predecessor,
21 Jacksonville Electric Authority, from 1979 to present,
22 at that time, 2017. And also shows sales projections by
23 various metrics and how the actual sales far
24 underperform.

25 So it compares the projection based on

1 historical growth rate, projection based on the
2 integrated resource plan, IRP, the ten-year site plan,
3 site plan TYSP and the projection on actual growth rate
4 from 2006.

5 Q So you've seen this chart before?

6 A Yes.

7 Q Do you see that this omits the 2018 numbers?

8 A Yes.

9 Q Do you know if the 2018 sales were more or less
10 than '17?

11 A I -- I don't know. This was a March '18 report
12 so I guess they didn't have '18 numbers in March.

13 Q Did they have projections from the ten-year
14 site plan?

15 A Yes, those are reflected here.

16 Q Where does it reflect?

17 A The ten-year site plan is the red line.

18 Q Which shows it going up?

19 A It does appear to be slightly up.

20 Q And Paul McElroy said in the March 29 special
21 committee meeting that sales would remain flat for the
22 next five years, not decrease, and may marginally go up
23 by 1 percent, were you aware of that?

24 A I'm sorry. Mr. McElroy said that where?

25 Q At the March 29th --

1 A I don't have --

2 Q -- special committee meeting.

3 A I don't have a special -- specific recollection
4 of Mr. McElroy's statements, but I would have been
5 present.

6 Q You would have been present?

7 A Present at that board meeting.

8 Q Are you aware that generally that he disagreed
9 that the projections should be hovering at negative on
10 sales?

11 A I -- I don't know what his position on future
12 projections are. I do know that JEA abandoned use of
13 the ten-year site plan as a metric for predicting future
14 financial performance in 2014. So the ten-year site
15 plan is not a reliable indicator of future sales.

16 Q There's some difference of opinion within JEA
17 about that, isn't there?

18 A I don't know if there is.

19 Q Well, why is the red line -- if he abandoned it
20 in '14, why is the red line on in '17 -- in '18?

21 A Because JEA is still required by Florida
22 regulators and PFC, specifically, to provide reporting
23 based on the ten-year site plan, but I believe there's a
24 letter from Melissa Dykes, in February of 2020, that
25 articulates why. And she's far better equipped to

1 answer this question than I am. She articulates in her
2 February 26, 2020, letter why the ten-year site plan is
3 not a reliable indicator of future performance and
4 includes a chart to illustrate that.

5 Q In her judgment?

6 A Well, she includes a graph that demonstrates
7 that it's an unreliable predictor.

8 Q Well, then, if it's unreliable, why is JEA
9 showing it on Exhibit 24?

10 A Well, it's required by the regulators to still
11 submit a plan to the PFC that uses the regular --
12 regulatory mandated assumptions for the ten-year site
13 plan.

14 Q And you're telling me that you're unaware that
15 at the March 29th city council meeting, that McElroy
16 says that the sales would remain at least flat, not
17 decrease and probably go up by as much as 1 percent,
18 you're not aware of that?

19 A Well, what I said is I don't have a specific
20 recollection sitting here, but I was present at that
21 meeting so I would have heard him say it.

22 Q But you don't have any recollection of it?

23 A Not today, sitting here.

24 Q Were you aware generally that Paul McElroy had
25 a difference of opinion than Aaron Zahn regarding sales

1 growth?

2 A I don't recall specifically discussing future
3 sales growth with Mr. McElroy. And I can't speak to
4 what his opinion regarding future sales growth was,
5 other than perhaps by reference to the statements he
6 made in the March meeting you just referred to.

7 Q Well, that's not quite an answer to my
8 question. My question was: Were you aware there was a
9 difference of opinion between McElroy and Aaron Zahn?

10 A I'm not aware of what Mr. McElroy's opinion was
11 beyond what he stated at that March meeting.

12 Q I think that answer is no?

13 A Well, I know that Mr. Zahn said that he did not
14 believe there was a future for sales growth for JEA. I
15 was not aware of Mr. McElroy's position until you just
16 said that he made statements at the March meeting.

17 Q Look at Exhibit 27.

18 A Yes.

19 (Howard Exhibit 27 was marked for
20 identification.)

21 Q On April 6th, which is seven days or so after
22 the city council special committee, Paul McElroy resigns
23 as the CEO of JEA.

24 Do you recall that?

25 A I recall him resigning, yes.

1 Q How did you learn about that?

2 A In -- in a meeting. He and I had a personal
3 meeting.

4 Q When was that?

5 A It would have been immediately prior to April
6 6th, so within a -- I don't know what date, what day of
7 the week that date was, but within a couple of days
8 prior to that, I presume.

9 Q And just the two of you?

10 A Yes.

11 Q And tell us about that conversation.

12 A I received a call from the mayor indicating
13 that he had lost confidence in Mr. McElroy and asking me
14 what Mr. McElroy's future plans were. Mr. McElroy's
15 then current contract was set to expire in September of
16 that year, September of '18. I told him that I didn't
17 know what Mr. McElroy's plans were beyond September of
18 '18. We had not discussed at that point in time his
19 contract renewal or retirement plans.

20 I asked for a meeting with Mr. McElroy to
21 discuss that. And shared with him that the mayor had
22 lost confidence in his leadership. And he said that he
23 would rather spend time with his family and so he would
24 just retire or words to that effect.

25 Q When did the mayor call you and tell you that

1 he lost confidence in Paul McElroy's leadership?

2 A It would have been immediately prior to my
3 meeting with Mr. McElroy, so, again, that first week of
4 April.

5 Q First week of April?

6 A I didn't sit on it when he -- when he called
7 me, I asked Mr. McElroy for a meeting so we would have
8 met shortly thereafter.

9 Q I assume, from what you told me, the mayor
10 asked you to ask Mr. Paul McElroy to resign?

11 A Not in so many words. He asked for his plans
12 regarding continuing in his role after the end of his
13 then current contract. And I think Mr. McElroy
14 interpreted the loss of confidence as a request for his
15 resignation.

16 I also got the clear impression from
17 Mr. McElroy that he was not enjoying the discussion
18 about privatization or the threats of subpoena to
19 testify before city council. In fact, he said so
20 directly to me, that he was offended by the city council
21 demand for a subpoena of his testimony.

22 So I -- I believe there were other motivations.
23 I gathered from Mr. McElroy there were other motivations
24 for his resignation.

25 Q Well, would it surprise you to hear McElroy

1 tell you that he felt like he was not in sync with the
2 leadership of JEA and the City regarding the sale of
3 JEA?

4 A Would it surprise me if he said that about that
5 point in time?

6 Q Yeah.

7 A Referring to senior leadership or to the -- to
8 the board?

9 Q Or the administration.

10 A Or the administration.

11 Q All of the above.

12 A I would be surprised if he thought he was out
13 of sync with his senior leadership team, who I believe
14 were all pretty much handpicked by him. I would be
15 disappointed if he thought that he was out of sync with
16 the board because we certainly, I believed, worked very
17 collaboratively together. I may not be surprised to
18 hear that he believed himself to be out of sync with the
19 administration. I would not be surprised.

20 Q And is it fair to assume that the reason for
21 that is because you had a very clear picture of the
22 administration wanting to sell JEA and Paul McElroy did
23 not?

24 A I would not go that far. I -- I never heard
25 Mr. McElroy say that a sale of JEA would be a bad thing.

1 He was opposed to it. I don't even think I got that
2 impression from him. My impression from him was much
3 more along the lines of previously alluded to, which was
4 to facilitate a discussion, provide the information
5 needed for any intelligent discussion about the Merits
6 of selling JEA. So I can't say that I ever heard him
7 say he was opposed to the sale.

8 Q You said you wouldn't go that far. How far
9 would you go in terms of whether he was in sync or not
10 in sync with the administration?

11 A It was -- it was not based on any statements
12 anyone made to me, Mr. Busey. It was just my
13 impression.

14 Q What was your impression?

15 A That they were out of sync.

16 Q As evidenced by the mayor asking you for his
17 resignation?

18 A He didn't say it in those so many words.

19 Q Isn't that the message you just committed?

20 A It was the message that what are your future
21 plans and I've lost confidence --

22 Q Other than -- other than JEA?

23 A Well, was he going to seek reappointment -- or
24 not reappointment -- seek the re-up for further time as
25 the CEO from the board. It's a board decision, not a

1 mayoral decision, to hire the CEO.

2 Q I was going to ask you about that, it is -- the
3 CEO reports to the board?

4 A He does.

5 Q The board selects the CEO?

6 A They do.

7 Q Not the mayor?

8 A That's correct.

9 Q What's the mayor doing calling you, telling you
10 he's lost confidence in the CEO?

11 A Well, again, it was really a question, asking
12 me to go and ask the -- I think appropriately so. I
13 don't think the mayor should have called Mr. McElroy and
14 he didn't. He called me and said, Would you ask what
15 his future plans are? I said, Yes. He says, I've just
16 lost confidence.

17 And you have to recall the context of a lot of
18 turmoil. So there was a lot of turmoil within the
19 organization. And some of that was directed not just to
20 the mayor or to the board, but also to the senior
21 leadership. So you have union representatives who are
22 being very vocal in their outrage at the discussion and
23 perhaps distrust of the leadership of JEA.

24 Q Outraged at the discussion of a sale?

25 A Privatization, yes. So all that was taking

1 place in this February, March time frame. And I -- I
2 certainly got the impression that it was taking a toll
3 on Mr. McElroy. So I believe there were other factors
4 at work. I don't -- I -- I did not perceive at the time
5 that the mayor was sending me on an errand to ask
6 Mr. McElroy to ask for his resignation so that he would
7 be removing a roadblock to the sale of JEA. That was
8 not my impression.

9 Q But you can understand how somebody could
10 develop that impression from the facts we've talked
11 about?

12 A Yes.

13 Q You have in front of you Exhibit 28, which is
14 the board minutes of April 17.

15 A Yes.

16 (Howard Exhibit 28 was marked for
17 identification.)

18 Q Was this the first board meeting after Paul
19 McElroy had announced his resignation?

20 A Yes.

21 Q And what was the discussion about replacing
22 Paul McElroy?

23 A Well, the initial discussion was on the search
24 for an interim CEO. So I think the -- the video
25 provides the best evidence of what was exactly said.

1 Q And there's a discussion of generally hiring a
2 search firm to find a new CEO?

3 A Yes.

4 Q And there was a need for an interim CEO?

5 A Yes.

6 Q When was Melissa appointed as the interim CEO?

7 A Immediately upon Mr. McElroy's resignation so I
8 guess that would have been April 6, so she served as
9 interim for a period of time there, I believe.

10 Q Until the 17th?

11 A Yes, that's my recollection.

12 Q And when did you learn that Aaron Zahn wanted
13 to be a candidate for the interim CEO?

14 A So can you refresh my recollection, when did he
15 tender his resignation? That wasn't in the exhibit
16 list. Was it April 14th?

17 MR. BLODGETT: I don't recall the specific date
18 it was.

19 Q No, I can't.

20 A And I don't either. So let's say the board
21 meeting was a Tuesday, April 17th. Yes. So I believe
22 he tendered his resignation on the preceding Friday, so
23 would have -- that would have been Friday, the 13th,
24 thereabouts.

25 MR. BLODGETT: I just found a document, that's

1 what my outline shows.

2 A Thank you. So Mr. Blodgett has confirmed that
3 April 13th was the preceding Friday and I believe that's
4 when I would have been notified that he was resigning
5 from the board and seeking the interim CEO position.

6 Q And how did you find that out?

7 A He telephoned me.

8 Q Tell me about the conversation.

9 A So as I indicated, I met Mr. Zahn once prior to
10 his appointment to the board. I now had two
11 interactions with him in the March 20th and March 20 --
12 March 20th workshop and March 20 whatever it was, 9th,
13 board meeting.

14 I think I also said that I appreciated the fact
15 that he was an energetic participant on the board. I
16 was very surprised that he was resigning and seeking the
17 interim CEO position. And I told him so. I believe I
18 encouraged him to stay on the board because I thought it
19 was a slam dunk that Ms. Dykes would be confirmed as the
20 interim CEO. So I was surprised, disappointed and not
21 encouraging.

22 Q To him in that conversation?

23 A To him in that conversation.

24 Q And then what happened?

25 A He asked to meet with me and share with me why

1 he thought he was qualified to serve as the interim CEO.
2 I agreed to take that meeting because he had now
3 resigned so we were able to have a meeting without
4 running afoul of sunshine. That would have been on a
5 Sunday afternoon, at my office, so the 15th of April.

6 Q What happened in that conversation?

7 A He came very well-prepared with some -- a
8 document that he had clearly been working on, outlining
9 what he believed JEA needed to do to move forward in
10 terms of -- I don't recall the specifics, but,
11 basically, a high level sort of strategic review and --
12 and proposed changes. Again, I don't recall the
13 specifics.

14 Q I mean, did it focus on privatization?

15 A It did not.

16 Q Did it mention it at all?

17 A Not that I recall.

18 Q And what was your reaction to him as a result
19 of that conversation in your office that afternoon?

20 A I don't think he changed my mind. I -- I think
21 I shared with him, these are great ideas. In fact, I
22 recall sharing with him these are great ideas, I wish
23 you would have stayed on the board and advocated.

24 I do recall one of the ideas was having to do
25 with activating the -- the dark fiber network that JEA

1 owns and really is not monetized and some other ideas
2 along those lines. It was not privatization.

3 And I said, Thank you. I appreciate you
4 meeting with me. It was probably an hour-long meeting
5 where he was advocating, campaigning for the position.
6 And I -- I remained unpersuaded.

7 Q And then your meeting, was that Tuesday?

8 A It was the 17th, yes.

9 Q Called to order at 12:02, by Chairman Howard.
10 And prior -- subsequent to your conversation with Aaron
11 on Sunday afternoon and prior to noon on Tuesday, did
12 you talk to anybody about the selection of an interim
13 CEO?

14 A Well, so I spoke to Ms. Hiers, who was the
15 chief human resources officer, about is there a playbook
16 for this or protocol for this? That probably would have
17 been on Monday to try and get our plan together on how
18 to do the vote.

19 I reached out to Ms. Dykes so that she was not
20 caught unaware, tried to reach out to her and -- and let
21 her know.

22 I first reached out to Ms. Charleroy because I
23 didn't have Ms. Dykes' cell phone number. So I ended up
24 reaching Ms. Charleroy and then reaching out to
25 Ms. Dykes. I don't recall that we ever connected over

1 that weekend, but I -- I --

2 Q We, being you and Melissa?

3 A Sorry, Ms. Dykes and I, I don't know that we
4 ever connected. But I thought it was appropriate, as
5 Chair, to alert her to what was going on.

6 Q But you don't remember talking to her?

7 A I don't -- we may have.

8 Q Do you know if she was surprised at the
9 meeting?

10 A Well, she certainly knew walking into the
11 meeting so someone had apprised her, if it wasn't me.

12 Q All right. So you talked about Melissa, you
13 talked about Charleroy. Anybody else you talked to?

14 A I received a telephone call that weekend from
15 Mr. Hughes, in the mayor's office, asking me what I
16 thought about Mr. Zahn's candidacy. I shared with him
17 my thoughts, that I thought Ms. Dykes was more
18 qualified. Brief conversation. I gathered that
19 Mr. Hughes supported the candidacy of -- of Mr. Zahn
20 without outright saying so or soliciting my support.

21 Thereafter, I received a call from Mayor Curry,
22 asking me what I thought about Mr. Zahn and his
23 candidacy. I shared with him the same concerns that I
24 had and preference for Ms. Dykes as having the requisite
25 experience at the utility to be the more competent

1 candidate.

2 I don't recall he outright solicited me to
3 support him. I think his statements were very
4 open-ended. Do what you think is best for JEA or words
5 to that effect.

6 Q But did I hear you say it was apparent to you
7 from the conversation with Brian Hughes that Brian was
8 encouraging the appointment of Aaron Zahn?

9 A Without outright soliciting my support, it was
10 my impression that -- that he supported Mr. Zahn's
11 candidacy.

12 Q Did he say why? Or why he thought this would
13 be a good choice for JEA?

14 A I don't recall that he made a statement why he
15 thought Mr. Zahn would be best. I have a recollection
16 that as I articulated the reasons I supported Ms. Dykes,
17 he expressed a concern that she would be a continuation
18 of Paul McElroy's tenure and policies, attitudes,
19 something to that effect.

20 That was my inference from that conversation
21 and -- and based on the statement along those words by
22 Mr. Hughes.

23 Q Anybody else you talked to about selection of
24 interim CEO?

25 A I'm sure I discussed it with my wife, but

1 beyond that, no.

2 Q That's the most important conversation.

3 A They always are, Mr. Busey.

4 Q And you're telling me that Mayor Curry did not
5 express an opinion to you one way or the other, really
6 just completely benign, he just happened to call you and
7 talk to you on Sunday afternoon?

8 A I don't recall that he outright said, I want
9 you to vote for Mr. Zahn.

10 Q Accepting that, something short of that?

11 A I -- I do recall that it was a general
12 sentiment of, well, do what you think is best. He may
13 have said those exact words.

14 Q Besides Mr. Hughes and Mr. -- and Mayor Curry
15 calling you, anybody else that you talked to?

16 A No. As I said, I may have reached out and
17 spoken to Ms. Dykes. I just don't recall if we actually
18 made contact.

19 And I did speak with Ms. Hiers the morning --
20 well, I don't recall what day I spoke to her, but since
21 the Friday afternoon call from Mr. Zahn, I suspect it
22 was Monday morning that I met with Ms. Hiers to talk
23 about how to conduct the interim director CEO vote.

24 Q Did you talk to Tom Petway about it?

25 A No.

1 Q Talk to Sam Mousa or Michael Weinstein about
2 it?

3 A No.

4 Q Did you talk to any other member of the board
5 of JEA before the board?

6 A No.

7 Q Just thought I'd ask.

8 And so you took a vote, as reflected in the
9 video and the minutes, and Aaron Zahn was selected as
10 interim CEO?

11 A Yes.

12 Q And what was your impression about how that
13 came down? You shared with me how --

14 A I was very surprised at the votes. I --
15 because we don't have an opportunity to speak as board
16 members, I suspected that the vote -- votes would be
17 there for Ms. Dykes as the most logical interim
18 candidate. So I was quite surprised when they came out
19 otherwise.

20 Q Did the JEA perform, back then, a reference
21 check on Aaron Zahn?

22 A At that time, no. But subsequently, yes.

23 Q At what point in time?

24 A I believe it was when he was submitting his
25 candidacy for the permanent CEO position.

1 Q Did you talk to Melissa Dykes after the meeting
2 regarding her disappointment or lack of -- about her
3 reaction to what happened at the meeting?

4 A I -- I know that we had discussions. I don't
5 recall that she expressed profound disappointment or
6 surprise. I think I did.

7 Q Did you talk with her about encouraging her to
8 stay employed by JEA?

9 A I did, specifically about the idea of
10 serving -- oh, I'm sorry, you asked me previously what
11 Mr. Zahn and I discussed. At the Sunday afternoon
12 meeting, prior to the board meeting, when he was
13 outlining his plan or vision for JEA, he included a
14 specific role for Ms. Dykes to serve as the chief
15 operating officer and strong number two responsible
16 really for oversight of operations at JEA. And that was
17 another topic that I wanted to discuss with her prior to
18 the April 17 board meeting.

19 So I know that we had some discussions around
20 that, if not prior to, immediately subsequent to that
21 board vote where he was confirmed as interim CEO.

22 Q During his remarks to the JEA board at that
23 meeting, Aaron Zahn pledged, quote, "Build consensus
24 around the purpose role and value of JEA and the
25 community."

1 Do you believe he fulfilled that promise?

2 A Well, with the benefit of hindsight, I would --
3 I would say that we all fell short, Mr. Zahn and the
4 board.

5 MR. BUSEY: Let's go off the record.

6 (Lunch recess taken.)

7 BY MR. BUSEY:

8 Q Let me show you Exhibit 29. Do you have that?

9 A Yes, sir.

10 (Howard Exhibit 29 was marked for
11 identification.)

12 Q That is a public statement by the mayor, dated
13 April 26, which was less than ten days after the April
14 17th board meeting we're talking about where Aaron was
15 selected as the interim CEO.

16 And the purpose of this public statement
17 apparently was the mayor said he was not going to
18 submit any JEA privatization plan to the City of
19 Jacksonville.

20 Do you remember this statement when it was
21 made?

22 A Yes.

23 Q Did you talk to the mayor about it?

24 A No.

25 Q How did you find out about it?

1 A The press.

2 Q Nobody in his administration told you it was
3 coming?

4 A They did not.

5 Q What was your reaction?

6 A Surprised and perhaps a bit disappointed.
7 Primarily because I believed then and now that there
8 should have been a robust community discussion about
9 the option.

10 Q And this appeared to foreclose that robust
11 discussion?

12 A It did.

13 Q Well, the mayor was obviously interested in
14 privatization before this. What made him come to this
15 conclusion, do you know?

16 A I do not know.

17 Q So what you're telling me, you were surprised
18 and disappointed?

19 A I was.

20 Q Statement on paragraph -- page 2, it says at
21 the bottom, Unfortunately, a clear and reasonable
22 process to discuss these issues was highjacked by a few
23 special interests and politicians with an agenda to put
24 politics above all else. Fixated on the false choice of
25 sell versus don't sell, they've created an environment

1 fostering misinformation and mistrust. Despite this,
2 the valuation undertaken by JEA leadership did yield
3 evidence of importance strengths we have in our
4 community, utilities, balance sheet.

5 Do you know what he was talking about about the
6 highjacking by personal interests?

7 A I -- I don't know. I do know that during the
8 discussion and that three to four-month period, December
9 through April, there was the robust community and JEA
10 union employee opposition to a sale. And I -- I suspect
11 that's what he was alluding to, together with the
12 tension that his administration had with the city
13 council president.

14 Q So was it -- I'm asking: Was it your
15 impression after this -- after that announcement by the
16 mayor, on April 26th, that the issue of the sale of JEA
17 was a dead issue?

18 A It was.

19 Q Then you had a board meeting on May 15th, do
20 you remember that? This is Exhibit 30.

21 A Yes.

22 (Howard Exhibit 30 was marked for
23 identification.)

24 Q You chaired that board meeting?

25 A Yes.

1 Q And you see on page 2 of it, there's a -- an
2 item called CEO search update?

3 A Yes.

4 Q Was the board really searching for a new CEO?

5 A Yes.

6 Q Did you -- at that point in time of this
7 meeting, did you know that Aaron Zahn was interested in
8 that position?

9 A I don't know if he had stated as much, but I
10 certainly assumed that he would be interested in the
11 permanent position, given his eagerness to serve as the
12 interim.

13 Q Had Aaron Zahn told you by May 15th he wanted
14 to be permanent CEO?

15 A I don't recall.

16 Q Had anybody else spoken to you by May 15th
17 regarding Aaron Zahn becoming permanent CEO?

18 A I don't recall. At some point he certainly
19 indicated to me that he was going to seek to be the
20 permanent CEO, but I -- I don't recall where in the
21 timeline of that process he made that statement.

22 Q And the minutes reflect on page 3 a discussion
23 about who was going to be the search firm and Heidrick &
24 Struggles was selected by the board. Do you remember
25 that?

1 A Yes.

2 Q Do you remember what the controversy was about
3 that as to who was going to be the search firm?

4 A I don't recall a particular controversy. I
5 recall that there was some disclosure made that there
6 had been a prior relationship between Mr. Zahn and
7 either the firm of Heidrick & Struggles or one of the
8 individuals who was now at Heidrick & Struggles, but
9 perhaps they assisted him in a prior search or were
10 engaged by his prior employers. I'm sorry, I -- I have
11 a vague recollection there was some discussion around
12 that issue, but it was not ultimately deemed to be
13 disqualifying.

14 Q On page 5 of those minutes, the March 5th --
15 May 15th meeting, under title C, Open Discussion,
16 there's a paragraph that says, Mr. Cumber reminded the
17 board at a previous finance and audit committee a
18 request was made to have the discussions related to rate
19 restructuring.

20 Board members held discussions regarding
21 privatization. On a motion by Vice Chair Cumber and
22 seconded by Secretary Newbill, the board unanimously
23 approved, absent a future board decision, any activities
24 tied to a privatization effort would be put on hold.

25 Do you remember that discussion?

1 A I -- I remember the motion. I don't have a
2 specific recall around the discussion.

3 Q Do you remember that a motion was made?

4 A Yes.

5 Q Do you remember it passed?

6 A Yes.

7 Q And you don't remember what the discussion
8 was?

9 A Well, I don't remember the particulars of the
10 discussion, only that there was a motion discussion and
11 the motion passed.

12 Q Well, this was a pretty controversial issue
13 with the City at that time, wasn't it?

14 A Not anymore. The mayor had already said he was
15 not pursuing or wouldn't support any efforts, so this is
16 two or three weeks after that press conference
17 announcement.

18 Q Why would the mayor's announcement be
19 dispositive of the effort?

20 A Well, again, the -- the board of JEA doesn't
21 have the ability to approve a sale of itself. It's got
22 to be approved by city council. So to the extent that
23 the mayor wasn't going to support an effort to sell JEA,
24 I think that pretty much foreclosed any further
25 discussion on the issue. City council had by that point

1 made clear their opposition to a sale.

2 Q Say that again.

3 A I believe that city council had, by that point,
4 made clear their opposition to a sale.

5 Q Well, we've been through that. At what point
6 in time did that become clear to you?

7 A Well, it was certainly clear as of May 15th and
8 as of the April 26th announcement by the mayor.

9 Q But what about the City, you're saying the city
10 council decided?

11 A No, I think it had been made clear by
12 statements made by various city council members. I'm
13 not sure if they had a specific resolution at that
14 point, but they did have the special investigative
15 committee led by Councilman Crescimbinì, which had held
16 several meetings. And it was certainly my impression
17 that there was not going to be any positive action by
18 the mayor or the city council on a sale.

19 So this was not surprising to me that
20 Mr. Cumber would make this motion or that it would pass.
21 I voted for it.

22 Q You voted for it?

23 A I believe it was unanimous.

24 Q Why did you vote for it if you thought there
25 should be an open discussion?

1 A Because it was futile at that point we would
2 have been prolonging the community. Outrage is the
3 wrong word, but there was certainly discontent among the
4 JEA unionized work force, resistance within the
5 community and no support from the mayor or city council.
6 I didn't see any upside for JEA to continue those
7 discussions in the face of all of that.

8 Q The -- show you Exhibit 31. Do you have that?

9 A June 13, 2018?

10 (Howard Exhibit 31 was marked for
11 identification.)

12 Q Yes.

13 A Yes.

14 Q JEA Agenda Item Summary.

15 Are you familiar with that?

16 A I -- I would have seen it at the time it was
17 presented to the board, yes.

18 Q Did you understand the purpose of it?

19 A I believe so, yes.

20 Q What was it?

21 A To achieve consensus around the role of JEA and
22 its relationship to the City. Again, just in context,
23 we had come out of that very contentious period of
24 community and city council discussion around a potential
25 sale of JEA. There was an ongoing -- Councilman

1 Crescimbinì's committee was ongoing.

2 The Jacksonville Civic Council, I think that's
3 the name of that organization, had undertaken a public
4 review of JEA and its role vis-a-vis the City. So this,
5 I thought, was an appropriate response to that. It was
6 led by Mr. Zahn and Ms. Dykes and senior leadership team
7 to establish a -- a framework around the role of JEA in
8 the City and promote a better understanding of that
9 role.

10 Q Attached to Exhibit 31, and this -- 31 is an
11 agenda item summary, it's prepared, according to it, by
12 Aaron Zahn. And the reading of the issue, on April
13 17th, the board and interim managing director/CEO
14 contemplated a transition period and plan for JEA and
15 its management, ("Transition"). The transition period
16 contemplated by the board included a process and
17 mechanism for ensuring alignment of JEA with the city
18 council and mayor's office relative to the financial,
19 operational and community expectations of JEA.

20 And then there's a -- there's a diagram that
21 contemplates a time frame for that.

22 And then there are -- attached to the exhibit
23 is a resolution that I understand was drafted by Aaron
24 Zahn for the city council.

25 Do you remember that?

1 A Well, I remember the discussion. I -- I didn't
2 know that Aaron Zahn drafted the resolution. I'd
3 question if that's -- if that's true. Doesn't look like
4 something Mr. Zahn would have drafted, but I do recall
5 the entire discussion.

6 Q Tell me about the discussion.

7 A Well, again in context, following the sort of
8 contentious debate around the JEA and the debates of
9 Councilman Crescimbin's committee and the JCC
10 initiative and the continuing or lingering resentment,
11 distrust by JEA's work force, I think everyone
12 recognized, and by everyone I mean the senior leadership
13 team, myself, I believe the remainder of the board,
14 recognized a need to say, look, what is JEA's proper
15 role here to the City? And -- and how are we going to
16 better align JEA's goals with the City's goals? And
17 make sure that we don't go through something similar to
18 what we just went through based on misunderstandings
19 and/or misalignment of those goals.

20 So that was the background around this
21 framework and alignment.

22 Q Did that resolution ever get passed by the city
23 council?

24 A I don't -- I don't recall. I don't even know
25 if it was introduced. The discussion was had, but I --

1 I don't recall if the resolution was passed.

2 Q Discussion was had with the JEA board?

3 A And with individual city council members. I
4 think Mr. -- as I recall, Mr. Zahn indicated to me that
5 he was reaching out and going on a sort of whistle stop
6 tour of individual city council members to speak to them
7 directly about JEA, its desire for an alignment of its
8 goals with the City's goals. A discussion that I -- I
9 don't know had ever previously taken place.

10 Q Do you have Exhibit 33?

11 A Future of JEA Workshop?

12 (Howard Exhibit 33 was marked for
13 identification.)

14 Q Yes.

15 A I do.

16 Q Do you recall that?

17 A I don't -- I don't have a specific
18 recollection, Mr. Busey.

19 Q Of the workshop?

20 A Oh, I thought you were talking about the
21 document.

22 Yes, we had the workshop, but I don't have a
23 specific recollection of the document. I don't know
24 that I've ever seen this document. Looks to be
25 internally prepared talking points.

1 Q What was the workshop?

2 A Again, my recollection is that there was a --
3 there would be a video record of the meeting. My
4 recollection is that this was an opportunity for board
5 discussion around the future of JEA and alignment of its
6 objectives with the City's objectives, city council's
7 objectives.

8 Q We understand that this was a -- workshop was
9 held on June 26th at the Ponte Vedra Club. Do you
10 recall that?

11 A I don't recall attending that.

12 Q Do you know if it happened?

13 A I -- I don't know that it happened.

14 Q You see on the top of the line of the first
15 page of Exhibit 33, it says, Problem, the line -- the
16 heading is Competition for Electric Revenue, Team Dykes.
17 Do you know what Team Dykes is?

18 A I assume it's a reference to an internal
19 working group led by Melissa Dykes.

20 Q I understand your assumption. Had you ever
21 heard that term before?

22 A No.

23 Q Until you saw this document?

24 A Correct.

25 Q And you hadn't seen this document before

1 yesterday?

2 A I don't believe so, no.

3 Q Do you see underneath where it says, Team
4 Dykes, it says, Problem?

5 A Yes. Problem, quote, "get bigger or die,"
6 closed quote. Charter restrictions limit business type
7 and service territory.

8 Q Isn't charter restrictions on what JEA can or
9 can't do sort of a siren song for Aaron Zahn? Do you
10 remember hearing talk- -- do you remember hearing him
11 talk about that?

12 A I have heard him refer to charter restrictions,
13 yes.

14 Q As being the reason to sell JEA?

15 A Well, as being a limitation on -- on JEA's
16 revenue.

17 Q Does this sound then, like, within a month
18 Aaron Zahn's back on the track of trying to sell JEA?

19 A I -- I wasn't there so I don't know what they
20 discussed at their senior leadership team workshop. As
21 I read it now, it makes sense to me in the context of
22 the other discussions we were having about a strategic
23 planning process and the future of JEA. I don't
24 necessarily read it as he's back on the bandwagon of
25 privatization.

1 Q Well, you heard him talking about that he felt
2 like JEA was unduly restricted by legislative charter
3 restrictions?

4 A He did and I did and I think many people did.
5 And the fact that they limited JEA's revenue
6 opportunities was a fact that didn't just justify a
7 privatization sale, but also presented a business
8 reality that we had to address.

9 Q And then on page 2, Step 2, rethink structure
10 of JEA and how it fits into COJ.

11 Do you remember having this discussion at all
12 with Aaron Zahn when he was an interim CEO and you were
13 the -- and you were the chairman of the board?

14 A Well, so rethink structure of JEA, again, isn't
15 necessarily a code of selling JEA in my mind. It was,
16 again, in the context of that strategic framework, which
17 we discussed earlier as the attachment to the agenda
18 item.

19 So there was a question mark regarding how the
20 City regards JEA as a future asset and what its goals
21 were with respect to JEA and what JEA -- JEA's goals
22 were and if they synced up. So how it fits into COJ
23 doesn't -- doesn't read to me as necessarily meaning a
24 sale.

25 Q Do you know why the -- that senior leadership

1 team on the 26th met at Ponte Vedra offsite? Did
2 Aaron Zahn talk to you about the fact that the senior
3 staff was going to have an offsite meeting at
4 Ponte Vedra?

5 A I don't recall being made aware of that, no.

6 Q That's not something you ordinarily -- the
7 Chair would be aware of?

8 A Or participate in, no.

9 Q That's an extraordinary expense, isn't it?

10 A I -- I don't know what expense was incurred, if
11 they were just there for lunch or if they actually had
12 rooms for the night at JEA's expense. I -- I don't
13 know.

14 Q Look at what we've marked as Exhibit 34.
15 Do you see that?

16 A Yes. E-mail from Elaine Selders.
17 (Howard Exhibit 34 was marked for
18 identification.)

19 Q Do you know who she is?

20 A No.

21 Q It's an e-mail to an awful lot of folks and it
22 says, Good morning. Please see the attached addendum
23 one with the request for information for strategic
24 planning and implementation consulting services. Please
25 refer to the information attached when submitting your

1 response.

2 All responses are due by July 30th.

3 Do you know what she was soliciting by this
4 RFP?

5 A I had never seen this e-mail before. I don't
6 recall that I ever seen the RFP before. We had
7 discussed -- or, sorry, I had discussed with Mr. Zahn at
8 some point in his tenure, early in his tenure, as
9 interim CEO, the fact that JEA was due for a strategic
10 planning process, historically something that they had
11 engaged in every five years and we were coming to the
12 end of that then current five-year strategic planning
13 program.

14 So I recall that he and I had discussed the
15 fact that this was going to be a significant initiative
16 to go through a strategic planning exercise and I
17 suspect that he would have shared with me the need to
18 engage or desire to engage an outside consultant.

19 So I believe this was in response to those
20 discussions that we had at that point in time, but, no,
21 I did not see this.

22 Q Did he discuss with you physically the
23 engagement or prospective engagement of McKinsey?

24 A I -- I don't recall that we discussed engaging
25 McKinsey. John McCarthy was the head of procurement at

1 that point in time and I know that there were rules
2 governing those types of engagements and what had to go
3 out to an RFP. So I don't think it was one where he
4 could sole source McKinsey without doing the RFP, but,
5 of course, I later learned that McKinsey would be the
6 consultants on the strategic planning process.

7 Q How did you learn that?

8 A Well, at some point I was told by Mr. Zahn or
9 others that they were the chosen or selected or winning
10 bidder.

11 Q And what was your understanding of what
12 McKinsey -- McKinsey was going to do for JEA?

13 A My understanding was it was a strategic
14 planning consultancy, with all that that implies.

15 Q Sounds like a lot of gobbledegook, doesn't it?

16 A Well, McKinsey and other consultancies like
17 that make a lot of money doing this -- this sort of
18 thing. I -- I believe there's value in a strategic
19 planning process. I think an organization needs to
20 think long-term and be proactive and thinking about
21 itself as an institution.

22 But as to any advanced input into what the
23 specifics of the RFP would be, no, I -- I would not have
24 dictated the RFP.

25 Q Exhibit 35, do you see that?

1 A August 14, 2018?

2 (Howard Exhibit 35 was marked for
3 identification.)

4 Q Yes.

5 A Yes.

6 Q Do you know if -- that was attached to a -- the
7 agenda for a board meeting of August 21st, wasn't it?

8 A It -- it may have been. I didn't go back and
9 compare that, but I'll take your word for it.

10 Q Do see the legend at the top of Exhibit 35?

11 A V.C. 8/21/18.

12 Q Yeah. Wouldn't that be a board meeting?

13 A Yeah. I don't know V.C.

14 Q Do you see on the left-hand side, it says,
15 Return to the agenda?

16 Do you usually see that on the attachments to
17 the vendors?

18 A Yes, yes. It was a printout from the
19 electronic board package.

20 Q What was the purpose of this meeting of the
21 board package?

22 A So the recommended board action was follow up
23 on discussions at the May, June and July board meetings
24 and it was staff requesting approval of the strategic
25 framework and authorization of JEA staff to coordinate

1 follow-up meetings with city council and mayor.

2 Q What does that mean?

3 A Well, it -- it was seeking the board's approval
4 of the strategic framework as outlined in the attached
5 materials. I think it was really looking for board
6 buy-in to the process of the strategic planning and a
7 framework that aligned with the City and city council.
8 The same thing we talked about for the previous three
9 months, just took a while.

10 Q Well, there's a -- in the attachments to this
11 Exhibit 35, Agenda Item Summary, there is a letter from
12 you to the mayor and to the city council.

13 Do you see that?

14 A I do.

15 Q What was the purpose of that letter?

16 A To follow up --

17 Q Have you seen this before today?

18 A Yes, I wrote it and -- and these are pretty
19 much my words. This was not ghost written for me by
20 Mr. Zahn or anyone else.

21 Q And what was the message?

22 A Well, as set forth in my -- in my letter, the
23 goal was to try and bring alignment between JEA and the
24 City and avoid the disconnects that had led to the
25 termination of prior discussions and the mistrust and

1 distrust that have sort of been fomented by the
2 privatization discussions.

3 Q And how were you -- how did you intend to
4 accomplish that? I hear what you're saying. As a
5 practical matter, how do you -- how do you accomplish
6 that?

7 A Well, for one thing you talk to one another.
8 It was my understanding that there was very little
9 communication between JEA and -- and city council under
10 Mr. McElroy's prior tenure. That was brought to my
11 attention after Mr. McElroy's tenure. I think
12 engagement with city council, in particular, on issues
13 relating to JEA would be beneficial in avoiding
14 misunderstandings. I strongly encouraged Mr. Zahn and I
15 believe he acted on his own and in response to my
16 encouragement to meet with city council members on a
17 regular basis. I suspect he also met with members of
18 the administration on a regular basis.

19 Q And do you have Exhibit 36?

20 A The McKinsey contract?

21 (Howard Exhibit 36 was marked for
22 identification.)

23 Q Yes.

24 A Yes.

25 Q The McKinsey contract, dated September 28th,

1 2018?

2 A Yes.

3 Q And what was the purpose of this contract?

4 A I -- I had never seen this contract previously.

5 Q Previously to last night?

6 A To your providing it to me last night,
7 yesterday.

8 Q You had never seen it. Were you aware of it?

9 A I knew that they had been engaged, yes.

10 Q You were aware that McKinsey had been
11 engaged --

12 A Yes.

13 Q -- by JEA?

14 A Yes.

15 Q For what purpose?

16 A Strategic planning consultant.

17 Q What does that mean?

18 A That they would guide the process of strategic
19 planning with the JEA senior leadership team.

20 Q Well, you -- and you see in the agreement on
21 the bottom of the first page is -- the initial contract
22 was for \$308,000?

23 A Yes.

24 Q What was McKinsey going to do for \$300,000?

25 What does that mean, plan, strategic plan? I don't

1 understand. As a practical matter, what were they going
2 to do?

3 A Well, there was a detailed list of services on
4 Exhibits A and B and the ITN and the technical
5 specifications, I assume that sets forth in detail. My
6 general understanding of strategic planning consultancy
7 is that they do an assessment of the organization, do an
8 assessment of the industry sector for that organization
9 and then guide the executive management team of the
10 organization through their challenges, assessing their
11 strengths and weaknesses and form -- assist them in
12 formulating a plan to guide the organization over some
13 prescribed period of time, five years, ten years.

14 Q Did McKinsey do that?

15 A It's my understanding that they did deliberate
16 final work product at some point.

17 Q Have you seen it in the materials?

18 A I don't recall seeing it in these materials,
19 but I believe I have seen it.

20 Q When was it delivered, do you know?

21 A I do not recall.

22 Q What did it say?

23 A It was extensive. I will confess to you,
24 Mr. Busey, it was after my tenure on the board. And
25 while I had a curiosity about it, I did -- I did not

1 study it in depth.

2 Q When was your tenure on the board over?

3 A July board meeting, so July 23rd, 27th. I'd
4 have to get the exact date.

5 Q July 23, 2019?

6 A Yes.

7 Q Was it --

8 A One board meeting too late, as I'm fond of
9 saying.

10 Q So the McKinsey report came in after that board
11 meeting of July 23, 2019?

12 A I believe that's correct.

13 Q Look at Exhibit 37.

14 A Yes.

15 (Howard Exhibit 37 was marked for
16 identification.)

17 Q Do you know what that is?

18 A It appears to be an article in the Jacksonville
19 Business Journal about the Innovation -- Infrastructure
20 Innovation Submit.

21 Q What is the Jax Infrastructure Innovation
22 Submit?

23 A So at some point early in his tenure as interim
24 CEO, Mr. Zahn indicated to me that in discussions with
25 the JTA and the Chamber of Commerce that they

1 collectively believed there was an opportunity for a
2 summit focusing on Jacksonville's infrastructure and
3 innovation opportunities that would benefit the City,
4 benefit City leaders, bring a focus on some of the
5 things that are going on with JTA and JEA. Be
6 underwritten by sponsorships and -- and, yes.

7 That's what I understood. He wanted to do this
8 and others -- he related to me that others in the
9 community were supportive and would collaborate them.
10 So a three-way presentation.

11 Q Was it authorized by the JEA board?

12 A I don't recall a specific board action. I
13 think he disclosed it to the board. He didn't just talk
14 about it with me, but I don't recall that there was a
15 resolution.

16 Q Do you recall what the expense to JEA was or
17 participation in the summit?

18 A I recall later learning it was far more than I
19 had initially been told, but I don't recall the exact
20 numbers.

21 Q What were you initially told?

22 A Well, I don't know that he specifically quoted
23 an amount to me. As I recall, it was to be primarily
24 underwritten by sponsorships of commercial entities so
25 they would pay a sponsorship fee, like many trade

1 conferences. And there would be some contribution by
2 each of Chamber -- Jacksonville Chamber of Commerce, JTA
3 and JEA. And there would be -- we would support
4 attendance with employees of JEA during work hours.

5 Q Do you remember how much it cost JEA?

6 A I don't have a specific recollection. I
7 remember learning later that the number was far higher
8 than what I had initially understood it was going to
9 be.

10 Q Does \$325,000 sound right?

11 A That rings a bell.

12 Q Would you expect the CEO to get authorization
13 from the board to spend that much money for a summit?

14 A Yes, I would have.

15 Q And did he --

16 A I don't recall that any board authorization was
17 obtained.

18 Q What about the \$25,000 that was reportedly sent
19 to the chamber for Southern Strategies?

20 A I was unaware of that.

21 Q Until when?

22 A Until the newspaper article came out in January
23 of 2020.

24 Q And what did you learn from that newspaper
25 article?

1 A That JEA paid the Jacksonville Chamber of
2 Commerce \$25,000 and reportedly told them to hire Deno
3 Hicks, a local lobbyist.

4 Q And to pass somebody on to Southern Strategies?

5 A Deno was employed by Southern Strategies, I'm
6 sorry.

7 Q And you read about that in the newspaper?

8 A Yes, I was unaware of that.

9 Q Did you call Aaron and say what's this about?

10 A I was off the board by that point in time, so.

11 Q What point in time was that?

12 A This was January of 2020 and I was -- I was off
13 the board July of 2019.

14 Q So looking at Exhibit 37, the -- the summit was
15 October of '18?

16 A Yes.

17 Q And at which you're talking about you didn't
18 learn about this transfer of funds until after you were
19 off the board in late '19 or early '20?

20 A Until 2020 when it became public. I knew that
21 the chamber and JTA and JEA were collaborating on the
22 summit. I was unaware that JEA paid the chamber \$25,000
23 in connection with the summit.

24 Q In the -- the discussion, what happened at that
25 summit, which is Exhibit 37, the mayor's quoted at the

1 end on page 8, Mayor Lenny Curry took the stage after
2 Zahn and addressed the last year of JEA discussions in
3 Jacksonville, discussions that were dominated by the
4 question: Would Jacksonville be better served if JEA
5 was sold to a private utility?

6 Quote, "There have been tough conversations
7 over the last year and those conversations have created
8 fear and uncertainty," said Curry. "But all of those
9 conversations were filtered to you through a media
10 narrative that was not true."

11 Do you know what he's talking about?

12 A I -- I -- I don't know specifically what he was
13 referring to in that quote. I -- I know what the tough
14 conversations were. We -- we had had a contentious
15 debate over potentially selling JEA.

16 Q But do you know what he was -- what he thought
17 was untrue in the meeting?

18 A I don't know specifically what he was referring
19 to.

20 Q Let me direct you to Exhibit 41, please.

21 A Okay.

22 (Howard Exhibit 41 was marked for
23 identification.)

24 Q A November 19, 2018, e-mail from Aaron Zahn to
25 Michael Munz in which -- I'll read it, Aaron Zahn to

1 Michael Munz, Generally this doesn't bother me, but I
2 thought it was striking when I actually reviewed it over
3 the weekend. There is now a world -- there is now a
4 world where this cannot be intentional, especially when
5 compared to other candidate reviews. Also, interesting
6 to note is that these were prepared by the recruiter
7 herself and not an industrial psychologist so they are
8 effectively useless.

9 Do you know what that's referring to?

10 A It says, See attached.

11 Q Yeah.

12 A There is a second page, but I've never seen
13 this before.

14 Q And what is referred to as actual -- let's
15 attach the actual fact and detail of my resume and
16 interview were ignored. And as an overarching comment,
17 one can't help but to notice the depth and detail
18 provided for the other candidate in addition to -- in
19 comparison to the relative sparse notes for my
20 evaluation.

21 It's apparent that Aaron was complaining about
22 the comments that were made about him during the
23 interview process. Were you aware of his disappointment
24 about that?

25 A No, I don't believe Aaron vented those

1 frustrations to me.

2 Q Do you know why he was complaining to Michael
3 Munz?

4 A No. I know that he and Munz knew each other
5 and the Dalton Agency ultimately got engaged by JEA at
6 some point thereafter, but I don't know if he had a
7 personal friendship with Munz or -- I don't know.

8 Q When you say thereafter, after what?

9 A After November of '18, Dalton Agency ended up
10 getting engaged.

11 Q So if -- if I remember -- recall your testimony
12 correctly, you were unaware in 2018 that Aaron Zahn was
13 unhappy with the Heidricks & Struggles' evaluation of
14 him as a candidate?

15 A I don't recall him ever complaining, venting to
16 me about that.

17 Q Okay. Let me point to you Exhibit 42. This is
18 an e-mail from Patricia Maillis, on Monday, November 26,
19 regarding JEA compensation analysis.

20 And -- and in second paragraph she says, Hoping
21 you will be able to give me a quick sanity check on some
22 analysis recommendations that Angie and I are providing
23 the new CEO related to the LTI.

24 Now, who is the new CEO?

25 A That would be Mr. Zahn, I assume, she's

1 referring to.

2 (Howard Exhibit 42 was marked for
3 identification.)

4 Q He wasn't selected until the next day, was he,
5 November 27?

6 A I -- I don't have those dates in front of me.
7 Was that the final date?

8 Q Yes.

9 A Okay. I mean, he was the new interim.
10 Although not that new at that point.

11 Q And when you read on down, there's another
12 paragraph, however, there's an additional ask. The CEO
13 is seeking to put the LTI in place.

14 Now, it's apparent from this e-mail that
15 Patricia Maillis, on Monday, November 26, thought that
16 Aaron Zahn was going to be the CEO after the 27th board
17 meeting. Do you have any idea why she would assume
18 that?

19 A I do not. I didn't assume that.

20 Q Would you agree with me it's apparent that
21 Patricia Maillis assumed that?

22 A I could see how you would read her verbiage to
23 infer that she believed he would be the new CEO.

24 Q I'll read that sentence again. The CEO is
25 seeking to put the LTI in place. LTI stands for

1 long-term incentive plan?

2 A Yes.

3 Q Did you know that Aaron Zahn was trying to put
4 a long-term incentive plan in place?

5 A There had been discussion at this point. I
6 believe, on a total market compensation study, Willis
7 Towers Watson had provided those services to JEA in the
8 past. And I don't know exactly when they were asked
9 about an LTI, but I -- I know that there was discussion
10 regarding a long-term incentive plan as a component of
11 an overall market review of JEA's compensation.

12 Q Did you talk to Aaron Zahn about putting a
13 long-term incentive plan in place with JEA?

14 A We had those discussions somewhere along the
15 line.

16 Q You and Aaron?

17 A Mr. Zahn and I, yes.

18 Q And what was your response to him?

19 A Well, it was an ongoing discussion about
20 overall market compensation. It was never limited to
21 the long-term incentive component. The -- the
22 context -- and I don't believe this was limited to his
23 term as interim, I believe it extended from the time he
24 was both interim and then finally the permanent CEO.

25 And those discussions were around the issue of

1 market compensation and building -- and retaining
2 quality leaders. He believed that -- he, Mr. Zahn,
3 believed that the senior leadership team was not as
4 strong as it could be and that he was hampered in his
5 ability to -- as CEO to attract top-notch talent to JEA
6 because of the lower than market compensation amounts.

7 So he was in favor of the outside study from
8 Willis Towers Watson to evaluate what the market is and
9 what JEA needed to do to bring itself to the 50 percent
10 percentile of market compensation, recognizing that it's
11 a public and not a privately-owned utility. And LTI was
12 just a portion of those overall discussions.

13 Q Well, what would -- did you have at the time
14 any impressions whether or not an LTI was appropriate
15 for a public municipal utility?

16 A I'm sorry, may I have the timing? Say it
17 again.

18 Q At this time.

19 A At this time?

20 Q Yeah.

21 A Well, I don't know that I had a specific
22 impression about the appropriateness of long-term
23 incentive compensation. What we were focused on was the
24 overall compensation program as it related to the
25 market. And I certainly didn't have any understanding

1 that it was unique among publicly or municipal utilities
2 to have an LTI component.

3 MR. LINDSEY: Excuse me, Steve, could I take
4 five minutes? Just a five-minute break.

5 MR. BUSEY: Yeah, sure.

6 (Recess taken.)

7 BY MR. BUSEY:

8 Q We're up to the point of the November 27th
9 board meeting of which elects Aaron Zahn as the
10 permanent CEO.

11 And look an Exhibit 44. Have you seen Exhibit
12 44 before, before I gave it to you yesterday?

13 A Yes, I believe this was provided to me by Kay
14 Fuhrman from Heidrick & Struggles based on her
15 reputational reference check of the candidates, final
16 candidates.

17 (Howard Exhibit 44 was marked for
18 identification.)

19 Q Do you know if it was provided to all the board
20 members?

21 A I -- I believe so, but I -- I guess I don't
22 know that for a fact.

23 Q That is, you don't know?

24 A Correct.

25 Q It's an assumption?

1 A I assume it was, but I don't know that for a
2 fact.

3 Q Because in the -- during the board meeting,
4 according to the transcript, you asked Kate Fuhrman of
5 Heidrick & Struggles whether or not she had received,
6 quote, "A negative reputational references as to any of
7 the candidates." And she answered, quote, "I did not."

8 A Huh.

9 Q However, the reference notes contain some
10 negative information and I was curious about if it was
11 discussed at the meeting. And what I'm referring to on
12 Exhibit 44, which are Heidrick & Struggles' notes, the
13 following five comments that I'll read from the first
14 page of Exhibit 44 and the second page. Six comments.

15 A Uh-huh.

16 Q First one would be, He can be high on the IQ
17 spectrum, but really challenged on EQ. He has room to
18 grow in his career.

19 And then underneath that, the second comment,
20 Unbridled smarts can work well in financial services,
21 but I have a question as to whether it is right for the
22 utility.

23 A third comment that I'm taking out of the
24 context of these comments, Aaron knows what he's good at
25 and what he's not good at.

1 Fourth it's -- he has really demanding style
2 and I question whether he can temper that.

3 Five, He's good in front of the camera, good
4 looking, he's set up for politics. My sense is he's a
5 good guy, likeable, very smart guy, good salesman, but
6 he doesn't understand technology.

7 And then on the second -- the second page, No
8 reputational issues with him. He did get lawyers
9 involved to get municipals to do work with BCR, but it
10 wasn't illegal. He would be known as a litigious guy in
11 the water wastewater industry. He was quick on the draw
12 to get lawyers involved.

13 Were you aware of all those comments at the
14 time he was selected?

15 A Well, Mr. Busey, I know I've seen this document
16 before. I -- I can't say with certainty that it was
17 provided to me in advance of the November 27 board
18 meeting.

19 Q Do you find those comments about Aaron Zahn to
20 be, in your experience, accurate?

21 A Yes, in some ways.

22 Q Look at 46. This is a document that was
23 produced to us by JEA and it appears to be a -- a draft
24 of his comments to the board on November 27th. We know
25 from the metadata of this document that it was prepared

1 on November 17th.

2 Does it reflect comments that you heard him say
3 at the board meeting?

4 A Mr. Busey, I'd have to compare this to the
5 actual video record of the board meeting. It -- it's --
6 it rings a bell.

7 (Howard Exhibit 46 was marked for
8 identification.)

9 Q And it says, By October 16th, 2018, six short
10 months after this board and our management team
11 committed to a transition, we have pivoted the company
12 and accomplished some unique firsts for JEA.

13 1, We strict -- we established the first
14 strategic framework, a measuring stick of progress in
15 JEA's history.

16 2, Privatization to focus.

17 Were you aware that that was his focus, was
18 privatization?

19 A No, and I -- I don't believe that made it into
20 his final comments.

21 Q That's probably prudent, wasn't it?

22 Look at Exhibit 48. I believe this is what you
23 mentioned a while ago.

24 A It is.

25 (Howard Exhibit 48 was marked for

1 identification.)

2 Q Total Market Compensation Strategy?

3 A Yes.

4 Q When -- when was this prepared, by whom, for
5 what?

6 A Well, at -- it's dated January of 2018. I
7 suspect that it had a genesis, it preceded his final
8 publication date. And it appears to be a collaborative
9 effort between JEA senior leadership team and perhaps
10 Willis Towers Watson.

11 Q And look at page 14 of Exhibit 48. And it's
12 not numbered, but it's just before page 15, which is
13 numbered. And it has a graph on it like this.

14 A I have it.

15 Q What does that page depict in your judgment?

16 A So we've looked at this graph before in the
17 March 20 workshop so it's a variation of the graph that
18 was located at page 10 of the March 20th workshop
19 materials. And it depicts actual sales measured in
20 megawatt hours over a period of time, '79 through '17.

21 Q As declining?

22 A It does show them declining from 2006 to 2017,
23 yes.

24 Q Now, if you compare this chart to the one you
25 said you've seen before on Exhibit 24, at page 10, what

1 it omits is the TPS -- TSP.

2 A TSP.

3 MR. BLODGETT: Ten-year site plan.

4 Q Ten-year site plan, the little red line goes up
5 in '17 that shows increasing sales --

6 A Yes.

7 Q -- that was in Exhibit 24 in March of '18, but
8 it's not in Exhibit 48. Why is that?

9 A I don't know.

10 Q Is it because Aaron Zahn was in control now and
11 he didn't want to show sales going up?

12 A I -- I don't know who decided what to include
13 and what not to include.

14 Q Well, you see that it was there before and
15 omitted now?

16 A I do.

17 Q Can we assume Aaron's responsible for that
18 omission?

19 A You can make that assumption. I can't.

20 Q Who -- who would you think would make it -- do
21 you know who prepared these charts?

22 A I do not.

23 Q Do you ask?

24 A No.

25 Q Did you ask when you received this as a --

1 as -- with -- have you seen this before?

2 A I have.

3 Q When did you see it?

4 A I would have received this at some point in or
5 about January of 2018.

6 Q And turn to the next page, to 15, in Exhibit
7 48. What does that red line show, do you know?

8 A Yes. So this was a markup of the policy -- JEA
9 board policy manual relating to compensation philosophy
10 and reflects a markup that took place, I believe, in the
11 compensation committee meeting in December or January,
12 December '18 or January -- sorry, December '17 or
13 January '18.

14 Q Of what year?

15 A January '18 or December '17. December 2017 or
16 January 2018. So there --

17 Q Got it.

18 A -- there were compensation committee meetings
19 around this issue.

20 Q Okay. And you see on page 15, among the things
21 that were added in that, is short-term and long-term
22 incentives were aligned to drive JEA's corporate
23 measures of value.

24 And long-term incentive is new, isn't it?

25 A Yes.

1 Q And are you aware of why Aaron Zahn asserted
2 long-term incentives as something new in the overall
3 market compensation strategy?

4 A I don't know why he did what he did, but I know
5 that we did talk at the compensation committee level
6 about the various components of an overall market
7 compensation and it did include a long-term incentive
8 component.

9 Q And on the next page, page 16, it shows the
10 long-term incentive as a -- as a factor, right?

11 A As a component, yes, of total compensation.

12 Q And it says, Financial advise -- financial
13 value and profitability.

14 A Yes.

15 Q JEA's a nonprofit, isn't it?

16 A It is, but you drive to a net earnings number,
17 which feeds the contribution to the City.

18 Q But why are we talking about profitability in a
19 nonprofit?

20 A Because you don't want to run it at a loss, you
21 want to -- you can debate the semantics of the choice of
22 terms, but you definitely want to make money because
23 we're contractually obligated to pay the City a
24 contribution amount.

25 Q Isn't an appropriate term for making money in a

1 nonprofit surplus rather than profit?

2 A Certainly -- certainly could use the word
3 surplus here.

4 Q Isn't that what most people use when you talk
5 about nonprofit earnings?

6 A I don't know about most people, Mr. Busey.

7 Q You don't?

8 A No.

9 Q Why is your --

10 A I don't advise non-profits as a regular part of
11 my practice.

12 Q You don't?

13 A No.

14 Q Well, you're aware that Aaron Zahn was focused
15 on his concept of driving profits and value?

16 A I'm aware that Mr. Zahn had a focus on the
17 four -- four specific values that were articulated in
18 the strategic framework. And those were the customer
19 value, the community impact value, the environmental
20 value and the financial value of the organization.

21 Q So I'm trying now to focus on when you learned
22 that Aaron Zahn was trying to get a long-term incentive
23 plan in place at JEA. And was this the first awareness
24 you had of it or was there others?

25 A I'm sorry, I heard your question. Just a

1 moment. Is this exhibit out of order or is it misdated
2 because everything up until this point was in the end of
3 '18 and it follows -- picks up with Exhibits 51, '19.
4 So is this --

5 MR. BLODGETT: It's misdated. It's supposed to
6 be January 2019.

7 THE WITNESS: Thank you very much,
8 Mr. Blodgett.

9 MR. BLODGETT: Sorry. I didn't date it, but
10 you're correct, I think.

11 THE WITNESS: Sorry, I was confused for a
12 moment.

13 BY MR. BUSEY:

14 Q We were trying to see if you were paying
15 attention.

16 A You succeeded or maybe I succeeded.

17 I -- I can't say that I ever knew that Mr. Zahn
18 was fixated on adding a long-term incentive component to
19 the compensation policy. What I can say is that
20 throughout the period of this discussion, so it would
21 have been late 2018 and early 2019, that there were
22 discussions around the total compensation policy.

23 And during those discussions, you know, hitting
24 the 50 percentile mark for overall compensation and
25 including base salary, short-term incentive and

1 long-term incentive. The long-term incentive was always
2 part of those discussions, but I cannot say that it was
3 the focus or that Mr. Zahn indicated his desire to have
4 a long-term incentive component.

5 And I -- I apologize, I just want to correct
6 earlier when I was saying late '17, early '18, clearly I
7 was feeding off the wrong date here. So it would have
8 been late '18, early '19.

9 Q Right.

10 A Sorry about that.

11 Q I heard what you just said about Aaron Zahn
12 that consistently long-term incentive was a part of his
13 pitch. Had you heard about long-term incentive plans at
14 JEA before Aaron Zahn came along?

15 A No. Our prior discussions at the board level
16 regarding compensation had been focused on base salary
17 and the short-term incentive compensation program.
18 There was a --

19 Q Okay.

20 A -- bonus program at JEA historically, but it
21 was short-term incentive, not long-term.

22 Q And -- and so you'd agree with me that the
23 notion being inserted into the compensation discussion
24 after Aaron Zahn came on board about long-term incentive
25 plan was Aaron Zahn's submission?

1 A Well, I would agree it was a new issue and it
2 certainly coincided with his arrival, but I can't go the
3 next step.

4 Q Well, look at Exhibit 49.

5 A Okay.

6 (Howard Exhibit 49 was marked for
7 identification.)

8 Q It's the compensation committee meeting of
9 January the 19 -- January 2019.

10 A Yes.

11 Q And agenda item 2B, Total Compensation
12 Philosophy.

13 A Yes.

14 Q And it talks about his philosophy and in the
15 last sentence of that paragraph, Mr. Zahn then provided
16 the definition of total compensation and
17 short-term/long-term incentives, short-term, slash,
18 long-term incentives and provided a recommendation for
19 a change in board policy to incorporate these changes.
20 The item was presented for information to the
21 committee.

22 So is this a -- a fair summary that Aaron Zahn,
23 in January of 2019, recommended a change in the board
24 policy that would include, among other things, a
25 long-term incentive plan?

1 A Yes, that's fair.

2 Q Okay. And then under D, under item 2, the
3 Executive Contract. Aaron Zahn, managing director/CEO
4 and Interim Committee Chair Johnson discussed the
5 executive contract.

6 The executive contract would be the contract
7 between JEA and Aaron Zahn?

8 A Yes.

9 Q And discussed extending the current contract
10 until July 31, 2019, to allow time for the total
11 compensation plan to be worked out prior to finalizing
12 the contract for the managing director/CEO.

13 Were you aware of that discussion?

14 A Yes, I was present for that discussion.

15 Q And why -- why was it that the board was going
16 to consider extending the existing contract for Zahn and
17 not -- and not addressing it until after the total
18 compensation plan had been included?

19 A My recollection is that Mr. Zahn made a
20 statement to the effect of I don't want to have my
21 contract taken out of order. I want to make sure all
22 the other members of the senior leadership team of the
23 company are taken care of before mine's finalized.
24 Something along those lines.

25 Q Alan, isn't -- don't you think it's equally

1 fair that Alan Zahn -- that Aaron Zahn didn't want a
2 contract finalized until he could take advantage of the
3 long-term incentive program which he was trying to take
4 it and put it into effect?

5 A You could certainly draw that inference, but
6 that's not what he said.

7 Q But it would be a fair inference, wouldn't it?

8 A I think you can draw that inference.

9 Q And do you recall at what point in time you got
10 a better feel for Aaron Zahn was pushing in terms of a
11 long-term incentive plan?

12 A I don't -- I don't understand the question.
13 Better feel for what he was pushing?

14 Q Yeah. What he was trying to put in place in
15 the form of a long-term incentive plan.

16 A I don't think I ever saw any details until much
17 later. So that would have been in the June/July time
18 frame as the performance unit plan was coming into
19 focus.

20 Q Okay. You perceive where I'm going.

21 A Yes.

22 Q This is the first time the word performance
23 unit plan has entered this conversation today. How did
24 you get from long-term incentive plan to performance
25 unit plan?

1 A Well, I didn't ascribe the title to it. I'm
2 note sure if that originated with some of the
3 consultants or outside law firms, but my involvement
4 with the concept of a performance unit plan was really
5 limited to my participation in the compensation
6 committee meetings. We did not thereafter, I don't
7 believe, have any board level resolutions or discussions
8 about the long-term incentive plan, other than in the
9 context of approving an overall compensation strategy.
10 To my knowledge, PUP didn't come into the lexicon until,
11 again, maybe July, June/July time frame.

12 Q When did you first hear it?

13 A It would have been in that June/July time
14 frame.

15 Q At a meeting? At a conversation with Aaron
16 Zahn?

17 A So without ascribing dates to these meetings,
18 there were a series of discussions, meetings from this
19 January compensation meeting through my last board
20 meeting in July around the strategic planning process,
21 the status quo forecast, the traditional utility
22 response forecast and then the nontraditional response.

23 In any one of those meetings, there may have
24 also been a discussion around the total compensation
25 plan. And please understand, more of those meetings

1 happened prior to my resignation as Chair because there
2 were scheduled meetings that I would have with Mr. Zahn
3 and often other members of the senior leadership team in
4 advance of the board meeting.

5 I've expressed to others an unfortunate
6 consequence of government in the sunshine is that,
7 particularly for an organization as complex as JEA, it's
8 necessary for the senior staff to meet with board
9 members and sort of prep them for the meeting and help
10 them understand the issues that will be raised at a
11 board meeting.

12 So a lot of discussions happened offline, if
13 you were, between the senior leadership team and the
14 individual board members prior to an actual board
15 meeting. And that was certainly the case with myself
16 and Mr. McElroy and it continued with Mr. Zahn.

17 And those meetings often touched on a number of
18 subjects. We're in the midst of the Vogtle lawsuit and
19 settlement discussions at this point in time. We're
20 also in the midst of the strategic planning process, the
21 McKinsey organizational health index, the -- the status
22 quo traditional, nontraditional responses and alongside
23 that, this total compensation strategy.

24 So I would have had a number of meetings and/or
25 discussions with Mr. Zahn and/or Ms. Dykes,

1 Mr. Wannemacher, others would join as suits the topic.

2 And it's entirely possible that at one of those
3 meetings, the word "PUP" was first introduced prior to
4 the July meeting where the resolution was approved. I
5 just can't give you a precise date when I first heard
6 the word "PUP."

7 Q Well, can you tell me what understanding you
8 have of the difference, if any, between a long-term
9 incentive plan and PUP?

10 A No, I understood that they were one and the
11 same. That PUP was the -- the long-term incentive
12 component.

13 Q It was interchangeable?

14 A Yes.

15 Q The terminology?

16 A Yes.

17 Q And you didn't understand any legal reason for
18 the distinction between the two?

19 A I did not.

20 Q Okay.

21 A But employee benefits is not -- all of that
22 stuff is not part of my regular practice.

23 Q Let me direct your attention to Exhibit 51.
24 Have you seen that before?

25 A Yes.

1 (Howard Exhibit 51 was marked for
2 identification.)

3 Q What is it?

4 A Ratings Agency Presentation. So at least once
5 a year, senior leadership team and typically the board
6 Chair would travel to New York and meet with the ratings
7 analyst from S&P, Moodys and Fitch. These were
8 presentations that were used as a talking point for
9 those meetings.

10 Q Exhibit 51 is an excerpt of what you can see
11 from the page numbers, there are at least 77 pages of
12 the document. Did you go to this presentation?

13 A I went to two different ratings presentations.
14 Quite frankly, I'd have to check my calendar to see if I
15 was at this one. This was January -- again, this says
16 '18, but it was '19.

17 MR. BLODGETT: February 2019.

18 THE WITNESS: Thank you.

19 A So, yes, I believe I was at the February '19
20 ratings presentation.

21 Q And you see on page 2, it says that, Since our
22 last annual update, JEA's maintained excellent financial
23 and operational metrics.

24 Is that true?

25 A Yes.

1 Q And it says, JEA is a superior electric
2 utility.

3 Is that true?

4 A Yes.

5 Q And on page 15, there's a comparison of what we
6 said in December '17 with what we did in fiscal year
7 '18.

8 Do you see that?

9 A Yes.

10 Q Says, In fiscal year '18, there was an increase
11 in system megawatt sales of 2.6 percent.

12 A Yes.

13 Q And base revenue increased 2.9 percent?

14 A Yes.

15 Q Do you see that?

16 A Yes.

17 Q Was that true? Were your sales going up?

18 A If we said it to the ratings analyst, it was
19 absolutely true.

20 Q That wasn't in your Exhibit 48, on page 10, was
21 it, where it showed sales going down?

22 A Well, it was a different page number. It was
23 14 or 15, 14 in Exhibit 48, that 2018 is not shown with
24 that chart.

25 Q You're right, page 14.

1 A Yeah, the 2018 doesn't show up in that chart.
2 It stopped at '17.

3 Q So your sales were actually going up?

4 A Well, according to the charts, and I haven't
5 independently verified this, it went down from 2006 to
6 2017, but then ticked up in '18. It was also -- it
7 looks like it was up in '14, '15 and '16.

8 Q And what JEA said to the rating agency would be
9 true, wouldn't it?

10 A Yes.

11 Q And on -- on the pitch presentation, Exhibit
12 51, on page 18, it shows that JEA -- that sales would
13 increase .07 percent, from 2008 to '23.

14 Do you see that?

15 A I do.

16 Q But the senior leadership team did not disclose
17 this projection during the board meetings in May, June
18 and July of '19, did they?

19 A I'd have to go back and refresh my recollection
20 on what was presented there.

21 Q You remember the predictions of the JEA being
22 in a death spiral?

23 A That was an unfortunate choice of words by
24 yours truly here, but, yes, I remember the projections
25 and -- are they here, the June and July presentations?

1 MR. BLODGETT: Excerpts. Well, no, I think the
2 whole presentations for May, June and July are for
3 scenarios 1, 2 and 3, if that's what you're
4 referring to.

5 THE WITNESS: It is.

6 MR. BLODGETT: Let me try to find -- are you
7 looking for May?

8 THE WITNESS: I was just trying to answer
9 Mr. Busey's question.

10 A I don't recall what was included in the
11 subsequent presentations to the board.

12 Q Well, let's go back to your phrase that that
13 was an unfortunate choice of words. You did say that,
14 didn't you?

15 A I did. And -- and I believe the essence of
16 that statement.

17 Q That JEA's in a death spiral?

18 A Yes. Given the opportunity, I may have phrased
19 it differently.

20 Q But at the time sales were projected to go up
21 and did go up, didn't they?

22 A For what period of time?

23 Q 2018 through '23.

24 A Well, they were projected to go up, yes, but i
25 guess we don't know yet.

1 Q They went up in '18?

2 A We know they went up in '18.

3 Q Okay.

4 A I don't -- I don't know about subsequent years.

5 Q But know the projection showed it was going to
6 go up?

7 A Yes.

8 Q Not down?

9 A Yes.

10 Q Doesn't show a death spiral, does it?

11 A Depends on how far out you look.

12 Q Well, looking at Exhibit 51.

13 A It does not show a death spiral there.

14 Q Looking at Exhibit 52.

15 A Yes.

16 (Howard Exhibit 52 was marked for
17 identification.)

18 Q This is a contract with -- between JEA and the
19 Dalton Agency. And it says, the Dalton Agency
20 onboarding in March of 2019.

21 Are you aware of the Dalton Agency being
22 retained by JEA?

23 A I subsequently became aware that they had been
24 engaged.

25 Q When you said "subsequently," when was that?

1 A After they had already been engaged.

2 Q While you were still chairman of the board?

3 A Well, no, I would have been -- I left as
4 chairman in February before this contract was executed,
5 so it would have been after I was chairman.

6 Q Let me be clear about that. When did you
7 resign as Chair?

8 A The February board meeting.

9 Q And why did you resign as Chair?

10 A Well, my tenure was up. Quite frankly, I was
11 serving on a term originally appointed to expire in
12 February of 2019. And so because my term had expired, I
13 thought it appropriate to step down.

14 The mayor asked if I would continue for a few
15 months while they found an appropriate replacement. We
16 had been -- during my tenure, we had been through a
17 period of time where there was high turnover in the JEA
18 board. And the way the bylaws were written, JEA's board
19 could only take action with a majority of the total
20 number of board members.

21 So you had to have at least four board members
22 in favor, even if you only had five board members or,
23 like, many organizations you and I are familiar with,
24 action was not taken by the majority of the board
25 members then present, it had to be four. And there were

1 times during my tenure where we only had four board
2 members present for a meeting so it made decisions
3 difficult.

4 And so I accommodated that request to stay on
5 past my scheduled tenure, although I did resign as board
6 Chair.

7 Q So you resigned as board Chair at the February
8 meeting and you continued as a member of the board until
9 when?

10 A July board meeting.

11 Q Until the July board meeting, which is July
12 23 --

13 A Yes.

14 Q -- of 2019.

15 And then what happened to cause you to
16 terminate your membership at that point? Did you resign
17 or were you --

18 A Oh, I resigned, yes.

19 Q Why?

20 A Yes. Is it fair to say I had had enough fun?
21 It was tremendously time consuming. I spent hours and
22 hours and hours every week for an extended period of
23 time in support of my JEA service, while maintaining a
24 busy law practice. And the reality is it came at the
25 expense of my personal time with my family.

1 And although I was asked by the mayor to
2 stay -- I'm sorry, I believe Mr. Hughes asked if I would
3 be reappointed, this would have been prior to February,
4 I declined. And -- and informed him that I would be
5 resigning as Chair at the February board meeting, but
6 would stay until they could find another -- vet and
7 appoint and get confirmed another director, which they
8 ultimately did.

9 Q And during the -- between the time you resigned
10 as board Chair in February and the time you resigned as
11 a member of the board as of July 23, what awareness did
12 you have of the Dalton Agency's providing assistance to
13 the JEA board?

14 A I -- I think I was only vaguely aware that they
15 were engaged, that they were providing some assistance
16 on Vogtle communications plan. I don't know what else,
17 but I know that.

18 Q Do you see on Exhibit 52, on March 8th, this
19 would be within a week after you resigned or so of the
20 Chair, item five on the agenda is crisis communications.

21 Do you have any idea why JEA would be having
22 crisis communications consulting in March of 2019?

23 A I -- I don't know. Although, I -- I've seen
24 this terminology before in PR agency contracts. I think
25 it's a generic term of art. I don't believe it was

1 uniquely -- I don't know, but I don't believe it was
2 unique to JEA.

3 Q Did you ever see the Dalton Agency or Michael
4 Munz script questions and answers for the board for
5 board meetings?

6 A I never witnessed that, no.

7 Q Never witnessed it?

8 A No.

9 Q In any form?

10 A I don't -- I don't have any rec- --
11 recollection that I witnessed that. I don't believe
12 they ever scripted them for me.

13 Your exhibit includes some scripted questions
14 and answers, which I assume were from the Dalton Agency,
15 but I -- I had not previously seen them.

16 Q Look at Exhibit 53, please.

17 Do you know what this is?

18 A I don't believe I had ever seen this until
19 yesterday. I -- I know what an IRP is.

20 (Howard Exhibit 53 was marked for
21 identification.)

22 Q What is an IRP?

23 A It's an integrated resource plan that utilities
24 undertake to forecast needs and evaluate various
25 scenarios that apply to base load demand, other factors

1 impacting an electric utility.

2 Q And on page 12 of this Exhibit 53, of this
3 excerpt. Preliminary Results, JEA Electric System IRP,
4 March 21, 2019, doesn't it show, in the third line
5 down, growth in electric sales, three out of four
6 scenarios?

7 A Yeah, but I don't think those are scenarios. I
8 think they're different -- different metrics. Baseline
9 growth and I think the abbreviation is for adjusted
10 annual growth rate of .87 percent, but then there's also
11 load erosion in the following column, which would reduce
12 energy demand by 1 percent over ten years, then they
13 increased electrification and green economy impacts.

14 Q So three out of the four show increase in -- in
15 sales?

16 A Well -- well -- but they're not projections
17 of -- they're not each a projection. It's impact of
18 those different variables, assumption regarding the
19 impact of those variables.

20 Q And three out of four were positive?

21 A Yes.

22 Q Let me draw your attention to Exhibit 54, which
23 is an e-mail from Steven McInall, dated February --
24 dated December 20th, 2019.

25 Have you seen this e-mail before?

1 A Not until you produced it to me.

2 (Howard Exhibit 54 was marked for
3 identification.)

4 Q If you go back in the e-mail, there's an e-mail
5 from Stephen Powell, who's with the general counsel's
6 office, to Jasen Hutchinson, who's with the JEA. He
7 says, Jasen, we have been made aware of the existence of
8 a document in progress since 2018 called an integrated
9 resource plan. We've been informed that it should have
10 been reached, at least in draft form, by the summer of
11 2019. I believe this is a 40-year plan, but not sure.
12 Can you assist in locating this current form?

13 And Jasen forwards that to Jeanie Gillespie and
14 says, Can you help me with this one? Thanks.

15 And Jeanie says in response, Good morning,
16 Steve. Can you please send me the new IRP, as requested
17 by OGC below. Last we discussed, you advised is not
18 complete.

19 This is to Steve McInall?

20 A Uh-huh.

21 Q But they would like the draft, if still not
22 complete. Thanks so much.

23 And Steve McInall says, We don't have a draft
24 or a final. I tapped the brakes on it to try to get
25 some alignment with the McKinsey work.

1 Attached is an updated presentation on the
2 study from March.

3 Let me know if further materials -- if you want
4 further materials. We are expecting a final draft in
5 January.

6 Were you aware that Steven McInall had tapped
7 the brakes on the preparing of the IRP because it was
8 inconsistent with the dire negative projections McKinsey
9 was making?

10 A No, I -- I was off the board by then and had no
11 knowledge.

12 Q You had no knowledge that the IRP was not
13 forthcoming in 2019?

14 A No.

15 Q Does this surprise you, that they had tapped
16 the brakes on the IRP to make it consistent with the
17 negative predictions of McKinsey?

18 A I don't have -- I don't have enough knowledge
19 to express surprise or -- I just don't know anything
20 about it.

21 Q Or disappointment?

22 A Or disappointment, I just don't know.

23 Q And let me point you to Exhibit 55. This is --
24 again, this is excerpts --

25 A Uh-huh.

1 (Howard Exhibit 55 was marked for
2 identification.)

3 Q -- of the year in review for JEA.

4 Have you seen this before?

5 A I -- do we have a correct date on this one?

6 MR. BLODGETT: I don't think it's dated.

7 A I don't -- I don't -- yeah, I don't know if
8 I've seen this before or not, Mr. Busey. It's
9 possible I've seen it or different versions of a report
10 like it.

11 MR. BLODGETT: If it helps, it was discussed at
12 the March 2019 board meeting.

13 THE WITNESS: Then I would have seen it.

14 BY MR. BUSEY:

15 Q The -- and you'll see that on page 6, it says,
16 Since April of '18, JEA's maintained -- is a superior
17 energy utility, maintained excellent financial and
18 operational metrics. Repaid the debt, continued to
19 subsorb -- absorb the cost of Vogtle and a lot of
20 positives about it.

21 Yet, at the end of it, where we're going, you
22 see page 13?

23 A Yes.

24 Q Do you know that presentation by Aaron Zahn?

25 A I don't -- I don't have anything after it's

1 time to pivot.

2 Q Do you remember the slide?

3 A Oh, I don't have a specific recollection.

4 Q You don't remember a slide as a part of this
5 presentation, prepared by Aaron Zahn, showing a
6 destroyer headed for a lighthouse --

7 A Ah, yes.

8 Q -- and it's time to pivot?

9 A Yes, I do recall the video. I didn't recall
10 the still image.

11 Q It was a video, you're right.

12 A It was a video, I recall, yes.

13 Q You want to tell us about it, please?

14 A Well, I don't recall the talking points over
15 it, only the essence of the message was that the
16 organization was doing great in the contemporary terms,
17 but that there were dangerous obstacles ahead was the
18 essence of the message.

19 Q And so what -- what were you going to do about
20 it?

21 A Well, his message was it's time to pivot or
22 turn.

23 Q In which direction?

24 A Well, I'm sorry, that was at the March
25 meeting?

1 MR. BLODGETT: Uh-huh.

2 A I think that was the forerunner to the
3 discussion over here are the challenges we face and
4 what is our baseline scenario, traditional response and
5 then nontraditional response. And those were followed
6 up in the May, June and July board meetings.

7 Q Earlier you referred to round one and round
8 two?

9 A Yes. This was the beginning of round two.

10 Q Round one was the sale effort in '18 and round
11 two was the sale effort in '19 is generally what you're
12 referring to?

13 A It is generally what I'm referring to.

14 Q Okay. And in May of '18, the board told the
15 senior leadership staff to stop it?

16 A That's right.

17 Q And it looks like it was starting up again
18 here, doesn't it?

19 A Well -- so it depends on how you characterize
20 it. No one started talking in March about let's have a
21 discussion at the board level and sale.

22 What the discussion was is we've gone through
23 this strategic assessment now as part of the outset of
24 the strategic planning process and we've identified
25 these obstacles to growth, which I think you alluded to

1 in previous exhibits, and so how do we respond to that.
2 I believe that it did more into a recapitalization,
3 slash, privatization discussion by June or July.

4 Q Discussion among whom?

5 A Well, the community. I mean, everything was
6 transacted at the board level and in public. So as soon
7 as we started identifying baseline traditional and
8 nontraditional responses, the public and the media
9 picked up on what that could mean.

10 Q It could mean, among other things, a sale?

11 A It could, yes.

12 Q In spite of the admonition for the board in May
13 of '18 to stop it?

14 A Yes. But at that point they were raising it
15 back to the board. It wasn't necessarily senior
16 leadership team or -- or Mr. Zahn going rogue on their
17 own.

18 Q When you say "they," you're referring to the
19 senior leadership team and Mr. Zahn --

20 A Yes, yes.

21 Q -- were raising it back to the board?

22 A Yes.

23 Q So in spite of being told to stop it, they were
24 raising it back to the board?

25 A But not in the context of let's go out and sell

1 it. They're, like, here are the challenges we're
2 facing, so what are the response options.

3 Q It's a little bit more of a subtle approach by
4 Mr. Zahn?

5 A Nuisanced, yes.

6 Q But don't you think it's fair that what was in
7 Mr. Zahn's head was to get into round two?

8 A I can't speak to what's in Mr. Zahn's head.

9 Q Well, you can to the extent that you
10 experienced it through July 23.

11 A Well, I can only speak to what he said and did.
12 And through July, we went through a sequence of here are
13 the challenges we face, how are we going to respond to
14 it? And certainly one of the responses. And ultimately
15 what the board decided at the July meeting was the
16 preferred response is a nontraditional response and that
17 kick started round two of the public debate over
18 privatization recap.

19 Q Let me show you Exhibit 57. And this is an
20 e-mail from Angela Hiers of January 15, 2019, to
21 Herschel Vinyard, proposing that he come to work for
22 JEA.

23 Are you aware of that?

24 A I knew that Mr. Vinyard was hired, but I had
25 never seen this e-mail before you gave it to me.

1 (Howard Exhibit 57 was marked for
2 identification.)

3 Q Well, you say you knew he was hired. Tell me
4 what you knew and when you knew it.

5 A Like, as I indicated over the course of my
6 tenure as Chair and -- and to some extent even after I
7 served as Chair, but still was on the board, there were
8 a series of discussions that I would have, meetings with
9 Mr. Zahn about Vogtle or about the total compensation
10 strategy, about the shareholder -- I'm sorry, the
11 strategic planning process. And at some point along
12 there, we talked about hiring out his -- building out
13 his senior leadership team. The hiring of Karen
14 Andrews, who came to JEA from Duke. The hiring of a new
15 chief information officer. The hiring of whomever.

16 And at some point in those conversations, he
17 said, Do you know Herschel Vinyard? I said, Yes. He
18 goes, What do you think about him? I think he's a great
19 attorney. What would he do here? You already had
20 general counsel representation. He goes, No, no, no,
21 I'm thinking about I need him in a more senior position
22 as sort of chief administrative officer.

23 He didn't require board approval for that. I
24 shared my opinion of Mr. Vinyard, which was positive,
25 is -- was and is positive. So at some point, presumably

1 prior to this, he asked me what I -- if I knew and what
2 I thought about Mr. Vinyard.

3 Q Prior to this would be prior to July -- January
4 15th, 2019?

5 A Yes.

6 Q This is a pretty high level hire, isn't it?

7 A It is, which is why I presumed he discussed it
8 with me first.

9 Q \$350,000 annually?

10 A Very high level.

11 Q Do you know how much Mr. Vinyard was making at
12 Foley & Lardner?

13 A I do not.

14 Q When's the first time you talked to Herschel
15 about coming to work for JEA?

16 A I don't think I spoke to him until after he was
17 already on board.

18 Q Which was when?

19 A I don't know what his start date was.

20 Q Well, you -- you knew Herschel. You knew him
21 to be a pretty accomplished lawyer.

22 A Yes.

23 Q You knew him to be a secretary of the
24 department of interior --

25 A I did.

1 Q -- of Governor Scott?

2 A Yes.

3 Q Why in the world would you think that he'd want
4 to go to work as an administrative officer for a
5 utility?

6 A I may have asked that question of Mr. Zahn when
7 he was thinking about offering it to him, but I can't
8 speak to Mr. Vinyard's motives.

9 Q And you don't recall Mr. Zahn's answer as why
10 he would do that?

11 A No. If he answered, I don't recall what he
12 said.

13 Q Do you remember him telling Herschel that if he
14 came to work in time to get in line for the long-term
15 incentive program, he can make an awful lot of money in
16 a few short years?

17 A I have no knowledge of those conversations.

18 Q Look at Exhibit 58, please.

19 A Uh-huh. Yes.

20 (Howard Exhibit 58 was marked for
21 identification.)

22 Q Have you seen this before?

23 A No, not until you produced it.

24 Q It's an e-mail from Angela Hiers, dated
25 February 6, 2019, to Herschel. And it says, Attached is

1 a copy of a market pricing sheet that is an overall part
2 of the market study for our organization. The sheet
3 depicts a 50 percentile philosophy that was approved by
4 our board and is used at JEA. We also consider internal
5 equity as a component of our structure/plan. As
6 mentioned in our earlier conversation, our new incentive
7 plan is still under design. We're confident this plan
8 will be approved and implemented based on our
9 conversation thus far.

10 Do you know what Angie's referring to when she
11 refers to our new incentive plan?

12 A No. I -- I assume it's reference to the total
13 compensation plan that was the subject of our earlier
14 discussion.

15 Q The new incentive plan, it was a component of
16 that?

17 A Yes, the new incentive would have been the LTI
18 that was a component of the total market's --

19 Q Important to --

20 A -- market compensation?

21 Q -- the PUP?

22 A Yes.

23 Q And so it appears that Angie is holding out to
24 Herschel here some promise of the incentive plan/PUP to
25 Herschel as an inducement to come to work for JEA?

1 A Yes.

2 Q And Exhibit 59 is an e-mail from Angie Hiers to
3 Herschel suggesting a start date of March 15th, 2019.

4 Is that consistent with your recollection?

5 A Yes.

6 (Howard Exhibit 59 was marked for
7 identification.)

8 Q When did you first talk to Herschel about
9 coming to work for JEA?

10 A It would have only been after he had started
11 his employment. We were not in regular -- we're not
12 personal friends and we're not in regular
13 communication.

14 Q Do you remember your first conversation with
15 him?

16 A No. It would have been at a -- at a meeting at
17 the JEA offices.

18 Q Look at Exhibit 60, please.

19 A Yes.

20 (Howard Exhibit 60 was marked for
21 identification.)

22 Q This is an e-mail, dated May 20th, from
23 Elizabeth Columbo at Nixon Peabody, Ryan Wannemacher and
24 Herschel Vinyard, chief administrative officer, on May
25 20th.

1 Have you seen this e-mail before?

2 A No. Nor -- nor the attached memo. Not until
3 you produced it to me yesterday.

4 Q You heard about it?

5 A I've read about it in the media, yes.

6 Q And what did you read about it?

7 A That outside attorneys for JEA had evaluated
8 the long-term incentive plan and concluded that it did
9 not pass legal muster.

10 Q And you see that in the memorandum, dated May
11 20th, which is attached to Elizabeth's e-mail?

12 A Yes.

13 Q It says, Brief Answer. And the first sentence
14 says, We do not believe the program would be able to
15 clear legal hurdles under Florida law.

16 Is that what you were just referring to?

17 A Yes. And -- and the paraphrasing of that in
18 the media reports.

19 Q Were you aware in May of 2019 that there was a
20 long-term incentive plan or PUP plan being considered by
21 the senior leadership?

22 A Yes. We had talked about the LTI as a
23 component of the overall market compensation strategy,
24 but I -- I don't -- I don't believe I'd ever seen a
25 draft of the plan beyond what was presented in the

1 compensation committee.

2 Q Did you know that the senior leadership team
3 had asked Nixon Peabody to opine on the legality of the
4 plan?

5 A No, I don't believe I -- I -- I don't believe I
6 knew that they had asked Nixon Peabody. I think -- I
7 think at some point, again, in a multitude of meetings
8 that covered multiple topics at each meeting, someone
9 somewhere, Mr. Zahn or Mr. Vinyard or someone, mentioned
10 that they were having it reviewed by outside counsel,
11 but I don't recall that they -- for some reason in my
12 mind, it was Foley, not Nixon Peabody.

13 Q Well, there's a reason for that.

14 A Okay.

15 Q After they got a no from Nixon Peabody, they
16 went to Foley.

17 A Ah. Okay. Well, see, there's some basis in my
18 recollection then.

19 Q You don't have any more clear recollection than
20 that?

21 A No.

22 Q You didn't know they got a no from Nixon
23 Peabody and then they went to Foley?

24 A I did not, not until the media reports.

25 Q Do you agree that getting a memorandum such as

1 this, the one that's attached to Exhibit 60 from Nixon
2 Peabody, which is an extensive single-spaced report that
3 says your plan doesn't pass muster under Florida law,
4 that that would be pretty material to the senior
5 leadership team?

6 A I'm sure it was.

7 Q Do you know if Mr. Wannemacher or Herschel told
8 anybody about the receipt of this memoranda?

9 A I do not know. They did not tell me.

10 Q Would you expect the senior leadership team to
11 tell the board when they're asking the board to approve
12 the long-term incentive plan that they had received this
13 memorandum?

14 A I would have expected that we would have been
15 told as a board. In fact, I specifically asked at the
16 board meeting had this plan been approved by -- by the
17 general counsel's office. And was told yes.

18 Q You were told it by whom?

19 A Lynne Rhode, chief legal officer for JEA at the
20 time.

21 Q And do you understand in retrospect upon which
22 she -- why she gave you the answer she did?

23 A I only have an understanding based on my
24 reading of media reports.

25 Q What is your understanding?

1 A What I recall from reading media reports was
2 that she had either received or requested or been
3 provided some outside authority, had gotten preliminary
4 sign-off internally from OGC and used that as a basis
5 for her affirmative response to my question in the board
6 meeting.

7 Q Have you talked to Jason Gabriel about that?

8 A I have not.

9 Q Do you know the position of OGC on Lynne
10 Rhode's advice to you to the board?

11 A Only to the extent I've read about it in the
12 media.

13 Q And what is your understanding of that?

14 A That it was a preliminary review and that she
15 was not authorized to give that definitive response at
16 the board meeting.

17 Q And did Lynne Rhode say anything to the board
18 about the fact that Herschel and Ryan Wannemacher had
19 been told the plan was illegal by outside counsel?

20 A She did not.

21 Q Would you have expected her to?

22 A I haven't read the Nixon Peabody memorandum
23 in-depth. If there were defects in the program that
24 were later addressed and the program modified to
25 eliminate the concerns such that Foley could say it

1 passed muster, I'm not sure I would have expected her to
2 say that there were problems, we fixed them and now it's
3 okay.

4 If there were problems raised by Nixon Peabody
5 that were not fixed, yes, I would have liked to have had
6 our legal officer tell me that, but -- but I don't know
7 what they objected to specifically and how that did or
8 did not get fixed so that Foley was comfortable opining
9 that it was permissible.

10 Q Well, under the totality of circumstances, as
11 you now understand them, to the extent that you do, do
12 you feel like the board was adequately advised regarding
13 the legality of the PUP plan?

14 A Well, hindsight being 20/20, no, I would have
15 preferred to have had more information regarding the
16 legality. I would have preferred that we slowed down
17 and studied it in more detail. More importantly, I
18 think the board made a mistake. I -- we should not have
19 approved a long-term incentive plan at the same time we
20 were considering the recapitalization and a short-term
21 potential exit.

22 Q Okay. Well, I -- I appreciate your candor in
23 saying that. Let's -- let's explore that. Why do you
24 feel that way?

25 A In hindsight, based on the totality of

1 circumstances, as you alluded to, I think it was
2 inappropriate for the board to pass a long-term
3 incentive plan that would reward employees based on the
4 financial performance of the company, including a
5 liquidity event at the same time you were considering a
6 resolution that included, as a possible outcome, a
7 liquidity event. I don't think that was appropriate.

8 Q Okay. Well, that's -- that's plainly stated.

9 Was there any discussion of that at the board
10 meeting on July 23?

11 A No, I think it was a failure on our part not to
12 focus on that.

13 Q Well, you remember Kelly Flanagan got close
14 to it.

15 A She did. She asked a question that we should
16 have spent more time discussing.

17 Q She asked Ryan Wannemacher the question, and
18 I'll paraphrase it, has anybody considered where this
19 sale plan and the PUP plan intersect? And he gave a
20 nonanswer to that question. And nobody followed up on
21 it.

22 But an accurate and truthful answer to the
23 question would be if we do this sale, based on the
24 valuations we've received and we implement this plan,
25 it's conceivable that the senior leadership team could

1 walk away with hundreds of millions of dollars.

2 A I would like to think if he had answered that
3 way that we would have had a different outcome on the
4 vote.

5 Q I would like to think so too. Do you think
6 that Ryan Wannemacher let the board down in his not
7 being more forthcoming in responding to Kelly's
8 question?

9 A I don't want to pass judgment on
10 Mr. Wannemacher and his response. There was a failure
11 on the board's part here.

12 Q Well, you say you don't want to pass judgment.
13 You said that there should have been more of a
14 discussion by the board. You acknowledge that his
15 answer to Kelly's question was less than forthcoming?

16 A Well, you said that and I -- I tend to agree.
17 I would have rather had a more fulsome response from
18 Mr. Wannemacher on the consequences of an eventual
19 liquidity event under the PUP plan.

20 Q Did you know that he actually had run
21 scenarios?

22 A I did not.

23 Q Do you know that now?

24 A I read that in the media and I think I heard
25 about it in Counsel Auditor Kyle Billy's report.

1 MR. BUSEY: Do y'all mind if we take a short
2 break here?

3 MR. LINDSEY: No.

4 MR. BUSEY: Off the record.

5 (Recess taken.)

6 BY MR. BUSEY:

7 Q I think we're at Exhibit 61. Will you look at
8 61, please?

9 A Yes, sir. Yes.

10 (Howard Exhibit 61 was marked for
11 identification.)

12 Q This is the minutes of the compensation
13 committee of June 18, 2019. And you were there,
14 right?

15 A Yes.

16 Q And under Agenda Item 2, under paragraph C,
17 long-term compensation update. Aaron Zahn, managing
18 direct/CEO and Herschel Vinyard, chief administrative
19 officer, presented the long-term compensation update.
20 For this program, employees are eligible to receive
21 self-funded, long-term incentives based upon clear,
22 measurable factors on a three-year industry standard
23 cycle.

24 Mr. Zahn advised the committee that if they
25 commissioned JEA leadership to move forward, the team

1 would work to develop an appropriate plan.

2 Board Chair Howard made a motion to direct JEA
3 management to start the process of finalizing the
4 long-term compensation framework.

5 Is that accurate?

6 A Yes.

7 Q When they use the term self-funded, long-term
8 incentive, did you understand what that meant?

9 A Yes. My understanding was that similar to the
10 short-term incentive program, bonus program that had
11 previously been in place and was funded based on savings
12 achieved against budget, that this program would be
13 funded -- self-funded based on increased surplus against
14 budget.

15 Q Did you understand that the -- when you -- it
16 said self-funded, did you understand that the --
17 self-funded, you thought, was increase in value of JEA
18 or self-funded because it was purchased by the
19 employees?

20 A Increased value in JEA. And to an extent,
21 offset by the purchase cost. There had been a
22 discussion prior to this about the pricing of long-term
23 incentive units. And the discussion included what the
24 price should be to acquire a unit. I'm not going to
25 claim it was my idea, but I -- I advocated for a low

1 price so that it would be available to the rank and file
2 employee. And so I'm not saying I threw out the number
3 \$10, but I -- I advocated for the \$10 price.

4 Q Did you understand that there was a reason
5 under Florida law why the employees had to pay for the
6 units?

7 A I think someone had mentioned that, but I did
8 not study that issue.

9 Q What was your understanding?

10 A That there was a requirement that there be a --
11 a buy-in.

12 Q And you accepted that?

13 A At face value, yes.

14 Q And so this suggests that at the compensation
15 committee meeting in June 18, 2019, you made a motion
16 suggesting that JEA management start the process of
17 finalizing a long-term compensation framework?

18 A Yes. There were only three in attendance.
19 Ms. Johnson, as Chair, wouldn't have been appropriate
20 for her to make the motion and so it was left to me or
21 Ms. Green. And I made the motion.

22 Q And did you think that was a good idea?

23 A We had already discussed the concept of a
24 long-term incentive as a component to the overall
25 compensation at the board level. And, yes, this was a

1 good idea to finalize it for presentation.

2 Q But I take it, based on our conversation a few
3 minutes ago, that you -- when you made that motion, you
4 weren't thinking that a long-term compensation
5 program -- long-term incentive program, which we awarded
6 employees based upon an increase in value of the
7 enterprise, would yield immediate results based upon a
8 privatization within the two or three-year period of
9 time?

10 A Correct.

11 Q It just wasn't on your radar screen?

12 A It was -- that's correct. It was not -- they
13 were proceeding on parallel paths and the question asked
14 by Ms. Flanagan at the July board meeting, what happens
15 when these intersect, should have sent off alarm bells
16 throughout the discussion and the board.

17 Q And actually it should have happened in the
18 compensation committee in June 18th, shouldn't it?

19 A Well, there was certainly no discussion
20 regarding the recapitalization program at that
21 compensation committee meeting. It was focused on the
22 compensation program.

23 Q Alan, what I hear you saying is that you and
24 members of the board didn't adequately focus on where
25 these two programs intersect, other than the fact that

1 Kelly came close on July 23 in asking the right
2 question.

3 What information do you have about whether or
4 not the senior leadership team was aware of the
5 potential intersection of those two programs?

6 A Well, I didn't have any information about the
7 senior leadership team's awareness of the intersection
8 at the time. I suppose I have since learned, again,
9 through media reports, that there was an awareness. And
10 I think you mentioned a moment ago that Mr. Wannemacher,
11 in fact, had run analyses of how a recapitalization
12 event would pay out under the long-term incentive plan.
13 So I wasn't aware, but have since become aware.

14 Q That the -- the senior leadership team had some
15 awareness?

16 A Correct.

17 Q And do you think that there was a failure on
18 the part of the senior leadership team to be more
19 forthcoming with the board?

20 A I think the senior leadership team should have
21 been more forthcoming, yes.

22 Q Based on Ryan Wannamacher's lack of an answer
23 to Kelly's question, do you think it was purposeful on
24 the part of the senior leadership team to avoid the
25 board's being aware of the potential payoffs of that

1 intersection?

2 A I am reluctant to ascribe intent to
3 Mr. Wannamacher or other team member's statements or
4 omissions.

5 Q You don't want to get into scienter?

6 A I don't want to get into scienter or
7 accusations that they had some hidden agenda. I'm just
8 not aware of what went on in their hearts and minds.

9 Q Are you willing to get into whether or not it's
10 negligence?

11 A Gosh, there's -- there's multiple reasons I'm
12 glad I'm not a judge. I don't want to have to make that
13 determination.

14 Q Do you think it's gross negligence?

15 A I -- I would not want to get into that
16 judgment.

17 Q Would you expect if you were in
18 Mr. Wannamacher's position that you would have been
19 more forthcoming?

20 A I would like to think I would have been, yes.

21 Q Do you think that he owed it to the board to do
22 so?

23 A I would have expected a -- a more fulsome
24 answer from Mr. Wannemacher, yes.

25 Q Were you in the room on December 16th, 2019,

1 when Ron Salem and Roy interviewed the senior leadership
2 team?

3 A I was not.

4 Q Have you seen a transcript of that, watched the
5 film of it?

6 A I think I've seen media -- excerpts of that
7 meeting on the media, but I don't believe I've read a
8 complete transcript, no.

9 Q I think it was Mr. Salem who said ask every
10 single one sitting there, Aaron and Wannemacher and
11 Herschel and Kevin Hyde, if any of them considered the
12 intersection of those two programs. And every one of
13 them said no.

14 Is that disappointing to you?

15 A Well, based on what you've told me that there
16 had been a consideration by at least some of those
17 individuals of the intersection, it is disappointing
18 that they had the knowledge and they denied it.

19 Q Well, if they had the -- it's one thing if they
20 didn't have the knowledge, if they were just clueless,
21 like, the board, but if they had the knowledge --

22 A Please, please. Clueless, a little strong.

23 Q I accept your objection to the question.

24 A Thank you.

25 Q But if -- if they -- if they weren't clueless,

1 like, the board and they actually had knowledge that
2 this was going to result in multi million dollar payoffs
3 to the senior leadership team, didn't they owe a duty to
4 the board to tell the board that?

5 A I could certainly see that legal argument that
6 there was a duty.

7 Q Being the lawyer you are?

8 A Yes.

9 Q Look at Exhibit 62.

10 A Okay.

11 (Howard Exhibit 62 was marked for
12 identification.)

13 Q Do you -- have you seen this before?

14 A Yes. I believe I've seen this or a version of
15 this presentation by the Willis Towers Watson firm.

16 Q Well, compare this with Exhibit 63, put them
17 both in front of you. The 62 is the Willis Towers
18 Watson report, dated April 8/22, and 63 is dated June
19 18th and has the same picture on the front.

20 Do you see that?

21 A I do.

22 (Howard Exhibit 63 was marked for
23 identification.)

24 Q And you say you've seen this before?

25 A Or versions of it, yes, I believe I have. Was

1 this presented at the compensation committee meeting we
2 were just discussing?

3 MR. BLODGETT: Purportedly, that's what the
4 board records show.

5 A Yes.

6 THE WITNESS: Thank you, Mr. Blodgett.

7 Q And on page -- Exhibit 62, on page 31, it says,
8 Estimated cost impact of the long-term incentive plan is
9 \$4 million.

10 Do you see that?

11 A Yes. That was consistent with my understanding
12 at the time we were approving. Actually, I had three
13 and a half million in my mind. Oh, that's in the
14 subsequent version.

15 Q When you say the subsequent version, you're
16 talking about page 31, on Exhibit 63?

17 A Yes, the version dated June 18, 2000- --

18 Q Do you know where those numbers come from, how
19 they were calculated?

20 A I do not.

21 Q You just accepted them?

22 A I did, from the third-party consultant, yes.

23 Q Let's -- let's compare those two pages, 31 out
24 of 62 and 31 out of 63. Put them side by side. Do you
25 see in the Willis Towers initial draft, which is Exhibit

1 62 of the Willis Towers Watson, they have target bonuses
2 and long-term incentive opportunity percentages and
3 total at risk compensation?

4 Do you see that?

5 A Yes.

6 Q On the executive level, the target bonus was
7 proposed at 20 percent.

8 Do you see that?

9 A Yes.

10 Q And what was the target bonus proposed at the
11 executive level on the Exhibit 63, page 31?

12 A 45 percent.

13 Q Do you know how it got from 20 percent from
14 Willis Towers Watson recommendation to 45 percent in
15 Exhibit 63?

16 A I do not.

17 Q Were you aware that -- of that difference?

18 A I was not.

19 Q Did you know that Aaron Zahn made that change?

20 A I did not.

21 Q Would you expect Aaron Zahn to tell you about
22 that?

23 A I -- I'd like to understand why the numbers
24 changed, if there was some reason to justify the -- the
25 change in numbers. I understand that documents go

1 through drafts and there are various iterations and
2 motivations behind changes. I don't know what the
3 motivation behind this change was.

4 Q Do you see that in the long-term incentive
5 opportunity, under the April program it showed proposed
6 target of -- for the executive of 30 percent and under
7 the June 18th version, it shows proposed target of 40
8 percent for the executive?

9 A Yes.

10 Q Do you know how that comp -- that other
11 enrichment was made?

12 A I do not. I was not aware of that change and
13 do not know why it was made.

14 Q And do you see under total risk compensation
15 for the executive, it went from 50 percent in April to
16 85 percent in June?

17 A Yes. Same answer. I don't know who made it or
18 why it was made.

19 Q And in each of those charts, it shows marketed
20 either [REDACTED] percent. And you see down at the
21 bottom, there's a footnote that says, Note: Market data
22 provided by JEA.

23 A Yes.

24 Q Did you focus on that?

25 A I did not. Again, I assumed that we were

1 relying on the third party expert, Willis Towers Watson,
2 to vet these numbers.

3 Q But that's what the footnote says, you're not,
4 it says it was supplied by JEA, not by Willis Towers
5 Watson.

6 A I see that.

7 Q Is that troublesome to you?

8 A Moderately. Troublesome in the context of
9 saying what the market is.

10 Q And, again, the director level, which is just
11 below the executive's level, do you see how those
12 numbers were reduced from the April version to the June
13 version?

14 A Director level went up from 10 to 20 under
15 target bonus, went down from 15 to 5 under LTI and
16 stayed the same on at risk of 25.

17 Q You don't know why those changes were made?

18 A I do not.

19 Q On the LTI particularly?

20 A I do not.

21 Q You were at -- you were -- you were -- you were
22 at the June 18th compensation committee meeting?

23 A Yes.

24 Q So you saw this Exhibit 63 at that meeting?

25 A Yes. Well, the subsequent exhibit?

1 Q Yes.

2 A Yes.

3 Q Exhibit 63.

4 A But not the prior draft from April.

5 Q So if you had seen the prior draft, you would
6 have been more questioning of these percentages that are
7 shown on page 31?

8 A I -- I would like to think so.

9 Q But you weren't shown the prior drafts?

10 A We were not.

11 Q Would you have expected the senior leadership
12 team to be more forthcoming with you about why those
13 changes were made?

14 A Depending on the reasons for the change, I
15 mean, if they were made more conservative or reductions,
16 maybe not, but because they were more aggressive,
17 perhaps that would have been relevant information.

18 Q And more favorable for the executive team?

19 A Well, the fact that they were more favorable
20 might have been good information to have.

21 Q But you weren't given that, were you?

22 A We were not.

23 Q Look at, if you would, on page 63 -- on Exhibit
24 63, page 27.

25 A Yes. I have it.

1 Q Do you see that -- the payout range at the
2 bottom?

3 A Yes.

4 Q Maximum is 150 percent of target?

5 A Yes.

6 Q That maximum threshold of 150 percent of target
7 is not included in the final program that was submitted
8 to the board on July 23, which is, if you wanted to look
9 at it, the plan summary is Exhibit 80 and that --

10 A I'll take your word for it.

11 Q Okay. Do you -- do you know why there was a
12 threshold, a max set on -- by the compensation committee
13 of 150 in June, but it was omitted in the -- the max
14 payout of 150 percent of target was omitted in the plan
15 summary presented to the board on July 23, 2019?

16 A I do not know why that was omitted.

17 Q Were you aware that it was omitted?

18 A I was not aware that it was omitted. My
19 understanding at the time of the July board meeting was
20 that it was inconsistent -- the plan we were asked to
21 approve at the July board meeting was consistent with
22 what had been presented to the compensation committee.

23 Q And now that I show that to you, that there's
24 no maximum threshold of 150 percent of target on the
25 payout, do you think that's something that should have

1 been brought to your attention if it was omitted in the
2 final --

3 A Yes.

4 Q -- presentation?

5 So it would be in your judgment, at least to
6 that extent, the senior leadership team let the board
7 down?

8 A They were not as forthcoming as I would have
9 liked for them to have been.

10 Q It would be fairly characterized as an
11 omission, couldn't it?

12 A Yes.

13 Q And in the world of law and fraud, there are
14 misrepresentations and there are omissions, aren't
15 there?

16 A Yes.

17 Q And omission can be a fraud?

18 A It can be.

19 Q Look at Exhibit 65, please. This is an extract
20 of what was presented at the May 29, 2019, board
21 meeting.

22 Do you remember seeing that before?

23 A Yes.

24 (Howard Exhibit 65 was marked for
25 identification.)

1 Q This is the status quo baseline?

2 A Yes.

3 Q What was the purpose of this, do you remember?

4 A As I understand it, the purpose of the
5 presentation from the senior leadership team was to
6 demonstrate future impacts of market forces on JEA's
7 financial -- expected financial performance if it did
8 nothing in response to market forces.

9 Q And this is in May of 2019. If you turn to
10 what is -- if you look in the lower right-hand corner,
11 page 17 of this exhibit.

12 A Yes, I think you and I have seen this before.

13 Q Yeah. Now, this is -- but we're in 19 now.
14 And this shows the loss of revenue projected in the ones
15 you say we've seen it before, but, again, 2018 is
16 missing, isn't it?

17 A It is.

18 Q And 2018 was up, wasn't it?

19 A Yes, based on your prior exhibits.

20 Q So why wasn't 2018 on this chart? Because it
21 was inconsistent with Aaron Zahn's narrative?

22 A I -- I can't answer why it was omitted.

23 Q But it was omitted?

24 A I can say that it would have been inconsistent
25 with the chart because it would have trended up.

1 Q And would you characterize the fact that '18
2 wasn't on this chart as an omission?

3 A If that information was available, I would have
4 preferred it be shown.

5 Q Is that yes?

6 A Yes.

7 Q Do you know why -- well, first of all, do you
8 know who picked out the picture, which is on the front
9 page of Exhibit 65?

10 A I do not know who chose this image.

11 Q Or why there's a picture of a frog in a frying
12 pan?

13 A Well, I -- I know why. The -- the -- the --
14 the analogy is that of a frog who doesn't fight to get
15 out of the warm water and doesn't realize it's boiling
16 until it's too late. And that was the analogy being
17 used to compare JEA to its current complacency in the
18 face of changing market conditions.

19 Q On page 2 of this Exhibit 65, there's a
20 disclaimer.

21 A Yes.

22 Q The following status quo baseline financial
23 projections are presented solely for the JEA board of
24 directors planning and action in connection with the
25 development of the strategic plan. They are not a

1 projection of financial performance and, as such, should
2 not be relied upon by present or JEA -- present or
3 prospective JEA bond investors to purchase or sell any
4 security or to make any investment decision.

5 Projections are a mathematical representation
6 of a status quo business case and do not reflect likely
7 future events and future JEA actions that will likely
8 cause actual results to differ materially. This
9 presentation should be viewed in its entirety with
10 individual slides or sections of the presentation having
11 no greater or reduced significance relative to other
12 slides.

13 Isn't that an unusual disclaimer? It says you
14 shouldn't rely on what we're showing you here.

15 A No, no, I do not find it unusual or
16 inappropriate. In fact, I assume it was drafted by
17 Nixon Peabody on counsel to JEA because the reality is
18 that this financial -- this set of financial projections
19 assume that JEA leadership and board stick their head in
20 the sand and don't do anything. So I think it's
21 entirely appropriate.

22 Q And look at page 24 of Exhibit 65.

23 A Okay.

24 Q What does that page show us?

25 A Well, it's a -- a slide that includes

1 disclosure -- not disclosure, a statement regarding the
2 source of sales projections.

3 Q I'm sorry, say that again.

4 A Am I looking at the wrong one, 24?

5 Q No, you're looking at the right one.

6 A Okay. It's a slide that includes a statement
7 regarding the source of energy sales projections.

8 Q And the source of those four bullet points, is
9 that what you're saying?

10 A That's my understanding of this presentation,
11 yes, this slide.

12 Q Do you know why the background is blurred out?

13 A No.

14 Q Have you seen the data that's blurred out?

15 A If I have, I don't recall it specifically.

16 Q Look at Exhibit 66, page 5.

17 A That looks like the data that was blurred out.
18 (Howard Exhibit 66 was marked for
19 identification.)

20 Q And do you see on -- at the top of page 5 of
21 66, there's a legend that does not appear on page 24 of
22 Exhibit 65?

23 A The updated since previous SLT or the small
24 print?

25 Q The small print.

1 A Oh, my goodness.

2 Q I can read it.

3 A I'm glad you can.

4 Q Do you see that there's a legend there on 66
5 that's not on 65?

6 A I do. The following baseline conversation
7 financial projections.

8 Q Are presented solely for the JEA board of
9 directors planning and action. They are not a
10 projection of future financial performance and, as such,
11 should not be relied upon by present or prospective JEA
12 bond investors to purchase or sell any security, make
13 any investment decision. Projections are merely a
14 mathematical representation of a hypothetical case for
15 change. Actual results are likely to differ materially
16 from this business case.

17 A Yes.

18 Q Now, what -- why would that legend be omitted
19 from 65?

20 A Well, I don't -- I don't think it was omitted.
21 It was included in much larger font on page 2 of that
22 presentation.

23 Q But not on this page listing the energy
24 sales --

25 A No.

1 Q -- the actual data?

2 A No, but I think including it at the beginning
3 of the presentation, it applies to the entirety of the
4 presentation. I'm not offended by that.

5 Q And you're not offended by trying to keep you
6 from the underlying data that was blurred out in 65?

7 A Was it not included anywhere else in the
8 presentation --

9 Q Not --

10 A -- at 65?

11 Q It's not.

12 A I don't recall the sources of that energy sales
13 projections. Well, I mean, yes, can we always say we
14 would have rather had more detail and more background,
15 but at some point the firehose just gets to be too much
16 so I -- I'm not -- I'm not going to be critical of the
17 staff if they distilled -- if they accurately distilled
18 the information down.

19 Q But don't you see by now there was an effort by
20 the staff to mislead the board as to the direction of
21 JEA?

22 A I certainly see how that inference can be and
23 has been drawn by persons with the benefit of 20/20
24 hindsight. I will say, unequivocally, that at the time
25 in the midst of those discussions, I did not have the

1 impression that or sense or understanding that the
2 senior leadership team was engaged in any underhanded
3 plan or scheme to enrich themselves and to present false
4 financial projections to the board. That was never my
5 sense or understanding at that time.

6 Q Completely accepting that, do you suspect now
7 that it may have been true and the benefit of what you
8 now know?

9 A I -- I can see that that inference can be
10 drawn. Again, I can't see into the hearts and minds of
11 those people, but, you know, would I have liked to have
12 had a more fulsome response from Mr. Wannemacher? Yes,
13 in response to the question asked by Ms. Flanagan at the
14 July 2019 board meeting. Would I have liked to have had
15 the benefit of the legal memorandum by Nixon Peabody?
16 Yes. There are things that I would have liked to have
17 known that I did not know.

18 Q And then in 2019, wouldn't you have liked to
19 see the 2018 sales when you saw the sales shut off in
20 2017?

21 A I don't recall that they were dramatically
22 increased. And my recollection is that they were
23 accounted for by external factors that weren't something
24 you could rely on going forward. And I refer again to
25 the letter written by Melissa Dykes in February of 2020,

1 the increase in 2018 was not solely attributable to
2 overall gross increases in sales.

3 Q The letter you're referring to by Melissa Dykes
4 was a letter that was written by her when?

5 A February 26, 2020.

6 Q After all this had hit the fan and she was
7 trying to explain her way out of it?

8 A Well, I mean, I think she was responding to
9 media reports and with all due respect, the presentation
10 from Mr. Wedekind and his law partner.

11 Q Ooh, that was a shot across the table.

12 A Across the table as it were.

13 Q Do you think there's anything wrong with
14 Mr. Wedekind's presentation?

15 A I intend to agree with Ms. Dykes' conclusions
16 and criticisms regarding the laws in that presentation.

17 Q Given the objectivity you have as the chairman
18 of the board?

19 A I'm not criticizing Mr. Nunn and Mr. Wedekind,
20 per se, but I think that there may have been some flaws
21 in their assumptions and their interpretation.

22 Q I actually thought it was pretty well written.
23 Let me turn your attention to Exhibit 68,
24 please.

25 Have you seen this before?

1 A You and I talked about it earlier or some
2 version of this. I don't believe I had seen this
3 precise excerpt with circles until you produced it to
4 me.

5 (Howard Exhibit 68 was marked for
6 identification.)

7 Q The -- look at Exhibit 69, please.

8 A Yes.

9 (Howard Exhibit 69 was marked for
10 identification.)

11 Q This is an engagement letter from the Office of
12 General Counsel to engage Pillsbury for its legal
13 services to JEA. It's dated June 28, 2019.

14 Do you see that?

15 A Yes.

16 Q What do you know about this engagement of
17 Pillsbury?

18 A I've not seen this prior to you producing it to
19 me. I knew -- or had knowledge of the fact that they
20 were the preferred vendor by OGC and Mr. Zahn regarding
21 the recapitalization efforts.

22 Q When you say preferred vendor, now, tell me
23 what you mean. Are you thinking of a law firm as a
24 vendor?

25 A Well, vendor for legal services in this

1 context, yes. I -- I think, again, in that period of
2 time, January through July of 2019 and the course of
3 various conversations, Mr. Zahn had mentioned to me that
4 there was another firm, and I don't recall who it was,
5 that he thought would be highly qualified to assist JEA.
6 It may have been Skadden Arps, but I -- I may be totally
7 wrong with that, not sure how that name jumps out at me.

8 At then at some point he said, no, he felt
9 Pillsbury was going to be the right one and he had
10 talked to Jason Gabriel about engaging Pillsbury.

11 Q At what point in time was this conversation?

12 A This would have been late, so June, July. May,
13 June, July, somewhere in that time frame.

14 Q Do you know why this engagement was after the
15 July 23 board meeting -- I beg your pardon -- June 28th?
16 Why was this so late in the game? Do -- were you aware
17 that Pillsbury performed services prior to this date?

18 A I don't believe I was aware that they had
19 provided any services prior to this date.

20 Q And what did you believe the purpose of these
21 services was?

22 A To assist in the recapitalization efforts
23 should the board elect to go with the status -- or the
24 option 3, nontraditional response.

25 Q Look at Exhibit 70, please.

1 Have you seen this before?

2 A I don't recall seeing this. It's possible I
3 saw it at some point, but I -- I don't have -- I don't
4 have any recollection of seeing this.

5 (Howard Exhibit 70 was marked for
6 identification.)

7 Q It's entitled Project Freebird, do you know
8 what that term means?

9 A It was the code word used by the -- the
10 investment bankers and lawyers for the JEA
11 recapitalization. I think later renamed Project
12 Scampy.

13 Q When you say the recapitalization, you're
14 talking about round one or round two?

15 A This is all round two.

16 Q 2019?

17 A Yes.

18 Q And you don't know who came up with the term
19 Project Freebird?

20 A I do not.

21 Q This -- Exhibit 70 was organizational materials
22 for the meeting at Club Continental on July 10 and July
23 11, were you there at that meeting?

24 A I was invited by Mr. Zahn to come over and meet
25 some of the team members on July 10th so I showed up

1 that afternoon and was on the property for less than an
2 hour and did not participate in any organizational
3 meetings or project team meetings.

4 Q What did you participate in?

5 A I think Mr. Zahn called me and asked me to come
6 to Club Continental and meet with the project team. I
7 don't believe there was any -- oh, we were talking about
8 Vogtle so there was some discussion around Vogtle. So I
9 arrived, sought him out, spoke to a few people I knew,
10 Melissa Dykes, Kevin Hyde and others as I passed
11 through.

12 Located Mr. Zahn, he and I adjourned to a
13 table outside on the lawn of the property. We were
14 joined by Ms. Rhode and Mr. Vinyard. And they discussed
15 the Vogtle issues, which I'd been intimately involved
16 with.

17 Q Do -- you don't recall who was at the meeting,
18 do you -- do you recall?

19 A I didn't know most of the individuals so I
20 recognized and spoke to Kevin Hyde, Melissa Dykes,
21 Herschel Vinyard, Lynne Rhode. I was later introduced
22 to Stephen Amdur of the Pillsbury firm, but there were
23 another two dozen individuals that I did not meet, did
24 not know.

25 Q Investment bankers?

1 A I assume. I mean, it could have been other
2 attorneys from the Foley or Pillsbury law firms as
3 well.

4 Q Referring to Exhibit 70, there's a process
5 timeline that appears.

6 A Over several pages?

7 Q Yeah. Can you find it?

8 A Page 2, yes.

9 I said over several pages, I meant over several
10 weeks.

11 Q This is the timeline, if you turn several
12 pages, that I'm referring to.

13 A Oh. Yes, I have it. Page 5?

14 Q Yeah. Indicative process timeline. It starts
15 at the board meeting on July 23, 2019. And it has a
16 series of tasks. And then concluding and sign a
17 purchase agreement or definitive agreement in March of
18 2020.

19 Were you aware that that was a goal of this
20 sale process of round two?

21 A I don't think I'd ever heard that, no.

22 Q Let me show you what I marked as Exhibit 71.

23 A Yes.

24 (Howard Exhibit 71 was marked for
25 identification.)

1 Q Have you seen this before?

2 A I do not recall seeing this before.

3 Q Prior to the July 23 board meeting, did anybody
4 tell you the total number of performance units that
5 would be available for all eligible employees?

6 A I don't recall if someone told me or if I read
7 it in one of the compensation committee reports that
8 we've reviewed here today or presentations from Willis
9 Towers Watson.

10 My recollection is that it was to be a
11 three-year plan with 10,000 units at \$10 a unit and a
12 cost of 3 and a half million per year. That was my
13 recollection.

14 Q Do you see the -- you -- you have -- I think
15 you just said you had not seen Exhibit 71 before?

16 A No.

17 Q Do you see the disparity of value of the
18 plan towards the executive versus the rest of the
19 employees?

20 A Where are you referring to exactly?

21 Q Slide one, slide four. Do you see the --

22 A Yes, 40 percent of salary.

23 Q Yeah.

24 A All the way down to 1 percent of salary.

25 Q And the rest of them are single digits?

1 A Yes.

2 Q Is this consistent with the characterization
3 that it looks like that senior leadership team was
4 trying to rich themselves off the PUP plan?

5 A I certainly see how you could draw that
6 conclusion. I had not seen that background or that
7 breakdown prior to seeing this slide.

8 Q Or that disparity?

9 A Or -- or the disparity evidenced by that
10 breakdown.

11 Q Are these -- this slide, which we believe came
12 from Ryan Wannemacher, supports the thought that the
13 senior leadership team, through the PUP plan, was trying
14 to disproportionately enrich themselves with a long-term
15 incentive plan, doesn't it?

16 A Yes. I see where you can draw that
17 conclusion.

18 Q Oh, back to the Club Continental meeting.

19 A Yes.

20 Q We're informed that Tim Baker attended the
21 meeting. Did you see him there?

22 A I didn't know Mr. Baker, still don't really
23 know Mr. Baker. I don't recall if I saw him there or if
24 I would have recognized him if I did.

25 Q Can you think of any reason why he would be

1 there?

2 A None to my knowledge from the JEA perspective.

3 Q Yeah, from the JEA perspective.

4 A None to my knowledge.

5 Q And -- or stated differently, you can't think
6 of any reason for him to be there, can you?

7 A If he was there, I wouldn't -- I -- I can't
8 think of a reason why he would be there. I would -- I
9 have no knowledge of a reason why he would be there.

10 Q Let me ask you to look at Exhibit 72.

11 A Yes.

12 (Howard Exhibit 72 was marked for
13 identification.)

14 Q Exhibit 72 appears to be an e-mail from you
15 to Stephen Amdur, dated July the 11th.

16 Do you see that?

17 A Yes.

18 Q The subject is Project Freebird?

19 A Yes.

20 Q And July 11th was the second day of that Club
21 Continental meeting?

22 A Yes.

23 Q So can you recall -- tell me why you wrote this
24 e-mail to Stephen Amdur.

25 A Sure. I mentioned a moment ago that I was

1 called by Mr. Zahn to come out to the Club Continental
2 meeting on July 10th to meet the team or discuss Vogtle
3 and/or discuss Vogtle. We had a discussion around the
4 Vogtle lawsuit and issues with Mr. Zahn, myself,
5 Mr. Vinyard and Ms. Rhode. At sort of the conclusion of
6 the discussion around Vogtle, I said to them, I need to
7 disclose to you guys that my firm has been approached by
8 one of the potential bidders.

9 One of my law partners was approached by FP&L
10 and so I felt it was right -- I felt it was incumbent
11 upon me to disclose that fact.

12 Q Let me guess which partner.

13 A No need. So -- and let me just rewind. So if
14 we want to talk about my firm's engagement, I'll provide
15 you a little background and context. So we've spent a
16 lot of time talking about various topics. We haven't
17 spent a lot of time talking about Vogtle, but I spend as
18 much time with Mr. Zahn and outside counsel at Holland &
19 Knight on the Vogtle issues in the time period, you
20 know, gosh, October of '19 -- October of '18 through
21 July of '19 as I did on all other issues combined.
22 Vogtle was all-consuming.

23 And after I -- after I withdrew as chairman and
24 announced that I was stepping down from the board in the
25 July meeting and in the course of a discussion on

1 Vogtle, Mr. Zahn asked me, Would you be willing to
2 assist us or continue assisting us after you step off
3 the board on the Vogtle issues? That conversation took
4 place in late June 2019. I said, Yes, but I don't know
5 what the rules are that govern that.

6 Along in the same time, May, June time frame
7 and perhaps in one of the discussions where Mr. Zahn
8 indicated that they had settled on hiring Pillsbury
9 and/or Morgan Stanley and others, Mr. Zahn said in an
10 effort to keep costs down, I've asked each of the
11 outside vendors, investment banking firms and law firms
12 to take a discount against their standard rates with the
13 possibility of a success fee. I thought that made a lot
14 of sense. Didn't have anything to do with me, but I
15 thought it had -- made a lot of sense for the
16 organization because there was uncertainty regarding
17 whether or not the board would vote in favor of
18 exploring nontraditional -- nontraditional responses at
19 its July board meeting. So that's some background.

20 Following the ask, would I be interested in
21 assisting on Vogtle? I said, Yes, if permitted. And
22 sent an e-mail to Lynne Rhode asking the question, are
23 there restrictions on a former board member representing
24 JEA or being adverse to JEA?

25 Even prior to that, while I was on the board,

1 but months or a year prior, I had had occasion to ask
2 Carla Miller the same question. And without researching
3 it, Carla Miller is the City of Jacksonville ethics
4 director, she had said, Yes, I don't think there's any
5 objection -- any reasons why a former board member can't
6 serve.

7 And in an abundance of caution, I asked
8 Ms. Rhode because she was the lawyer for JEA. She came
9 back and said there's no prohibition on working for JEA,
10 but there would be issues if you were adverse to JEA as
11 a former board member. And that was the end of that.
12 It was all about Vogtle.

13 So coincidentally or not, immediately following
14 the Club Continental meeting July 12th, I want to say of
15 2019, we got an adverse order from the federal court
16 hearing in the case here in Jacksonville that booted the
17 case back to Atlanta and really sort of foreclosed any
18 assistance required of me on the Vogtle issue.

19 In more direct response to your question, on
20 July 10, sitting with Mr. Zahn, Mr. Vinyard and
21 Ms. Rhode, after we talked about Vogtle, I said, One of
22 my partners has been approached and asked if we would
23 represent one of the bidders, because I felt it was
24 appropriate to disclose that. And I told my partner,
25 no, I'm on the board and, no. And he goes, oh, I

1 thought you were off the board. So there was never any
2 substantive discussion about my firm representing any
3 bidder.

4 When I made that statement to Mr. Zahn,
5 Mr. Vinyard and Ms. Rhode, Mr. Zahn said something to
6 the effect of, well, no, we would want you on our team.
7 I said, well, I'd rather work for JEA than against it.
8 And Ms. Rhode said something to the effect of, well,
9 let's not talk about it until you're off the board. And
10 Mr. Vinyard said something to the effect of, and we want
11 to make sure it's okay by OGC. That was the sum and
12 substance of that conversation. It took about 30
13 seconds.

14 As Mr. Zahn was -- and so immediately after
15 that, I was, like, I've got to get back to work, day
16 job. As we were exiting the property, he summoned
17 Mr. Amdur, from the Pillsbury firm, who was sort of
18 heading up the team, over and introduced me. And said,
19 This is Alan Howard, he's a member of the board. He's
20 leaving the board in a couple of weeks, former chairman,
21 worked closely with us on Vogtle, has a lot of
22 institutional knowledge and there might be a role for
23 him after he's off the board because he's also an
24 attorney. And Mr. Amdur said, Well, very nice to meet
25 you. Send me some information on your firm. We'll let

1 you know if there's a role for you.

2 That gave rise to the e-mail the following day,
3 submitting the information that he had requested,
4 saying, you know, gosh, I hope we get to work together.
5 And then I heard nothing more until I was off the board.

6 But at no time, while I was on the board, did I
7 solicit employment for myself or our firm. At no time
8 was there an agreement to engage my firm while we were
9 on the board. And the only ultimate engagement of my
10 firm came after I was off the board and from OGC.

11 Q Referring to Exhibit 72, you expressed a
12 willingness to reduce your hourly rate in exchange for a
13 success fee. What is the definition of success as you
14 used it in your e-mail?

15 A A transaction closing, similar to what the, I
16 think, Morgan Stanley agreement had referred to.

17 Q A closing of a transaction to sell JEA?

18 A Well, a recapitalization. At that point I
19 don't think anyone had fixated on the ultimate outcome,
20 or if they had, I had not.

21 Q You're a lawyer, when you use the term
22 successfully, it has to be relative to something.

23 A Sure.

24 Q What is the success, is it a transaction? Is
25 it a transaction at a certain dollar level? What is it?

1 Was there any suggestion about what you meant by
2 successfully?

3 A There was not. The sole basis for that
4 reference was the prior discussion with Mr. Zahn that he
5 had negotiated agreements which apparently was not the
6 case, but he had told me earlier that he was negotiating
7 agreements with the other law firms and investment
8 banking firms to discount their hourly rate in exchange
9 for a success fee.

10 Q You said it apparently was not the case.

11 A I've since read in the media, I think, that
12 that was not the case.

13 Q Are you saying -- are you suggesting Aaron Zahn
14 said something to you that wasn't true?

15 A It may be that he was trying to negotiate those
16 terms and was unsuccessful, but that was what he said to
17 me prior to this, May or June.

18 Q Is Paul Renner still with your firm?

19 A He is not. He's joined the Nelson Mullins firm
20 with Mr. Wedekind.

21 Q I understand that's a good firm.

22 When did he leave your firm? When did Paul
23 Renner leave your firm?

24 A Yes. Gosh. Mr. Busey, I'm not sure of the
25 effective date. Was it May 1 of 2020 or June 1?

1 Recently. Within the last six months.

2 Q And what was the reason for his leaving your
3 firm?

4 A Well, I -- I think a lot of it had to do with
5 the fact that he lives in Flagler County, represents the
6 Flagler County, Volusia County district and wasn't
7 coming to Jacksonville very much. I think it was also
8 related to the fact that he's the speaker of the house
9 designate and he's looking to perhaps capitalize on the
10 opportunity and exposure that that affords him with a
11 larger statewide regional law firm. Those were the
12 reasons he articulated.

13 MR. BUSEY: Off the record.

14 (Off-the-record discussion.)

15 BY MR. BUSEY:

16 Q Look at Exhibit 73, please.

17 A Okay.

18 (Howard Exhibit 73 was marked for
19 identification.)

20 Q Have you seen this before?

21 A No, not until you produced it.

22 Q Do you see what it is?

23 A It looks like scripted question and answers. I
24 think it's what I had seen yesterday and referred to
25 earlier today when you asked me if I had seen any

1 scripted questions and answers from Mr. Munz and his
2 agency. This looks like it would have come from
3 Mr. Munz and his agency, although it doesn't appear to
4 be ascribed to them.

5 Q But you haven't seen it before?

6 A I don't recall seeing this. No.

7 Q But it was -- it looks like it was prepared for
8 the July 23 meeting, doesn't it?

9 A It does. If it was provided to us, I've
10 completely forgotten it. I -- I don't recall ever
11 seeing this.

12 Q And you had no awareness of Michael Munz, at
13 the Dalton Agency, providing scripted answers to
14 questions for the JEA board meetings?

15 A No. If -- if -- if they did it and I've
16 forgotten it, I'll ascribe it to my advanced years, but
17 I -- I don't recall ever charging them or meeting with
18 them about scripted answers. This just looks like their
19 work product.

20 You know, let me -- let me amend that response.
21 I feel like I met or spoke with Michael Munz at some
22 point in June or July about messaging, but it's only a
23 vague recollection.

24 Q Look at Exhibit 75. Have you seen this
25 before?

1 A Yes. This was, I think, a board presentation
2 regarding the constraints on growth. I believe it was
3 under Mr. Vinyard's purview.

4 (Howard Exhibit 75 was marked for
5 identification.)

6 Q That is he prepared it?

7 A Or directed its preparation, yes, and reported
8 on it at a -- at a board meeting.

9 Q Isn't it true that Mr. Zahn picked out the
10 pictures for these presentations?

11 A I -- I would have no knowledge of that.

12 Q Look at page 4 of that Exhibit 75.

13 A Yes.

14 Q There's a complicated chart about the viability
15 of initiatives with constraints. Did you study that?

16 A I've not studied it recently. I've -- I've
17 looked at it closely in advance of the -- gosh, I forget
18 at which board meeting it was presented.

19 Q The footnote at the bottom, it says,
20 Constraints considered are the Florida Constitution, the
21 Florida Public Service Commission Jurisdiction,
22 intellectual property considerations, the City of
23 Jacksonville Charter, JEA bond resolutions, JEA business
24 structure and policy considerations.

25 Do you consider all those as constraints?

1 A Do I consider them as constraints? I -- I
2 certainly see how some of them could be constraints, the
3 constitution, the PSC jurisdiction, limiting JEA's
4 ability to branch out into other revenue sources.

5 Q The next sentence says, Accumulative impact
6 analysis assumes current law is based on general and not
7 specific initiative terms and is subject to confirmation
8 and change by legal counsel.

9 So did you understand that this presentation
10 was subject to confirmation by legal counsel?

11 A I'm not sure that was my understanding at the
12 time. I think my understanding was that this was
13 compiled by Mr. Vinyard and Ms. Rhode, as the chief
14 legal officer, and perhaps others at the Office of
15 General Counsel in response to the question of what are
16 the barriers to JEA's growth.

17 Q But the footnote that says the presentation is
18 subject to confirmation by legal counsel, which suggests
19 that's a caveat that you can't rely on, isn't it?

20 A Well, it -- it doesn't say that you can't rely
21 on it, it just says you better make sure before you
22 make decisions based on it, that you should get it
23 confirmed.

24 Q By legal counsel?

25 A By legal counsel.

1 Q Isn't that what Mr. Vinyard was?

2 A That wasn't his title. I don't recall his
3 title, but I think --

4 Q Ms. Rhode too?

5 A Ms. Rhode was part of his team. She reported,
6 at least on a dotted-line basis, to Mr. Vinyard, yes.

7 Q And the last sentence in that footnote says,
8 Any specific initiative will require extensive and
9 detailed legal analysis and counsel?

10 A Yes.

11 Q Is that another caveat that you can't rely on
12 this without further legal analysis?

13 A Well, when it says any specific initiative,
14 I -- I'm not sure what -- how I interpreted that
15 statement at that time.

16 Q Did you read it at the time?

17 A I suspect I did. I think we all learned in law
18 school to read the footnotes.

19 As I read it now, I'm not sure that it bars
20 any specific initiative, nor undermines and caveats the
21 constraints. It just says, If you're going to
22 undertake the specific initiative to try and overcome
23 any constraints, go get more detailed analysis and
24 counsel.

25 Q And look at 7- -- Exhibit 76, please.

1 A Yes.

2 (Howard Exhibit 76 was marked for
3 identification.)

4 Q Did you see this at the time of the board
5 meeting of July 23?

6 A This or a presentation very similar to it was
7 presented at the July board meeting, yes.

8 Q And what was the purpose of this presentation
9 to your understanding?

10 A Well, again, in context, we had had the
11 baseline presentation, which you and I looked at
12 earlier, in May. In June, I don't think we looked at
13 necessarily the traditional utility response, but there
14 was a presentation of the board meeting in June of how a
15 traditional utility would respond, cutting work force,
16 reducing capital investment and otherwise balancing the
17 budget as it were to respond to declining revenues.

18 This then followed with the July board meeting,
19 baselined, not a good outcome. Traditional response,
20 not a good outcome. July, there's some nontraditional
21 responses that could generate a better outcome. That
22 was my understanding of the rationale behind this
23 presentation.

24 Q Look at page 9, do you see that it has an
25 objective having JEA board approving, by final vote, a

1 recommendation to send the plan to the city council by
2 March 2020?

3 A Yes.

4 Q Were you aware of that date?

5 A Well, at this time and it may have been
6 discussed in -- in the run-up to the meeting, but
7 certainly at this time I was aware of it.

8 Q Do you know the -- where that date came from,
9 March 2020?

10 A I do not.

11 Q Just a recommendation of the bankers?

12 A I -- I don't.

13 Q Do you know why Mayor Curry's administration
14 truncated that date from March 2020 to January of '20
15 during the negotiations of late '19?

16 A I do not.

17 Q Did you know that happened?

18 A I read about it in the media.

19 Q And look at Exhibit 77, please.

20 A Yes.

21 (Howard Exhibit 77 was marked for
22 identification.)

23 Q Do you remember seeing that?

24 A I do.

25 Q Is that what you voted on?

1 A It is.

2 Q On July -- July 23, 2000- --

3 A Yes, it is.

4 Q -- -19?

5 A Sorry.

6 Q And what was your understanding of the purpose
7 of the resolution?

8 A Well, as set forth in paragraph 2, the purpose
9 was to develop the ITN, to go out and seek a
10 competitor -- ITN or other competitive solicitation
11 document, to go out and seek nontraditional responses
12 that met these criteria, greater than 3 billion net
13 value, greater than 4 million value to customers,
14 et cetera.

15 Q We've seen evidence that this resolution wasn't
16 included in the board materials until the day before the
17 July 23 meeting. Do you remember seeing it before that
18 time?

19 A I do not. I previously stated, perhaps not
20 here, that we generally got board materials several
21 days, maybe a week in advance of the board meeting. And
22 this package was voluminous and delivered later than
23 usual. And I don't recall if it was delivered by hand
24 or electronically, but that's consistent with my
25 recollection. I think it came the day before.

1 Q It -- isn't that awful late to lure this kind
2 of substantive stuff to a board of this level of
3 magnitude of action in good governance?

4 A Yes. I would have liked to have seen it
5 earlier. However, I would say that -- you asked if I
6 had seen this resolution before, I had not, until the
7 day preceding the meeting, but elements of it had
8 certainly been the -- it had been circulated in the
9 subject of prior discussion and drafts. So I
10 specifically recall certain of these elements having
11 been previously discussed, just not the resolution.

12 Q And look at Exhibit 78. And what is your --
13 tell me -- can you tell me what Exhibit 78 is?

14 A This is a -- yes. It's a lengthy resolution
15 and attachments that refer to employee protection and
16 retention as you go into the recapitalization process.
17 The intent was to protect the employees and give them
18 an incentive to remain in the face of a period of
19 uncertainty surrounding a potential transaction.

20 The -- the -- the reasoning behind it is you
21 want to protect your human capital. I think every CEO
22 at JEA, for a long period of time, has acknowledged that
23 the people -- JEA is the people, it's not the power
24 lines and waterlines.

25 And what inevitably happens when you enter into

1 discussions for a potential transaction is competitors
2 will seek to poach talented individuals. And so this
3 was an effort to incentivize employees to stay with JEA
4 through that period of uncertainty and beyond. It's a
5 retention program.

6 (Howard Exhibit 78 was marked for
7 identification.)

8 Q You don't think the PUP plan was a sufficient
9 incentive to put millions of dollars in their pockets to
10 stay through the recapitalization?

11 A Well, not every employee was required or might
12 exercise the option to buy into the PUP so it was an
13 opportunity, but other employees might want to have the
14 benefit of protection that they wouldn't get fired and
15 the organization would want to have the protection that
16 they wouldn't take a better job and leave.

17 Q It's also possible the employees didn't, at
18 that point, understand their potential recovery under
19 the PUP plan, isn't it?

20 A That's possible.

21 Q And we're informed that this -- these
22 contracts, after they were approved by the board on the
23 23 of July, were just placed on the desk of the
24 employee, there was no negotiation or discussion with
25 any of them and they were just told to sign them and

1 turn them in, were you aware of that?

2 A I was not. I had no involvement after I
3 resigned at that meeting.

4 Q Did you have any discussion at the board
5 meeting as to whether or not any of the employees had
6 expressed a desire for this kind of protection?

7 A I don't recall any discussion at the board
8 meeting regarding that. I do recall there was some
9 discussion with Ms. Hiers in round one regarding
10 employee retention and that that was a concern that was
11 voiced in round two.

12 Q I see the chief -- the first exhibit under this
13 resolution is the employment agreement with the chief
14 executive officer. Again, I think I asked you this
15 question earlier. Isn't it the reason he put off his
16 employment contract until July 23 is so that he would
17 participate in the PUP plan?

18 A I can't speak to his motivation, but it was put
19 off until the total compensation plan was approved.

20 Q Exhibit 79 is a presentation on the Performance
21 Unit Program that was given at the board meeting; is
22 that right?

23 A It appears to be what was presented, yes.

24 (Howard Exhibit 79 was marked for
25 identification.)

1 Q And you see on page 6, it says at the bottom,
2 For the first performance period of '20 to '22 is
3 recommended that 30,000 performance units be made
4 available for purchase.

5 Under the plan there were 100,000 units,
6 weren't there?

7 A I -- I don't recall the specific details of the
8 plan. It was my understanding that it was 10,000 units
9 per year in three-year cycles and it may have been that
10 it was adopted as a ten-year plan. So that would -- the
11 math would work there.

12 Q Do you know if this recommendation was ever
13 done?

14 A The final bullet point --

15 Q Uh-huh.

16 A -- that recommended that there were 30,000?

17 Q Uh-huh.

18 A I don't -- I don't know the outcome of that
19 recommendation, no.

20 Q And look at Exhibit 80. That's a resolution
21 approving the PUP plan?

22 A Yes.

23 (Howard Exhibit 80 was marked for
24 identification.)

25 Q And you -- you were at the board meeting?

1 A Yes. July board meeting.

2 Q And you received -- you told me you recall the
3 question by Kelly Flanagan about the intersection of
4 these two plans?

5 A I do.

6 Q And that came during the discussion of this
7 resolution towards the end of the board meeting; isn't
8 that right?

9 A Yes.

10 Q And that discussion, if you look at the --
11 well, you were there participating in the board meeting.
12 The discussion regarding this resolution lasted what,
13 ten minutes?

14 A I don't recall the exact time, but it was
15 shorter than it should have been.

16 Q Okay. And why was that? Why do you think it
17 was shorter than it should have been?

18 A Mr. Busey, every -- every Chair of a board and
19 every board member wants to have active and engaged
20 board members who thoroughly read and understand all of
21 the information, accept presentations from staff,
22 particularly in a complex organization like JEA -- JEA,
23 but also challenge those presentations where
24 appropriate.

25 I -- I'm not sure that every member of the

1 board of JEA at that time fully understood the long-term
2 incentive performance plan as presented enough to ask
3 challenging questions. I think it came at the long --
4 end of a very long meeting and there may have been some
5 fatigue, but I don't know the answer to your question as
6 to why the discussion's too short.

7 Q Well, clearly, in retrospect, you weren't Chair
8 of the board at the time?

9 A I was not.

10 Q April was?

11 A Yes.

12 Q But wouldn't you think that if this board
13 were governed, given the substance of what was being
14 presented to them on July 23, there should have been
15 more notice and more discussion?

16 A As I said earlier that I think the board made a
17 mistake in approving the long-term incentive plan at the
18 same time that it approved pursuing recapitalization and
19 I'll stand by that statement.

20 Q In Exhibit 80, in paragraph 1, it gives the
21 chief executive officer or his designee the authority
22 to, 1, implement the long-term performance unit plan, 2,
23 to execute with each eligible employee the plan, and
24 each actively employee eligible, full-time attorney from
25 the Office of General Counsel of the City of

1 Jacksonville, who is dedicated exclusive to JEA.

2 Why is an OGC attorney included in this PUP
3 plan?

4 A I can't answer that question definitively.
5 I -- I understand that it referred to Ms. Rhode who was
6 tasked from OGC to JEA. Her office was in JEA's
7 building and she was dedicated exclusively --
8 exclusively to JEA. So it may be that she was just
9 regarded as practically, although not technically, a
10 JE- -- JEA employee and should be entitled to the
11 benefits in the opinion of Mr. Zahn and the SLT, but
12 I -- I can't speak to it beyond that.

13 Q Did anybody on the board question Lynne Rhode's
14 inclusion as an employee of JEA?

15 A I don't recall any discussion of the board on
16 that issue.

17 Q Do you recall any discussion at all with any
18 member of the senior leadership team or Aaron Zahn about
19 it?

20 A At the board meeting, them talking about it?

21 Q At any time.

22 A At any time. Well, they didn't talk about it
23 at the board meeting. There may have been a
24 conversation at the compensation committee meeting about
25 including Ms. Rhode. I have a vague recollection of

1 somewhere along the road, towards this July 23 board
2 meeting, that there was a discussion of including
3 Ms. Rhode as for all intents and purposes a -- or her
4 successor, didn't have to be her, as for all intents and
5 purposes an employee of JEA.

6 I -- I can't tell you the date or who were the
7 participants in that conversation.

8 Q Do you know Jason Gabriel's attitude about it,
9 including Ms. -- including Ms. Rhode?

10 A I do not. I assume that he had seen the
11 resolution in the plan.

12 Q You assume that?

13 A Yes. Based on my question to whether or not
14 the claim had been vetted by the OGC at the board
15 meeting.

16 Q And you see in the first part of paragraph 1,
17 where I was just reading, The chief executive officer or
18 his designee shall have the authority, 1, to implement a
19 long-term performance unit plan on the terms and
20 conditions set forth on the long-term performance plan
21 summary.

22 And if you look, there is a summary attached as
23 Exhibit -- Exhibit 1 to the resolution.

24 A Uh-huh.

25 Q Do you see the summary?

1 A I do.

2 Q And you see under -- under the first page of
3 the summary, it says, Pull a total of 100 performance
4 units are available for purchase under the plan?

5 A Yes, 100,000.

6 Q 100,000, so that's where I got the 100,000 that
7 I used to you earlier, you thought it was 30?

8 A Well, again, my understanding was it was a
9 ten-year plan and it's 10,000 units per year and three
10 year cycles, so 30,000 per three-year cycle. And -- but
11 ten-year term, 10,000 is not reflected in this summary,
12 but that was my understanding.

13 Q You see on the bottom of the same page where it
14 says, Performance period, each performance period will
15 be a three-year period?

16 A Yes, but I can tell you from my personal
17 practice and work with publicly traded corporations that
18 you typically adopt a ten-year stock plan. And that may
19 be for IRS reasons. Again, that's not my particular
20 area of expertise. And so I don't think that
21 statement's inconsistent.

22 Q But you don't see ten years in the summary?

23 A No, I don't.

24 Q What you see is a three-year period and there's
25 100,000 units?

1 A Yes, I see that.

2 Q Okay. In looking on page 2 of the Exhibit 1 --

3 A I'm sorry.

4 Q -- to the resolution, which is a summary of the
5 plan.

6 A Okay. Yes.

7 Q First of all, do -- why was -- why was there --
8 the board presented with a summary rather than a plan
9 document itself?

10 A I can't answer that question, other than the
11 fact that the plan had not been written perhaps.

12 Q Don't you think it would be prudent for the
13 plan to be written before the board approved it?

14 A You could argue, yes, but I -- I suspect in
15 point of practice, it's -- it's often the case that only
16 a summary is presented to the board -- presented to the
17 board because the plans are rather lengthy and obtuse.
18 No disrespect to the risk lawyers.

19 Q And not that this resolution's not obtuse?

20 A One could argue.

21 Q On the second page of the summary --

22 A Yes.

23 Q -- it talks about redemption price, which is
24 redemption for the public plan shares. It says, Current
25 year value means with respect to each performance

1 period, three-year period, the sum of, 1, JEA's net
2 position shown on its financial statements, 2, the
3 aggregate consideration paid, distributed or credited or
4 otherwise provided to the City, whether in cash or in
5 kind, during the 12-month period prior to the end of the
6 performance period; and 3, the aggregate consideration,
7 including refunds, rebates and distributions paid,
8 distributed and credited, otherwise provided to JEA's
9 customers during that 12-month period.

10 Were you aware of that?

11 A Well, I certainly saw it in the summary and I
12 think it was consistent with my understanding that
13 that's how you measure the value of JEA. Again,
14 considered in -- in the absence of any liquidity of
15 that.

16 Q All right. So among the minimum requirements
17 of the ITN was not only that there be a minimum of \$3
18 billion in value?

19 A Are you on 81?

20 Q No, I was referring back to the ITN, but if you
21 want to look at Exhibit 80 -- yeah, 81. 81.

22 A Okay.

23 Q Exhibit 81 is page 19 of the ITN.

24 A Okay.

25 (Howard Exhibit 81 was marked for

1 identification.)

2 Q 127-19. And it lists the minimum
3 requirements --

4 A Yes.

5 Q -- of the ITN. And the first one is you've got
6 to get \$3 billion net --

7 A Yeah.

8 Q -- net?

9 A Uh-huh.

10 Q And the second is 400 million be distributed to
11 customers.

12 A Uh-huh.

13 Q So as I just read the current year value under
14 redemption price, the 400 million would be added to the
15 proceeds received by the City and calculated in the PUP
16 plan?

17 A Yes.

18 Q So to the extent that the JEA is going to still
19 be \$400 million to the purchase price to the customers
20 of JEA, then that just enhances the PUP payout, doesn't
21 it?

22 A Yes.

23 Q Exhibit 82 is the retention letter for your
24 firm that was signed by the --

25 A Yes.

1 (Howard Exhibit 82 was marked for
2 identification.)

3 Q -- General Counsel on August 28th.

4 A Yes.

5 Q And by Ryan Wannemacher subsequently.

6 A Yes.

7 Q In the -- in the second paragraph of the
8 letter, it says, The firm shall assist JEA in certain
9 corporate transactional, local government, interlocal,
10 administrative matters, including JEA ITN 127-19.

11 A Yes.

12 Q It doesn't say anything about Vogtle, does it?

13 A Does not. I was surprised. Although not
14 surprised because there's an adverse ruling in July, I
15 forget the exact date, July 12th or 13th, where the
16 case was remanded to -- to the Northern District of
17 Georgia.

18 Q Look at Exhibit 68 -- excuse me, 83.

19 A Yes.

20 (Howard Exhibit 83 was marked for
21 identification.)

22 Q This is an e-mail by Jessica Lutrin, of
23 Pillsbury, to Lynne Rhode, on August the 16th, which is
24 some comment she's made on Lynne Rhode's work product,
25 but do you see Lynne Rhode's e-mail, In order to further

1 the purpose of and in accordance with the duties of
2 administrator, I delegate my authority to you, as CEO,
3 to assign to and notify each eligible employee of the
4 maximum number of performance units he or she may
5 purchase within the following parameters.

6 Number 4 of those parameters is that 100
7 percent of the 100,000 units available shall be
8 allocated.

9 Do you see that?

10 A Yes.

11 Q So, plainly, all 100,000 units were going to be
12 available during the three-year period?

13 A This would suggest so.

14 Q Look Exhibit 85. Have you seen this before?

15 A No. I don't recall ever seeing this.

16 (Howard Exhibit 85 was marked for
17 identification.)

18 Q This is on JEA letterhead. It relates to ITN
19 127-19. This is the addendum that's for the purpose of
20 making the following changes of clarification. And the
21 first clarification is about the cone of silence.

22 Did you understand that there was a cone of
23 silence?

24 A I heard that term used with reference to the
25 ITN, but I had never seen this amendment to the ITN.

1 Q What did you understand that term -- when you
2 heard it referred to in connection with the ITN, what
3 did you understand it meant?

4 A I understood that it referred to the
5 procurement code or procurement rules that governed JEA
6 and the process for communications with bidders that JEA
7 was in discussions with, primarily for the purpose of
8 limiting publicly available communications that would
9 give one bidder or the other an advantage. In other
10 words, works to the JEA's advantage if they're
11 negotiating with bidder A and can go to bidder B and
12 say, hey, this is what I can get from bidder A, whether
13 it's true or not.

14 Q So under procurement rules, the idea is if
15 you're putting something out for bid, you don't want the
16 bidders to know what each other were bidding?

17 A Yes, that was my understanding of the cone of
18 silence.

19 Q Okay. Well, do you see this addendum expands
20 the cone of silence?

21 A Give me a moment.

22 Q This is dated October the 7th. And what I'm
23 referring to is the -- it includes the cone of silence
24 not only among the procurement people at JEA, but also
25 representatives and it defines representatives as a JEA,

1 quote, representative, closed quote, includes the City
2 of Jacksonville mayor and the City of Jacksonville city
3 council members and their immediate staff.

4 A I see that.

5 Q Do you have any idea where that came from?
6 Why -- why the cone of silence was expanded during the
7 process in late August to include members of the city
8 council?

9 A I do not.

10 Q You were not privy to the --

11 A I was off the board and that -- no, I was not
12 privy to any of these discussions or -- or amendments.

13 Q And, therefore, you can't -- I take it you
14 can't shed any light to me why anybody would suggest
15 the city council could be governed by the cone of
16 silence?

17 A No.

18 Q You can't think of any reason in the law to
19 support that?

20 A There may be. I -- I'm not an expert in
21 procurement rules, but -- but I'm not aware of any.

22 Q City's not acquiring anything, is it?

23 A No, but -- but it could be disposing of an
24 asset. Again, I just don't know.

25 Q Okay. Look at 87, please. Exhibit 87.

1 A I do.

2 (Howard Exhibit 87 was marked for
3 identification.)

4 Q And do you know what that is?

5 A This is the Rating Agency Update.

6 Q Right.

7 A I don't know the precise date of this
8 presentation. It just says 2019.

9 MR. BLODGETT: Just for reference, the file
10 name and metadata said August of 2019. That's all
11 I've got for you.

12 THE WITNESS: Yeah, this -- thank you,
13 Mr. Blodgett. This was after I was off the board,
14 so I wouldn't have had any input or need to review
15 this.

16 BY MR. BUSEY:

17 Q And I'll just tell you, although you don't have
18 the entire presentation in front of you, but this is
19 just a predicate for my next question, this presentation
20 to the Rating Agency included McKinsey's up- --
21 McKinsey's financial model for the future of JEA and
22 numerous slides from the SLT presentation to the board
23 on July 23. And the reason I show that to you is it
24 leads up to Exhibit 87.

25 And there are -- there's an e-mail there

1 from -- on page 2 of the trail of e-mails from David
2 Bodek -- from Jeffrey Panger, who's a director of S&P
3 Global Ratings, Standard and Poor, and it's dated to
4 Ryan Wannemacher on October the 11th, 2019.

5 A Uh-huh.

6 (Howard Exhibit 87B was marked for
7 identification.)

8 Q It says, Gentlemen, I have some follow-up
9 questions regarding the information you provided at our
10 August 21 meeting.

11 Question Number 1, the McKinsey study suggests
12 a 35 percent decline in sales related to energy
13 efficiency and an 8 percent decline related to
14 distributed generation by 2030. More than offsetting
15 customer growth and leading to an 8 percent overall
16 decline in energy sales.

17 It's our understanding the McKinsey study was
18 the impetus for conducting the Baseline Scenario 1 and
19 Traditional Scenario 2 response and that results -- and
20 that the results prompted the decision to explore a
21 nontraditional scenario through the responses.

22 Insofar as I can find no other utility
23 suggesting this level of decline in sales relating to
24 energy efficiency and no other utilities, except perhaps
25 outside the southwest, certainly not in Florida, with

1 this level of DG penetration, this seems extraordinarily
2 high. What is the basis for the McKinsey estimates and
3 why is this more acceptable than what -- the rest of the
4 utility industry is viewing?

5 And then paragraph 2, the slide title, slide 42
6 says, May likely increase, may likely fall. The
7 combination of those words is confusing. What does may
8 likely mean?

9 Paragraph 3, If this is indeed JEA's view, why
10 is this not reflected in JEA's forecast, which suggests
11 flat sales, manageable rate increases and robust
12 financial metrics?

13 If JEA -- Number 4, if JEA's expecting an 8
14 percent decline in sales, why would you need to convert
15 the Greenland units from simple cycle to combined
16 cycle?

17 And then I'll skip over 5, 6, 7, 8.

18 And 9, it seems that the McKinsey study and
19 scenarios 1 and 2 are being held up as the motivation
20 for pursuing scenario 3, privatization. But as the
21 above questions suggests, we are unclear whether they
22 form a sound basis. Please help us understand your
23 thinking on this and whether, as possibly suggested by
24 slide 86, the privatization discussion is being driven
25 by a desire to use proceeds to retire City debt.

1 I look forward to your response.

2 So this was S&P being critical of the McKinsey
3 numbers that were used to support the July 23 action?

4 A Uh-huh.

5 Q Do you -- have you seen this before?

6 A I have not, not until you produced it.

7 Q Are you -- do you think those are fair
8 criticisms?

9 A I certainly think they're fair questions. I've
10 not studied the McKinsey report in great detail to
11 compare it to the forecasts that were presented -- to
12 compare it to the forecasts that were being presented to
13 the ratings agencies. And I certainly haven't studied
14 their underlying assumptions, but, yes, I believe they
15 are fair questions and appropriate for a ratings agency
16 to ask.

17 Q Let me refer you to Exhibit 90.

18 A Yes.

19 (Howard Exhibit 90 was marked for
20 identification.)

21 Q This is a letter by the county manager of
22 Nassau County to Lawsikia Hodges, dated January 31,
23 2020. And I recognize this was after your service on
24 the board, but there's a paragraph in Mr. Mullin's
25 letter that says, Prior to the formal notification to

1 Nassau County to negotiate to purchase JEA's assets --

2 And you recall that Nassau County --

3 A Yes.

4 Q -- Clay County had a right of first refusal on
5 JEA assets, if there were a sale of JEA?

6 A I recall.

7 Q Prior to the former notification to Nassau
8 County to negotiate to purchase the JEA assets,
9 representative of JEA came to Nassau County in August of
10 '19 to advise that JEA wanted to negotiate a sale to the
11 county. JEA had deferred addressing the "true up"
12 provision of the current agreement until the
13 negotiations were concluded. At the early meeting,
14 that's in August, it was disclosed by JEA
15 representatives that Florida Power & Light would be the
16 successful bidder of the main assets.

17 Do you have any reason to know why Michael
18 Mullin or anybody would have said in August that FPL
19 would be the successful bidder?

20 A No.

21 Q You told me Paul Renner was approached when he
22 was with your firm by FPL to be what, a lobbyist,
23 consultant, a lawyer for FPL?

24 A Local counsel was my understanding, but there
25 was never any substantive discussion, so.

1 Q It sort of surprises me -- well, I shouldn't
2 say sort of surprises me that FPL would come to Paul
3 Renner in that context, not surprising to me because I
4 know Paul and he's an excellent lawyer, but it surprises
5 me that if he saw FPL's lineup of consultants and
6 lawyers, it's a blue ribbon of who's who in
7 Jacksonville, including Sam Mousa and Tim Baker, at
8 Rogers Towers, why would -- in the world, what would
9 Paul Renner add to that?

10 A I can't answer that question. I don't know
11 what they were thinking. It was shut down immediately
12 when I told him we were on the board -- I was still on
13 the board, we couldn't assist them.

14 Q Do you think FPL was oblivious to the fact that
15 you were still on the board?

16 A Mr. Renner indicated to me that he had no
17 understanding that I was still on the board so I don't
18 know what FPL would have thought.

19 Q That would suggest some internal firm
20 communication issues?

21 A As I indicated, Mr. Renner wasn't often in the
22 office.

23 Q How many lawyers in your firm?

24 A Ten.

25 Q Then or now?

1 A Oh, okay. Now -- now ten, maybe eleven.

2 MR. BUSEY: Can we take a break? I think we're
3 about done.

4 THE WITNESS: Sure.

5 (Recess taken.)

6 MR. BUSEY: Warren, I hate to disappoint you,
7 but we don't have any more questions.

8 MR. LINDSEY: Okay. Not disappointed at all.
9 Nice to see y'all. Nice to meet you.

10 (Witness excused.)

11 (The interview was concluded at 4:51 p.m.)

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CERTIFICATE OF OATH

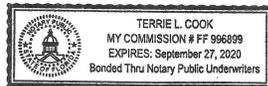
STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Terrie L. Cook, RPR, CRR, FPR, Notary Public, State of Florida, certify that **ALAN HOWARD** personally appeared before me on August 18, 2020, and was duly sworn.

WITNESS my hand and official seal on September 1, 2020, Jacksonville, Duval County, Florida.

Terrie L Cook

Terrie L. Cook, RPR, CRR, FPR
Notary Public-State of Florida



1 REPORTER'S CERTIFICATE

2
3 STATE OF FLORIDA

4 COUNTY OF DUVAL

5
6 I, Terrie L. Cook, RPR, CRR, FPR, certify that I
7 was authorized to and did stenographically report the
8 interview of **ALAN HOWARD**; that a review of the
9 transcript was requested; and that the foregoing
10 transcript, pages 1 through 255 is a true record of my
11 stenographic notes.12
13 I further certify that I am not a relative,
14 employee, attorney, or counsel of any of the parties,
15 nor am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.18
19 DATED on September 1, 2020.20
21 22
23 _____
24 Terrie L. Cook, RPR, CRR, FPR
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E R R A T A S H E E T

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES
In Re: JACKSONVILLE CITY COUNCIL
SPECIAL INVESTIGATORY COMMITTEE ON JEA MATTER

INTERVIEW OF ALAN HOWARD

TAKEN - August 18, 2020

PAGE NUMBER	LINE NUMBER	CHANGE/REASON
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under penalties of perjury, I declare that I have read
the foregoing document and that the facts stated in it
are true.

Date

ALAN HOWARD

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<p>\$10 [4] - 44:22, 187:3, 213:11</p> <p>\$25,000 [3] - 131:18, 132:2, 132:22</p> <p>\$300,000 [1] - 127:24</p> <p>\$308,000 [1] - 127:22</p> <p>\$325,000 [1] - 131:10</p> <p>\$350,000 [1] - 174:9</p> <p>\$400 [1] - 241:19</p> <p>\$650 [1] - 23:15</p> <p>\$86,000 [1] - 22:21</p>	<p>07 [1] - 158:13</p>	<p>61:22, 64:20, 70:18, 76:22, 77:6, 218:14, 242:15</p>	<p>19 [15] - 3:17, 4:3, 22:18, 59:15, 59:19, 59:21, 59:25, 60:12, 65:23, 133:24, 150:9, 200:13, 229:4, 240:23</p>	<p>157:23, 158:1, 159:23, 166:8, 200:15, 200:18, 200:20, 206:19, 207:1</p>
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<p>*22 [1] - 233:2</p>	<p>10,000 [4] - 213:11, 233:8, 238:9, 238:11</p>	<p>142 [2] - 4:24, 4:25</p>	<p>2014 [2] - 74:12, 89:14</p>	<p>2020 [19] - 1:9, 70:18, 89:24, 90:2, 131:23, 132:12, 132:20, 206:25, 207:5, 212:18, 221:25, 228:2, 228:9, 228:14, 249:23, 253:7, 253:11, 254:19, 255:5</p>
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