

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN RE: AARON ZAHN-TERMINATION OF EMPLOYMENT AGREEMENT WITH JEA</p> <hr/> <p style="text-align: center;">SWORN STATEMENT OF RYAN WANNEMACHER</p> <p>DATE TAKEN: Friday, January 3, 2019 TIME: 9:06 a.m. - 4:55 p.m. PLACE: Office of General Counsel 117 West Duval Street, Suite 480 Jacksonville, Florida</p> <p>REPORTED BY: Heather M. Thomas, Court Reporter</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>1 2 3 WITNESS: RYAN WANNEMACHER 4 5 EXAMINATION 6 By Mr. Powell ..... 8 7 CERTIFICATE OF REPORTER ..... 230 8 9 10 11 EXHIBITS 12 MARKED FOR IDENTIFICATION: 13 Number 1 Email chain 32 14 Number 2 Long-Term Incentive Plan Design 99 15 Number 3 Strategic Planning Overview 184 16 Number 3A Strategic Planning Process/Steps 184 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES FOR CITY OF JACKSONVILLE: 2 STEPHEN J. POWELL, ESQUIRE 3 SONYA HARRELL, ESQUIRE 4 ADINA TEODORESCU, ESQUIRE 5 SEAN GRANAT, ESQUIRE 6 Office of General Counsel 7 117 West Duval Street, Suite 480 8 Jacksonville, FL 32202 9 10 APPEARANCES FOR OFFICE OF INSPECTOR GENERAL: 11 ROBERT LINSNER, INVESTIGATOR 12 Office of Inspector General-City of Jacksonville 13 231 East Forsyth Street, Suite 470 14 Jacksonville, FL 32202 15 16 ALSO PRESENT: NIELS P. MURPHY, ESQUIRE 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 MR. LINSNER: This recorded interview is being 2 conducted at the Office of General Counsel, 3 City of Jacksonville. Today is January 3rd, 2020, 4 and the time now is 9:06 a.m. 5 MR. MURPHY: And I'll also be recording it, 6 too, for my record. 7 MR. POWELL: All right. With the 8 understanding that this is a confidential 9 proceeding and it's not subject to disclosure until 10 the investigation is concluded. 11 MR. MURPHY: I mean, I'll comply with whatever 12 laws or regulations there are. If you're telling 13 me you're not going to release any evidence of this 14 interview to the press, then I'll agree to that, 15 but as soon as I, you know, get an inkling that -- 16 MR. POWELL: No, that's a fact. 17 MR. MURPHY: Okay. Well, I mean, there was 18 already disclosures made by this office of -- how 19 Mr. Wannemacher, so -- and his termination. 20 MR. POWELL: Well, that's not anything to do 21 with this investigation. 22 MR. MURPHY: Well, anything from this 23 interview that's disclosed, then I would reserve 24 the right to use any of the recording to rebut that 25 in the media.</p>

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<p style="text-align: right;">Page 5</p> <p>1 MR. POWELL: No, that's fine. I'm quite</p> <p>2 confident we won't have a problem there.</p> <p>3 MR. MURPHY: Okay.</p> <p>4 MR. LINSNER: I'm Investigator Robert Linsner.</p> <p>5 I'm employed with -- by the Office of Inspector</p> <p>6 General, City of Jacksonville. The Office of</p> <p>7 Inspector General is assisting the Office of</p> <p>8 General Counsel with its investigation regarding</p> <p>9 Aaron Zahn, former CEO of JEA.</p> <p>10 Mr. Wannemacher, you are being interviewed as</p> <p>11 a witness in this investigation. If at any time</p> <p>12 your status as a witness changes, you will be</p> <p>13 notified. The attorneys who will be interviewing</p> <p>14 you are Stephen Powell, Adina Teodorescu, and Sonya</p> <p>15 Harrell.</p> <p>16 As a commissioned Notary Public in the State</p> <p>17 of Florida, I'm authorized to administer oaths.</p> <p>18 Please be advised that any false statements made</p> <p>19 during your interview or attempts to obstruct the</p> <p>20 Office of General -- Office of Inspector General's</p> <p>21 investigation and Office of General Counsel's</p> <p>22 investigation may be used in a subsequent</p> <p>23 prosecution against you.</p> <p>24 Please raise your right hand.</p> <p>25 Do you, Ryan Wannemacher, swear to tell the</p>	<p style="text-align: right;">Page 7</p> <p>1 a Garrity disclosure, and Mr. Wannemacher has</p> <p>2 agreed to such disclosure.</p> <p>3 MR. POWELL: And here it is. Essentially it</p> <p>4 says that pursuant to the limited waiver and</p> <p>5 release of rights, benefits, and obligations</p> <p>6 attached which you executed that you are being</p> <p>7 ordered by the interim CEO to cooperate and answer</p> <p>8 our questions.</p> <p>9 This details your rights, if you'd like to</p> <p>10 have a look at it.</p> <p>11 MR. MURPHY: Yeah.</p> <p>12 Okay. We've got to correct this, because it</p> <p>13 says termination of his employment. So it's</p> <p>14 already happened. Why don't we say --</p> <p>15 MR. POWELL: That's all fine. I'll initial.</p> <p>16 There are two. (Tenders.)</p> <p>17 THE WITNESS: Okay.</p> <p>18 MR. MURPHY: I'll take a picture of it once</p> <p>19 you sign it so I'll have a copy.</p> <p>20 MR. POWELL: I'll make a copy before we leave.</p> <p>21 MR. MURPHY: Okay.</p> <p>22 RYAN WANNEMACHER</p> <p>23 having been produced and first duly sworn as a witness,</p> <p>24 testified as follows:</p> <p>25</p>
<p style="text-align: right;">Page 6</p> <p>1 truth, the whole truth, and nothing but the truth?</p> <p>2 THE WITNESS: Yes.</p> <p>3 MR. LINSNER: Okay. And have any promises,</p> <p>4 threats, or inducements of any nature whatsoever</p> <p>5 been made by me in order to obtain your consent to</p> <p>6 this statement?</p> <p>7 THE WITNESS: No.</p> <p>8 MR. POWELL: Good morning, Mr. Wannemacher.</p> <p>9 I'm Steve Powell --</p> <p>10 MS. HARRELL: He wasn't finished.</p> <p>11 MR. POWELL: I'm sorry. Excuse me.</p> <p>12 MR. LINSNER: Do you understand that this</p> <p>13 recorded interview will be subject to public</p> <p>14 disclosure pursuant to Public Records Laws and</p> <p>15 other laws of the State of Florida?</p> <p>16 THE WITNESS: I do now.</p> <p>17 MR. LINSNER: Okay. All right.</p> <p>18 MR. MURPHY: And I also have just a statement</p> <p>19 consistent with that, that this interview is being</p> <p>20 conducted pursuant to Mr. Wannemacher's employment</p> <p>21 agreement with JEA, and in providing the interview,</p> <p>22 he is relying on his Garrity rights, including use</p> <p>23 and derivative use immunity and the nondisclosure</p> <p>24 obligations therein.</p> <p>25 The City of Jacksonville has agreed to provide</p>	<p style="text-align: right;">Page 8</p> <p>1 EXAMINATION</p> <p>2 BY MR. POWELL:</p> <p>3 Q Okey doke. Good morning again, sir.</p> <p>4 A Good morning.</p> <p>5 Q I'm Steve Powell. I'm with the</p> <p>6 Office of General Counsel for the City of Jacksonville.</p> <p>7 I'm the chief of the tort and employment department of</p> <p>8 our litigation group.</p> <p>9 I'm one of the -- one of the several of us</p> <p>10 that are carrying out the directive of the JEA board of</p> <p>11 directors from December 17 to investigate the tenure of</p> <p>12 Aaron Zahn as CEO of JEA to determine whether grounds</p> <p>13 exist to support the termination of Mr. Zahn's</p> <p>14 employment contract for cause. That is the sole reason</p> <p>15 that we are here today.</p> <p>16 A Okay.</p> <p>17 Q And in the course of our work, we have</p> <p>18 identified several areas of interest to us in that</p> <p>19 respect, and our only purpose today is to ask you</p> <p>20 questions to learn what you know about various matters</p> <p>21 and events as well as what you observed in relation to</p> <p>22 those things and what your participation was in regard</p> <p>23 to the decision-making that led to the events of</p> <p>24 November and December and of obviously most recently</p> <p>25 December 17th at the board meeting.</p>

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<p style="text-align: right;">Page 9</p> <p>1 All I ask -- all we ask -- and I'm going to be  2 assisted in this by Sonya Harrell, another of our  3 attorneys, Adina Teodorescu.  4 You are accompanied today by counsel as a  5 witness.  6 Do you want to introduce yourself --  7 MR. MURPHY: Yes. Niels Murphy from the law  8 firm of Murphy &amp; Anderson.  9 BY MR. POWELL:  10 Q All right. All we ask is that you answer as  11 completely as you can. The events that we're going to  12 be talking about are really probably no older than 18  13 months, so it's all fairly current, it seems to me, so I  14 would hope that you'd have a pretty good recall. And if  15 there are things that you would need to look at a  16 calendar for that you either have or don't have -- I  17 don't know whether you've got information in your  18 phone -- be that as it may, if we get to the end of this  19 and need to follow up with you, we'll do that with -- if  20 you want, through Mr. Murphy, however you want us to  21 handle that.  22 Please let me know if any of my questions are  23 unclear, and I will be more than happy to attempt to  24 clarify them so that we get a clear question and answer  25 record that everybody can rely on.</p>	<p style="text-align: right;">Page 11</p> <p>1 April of 2018, I was promoted to the CFO. I -- prior to  2 that I worked for Melissa. I was the director of  3 financial planning and analysis.  4 Q How long had you been in that position?  5 A About three years at that point.  6 Q Was that your entry position with JEA?  7 A Yes.  8 Q Have you had any contacts, either orally or in  9 writing, with Mr. Zahn since December 17th of 2019?  10 A I have not corresponded with him. He sent me  11 a text message when the news of my termination broke and  12 asked -- you know, I don't remember the specific -- you  13 know, what he asked. But he sent me a text message and  14 said, you know, something. But I didn't respond.  15 Q Do you still have the text?  16 A I probably do on my phone, yeah. I don't have  17 my phone with me.  18 Q Okay. Well, you laughed when you started to  19 answer that question. Was there something amusing in  20 Mr. Zahn's text?  21 A I don't recall the specifics of it, but it was  22 something to the effect of do I want to get a drink.  23 Q And you declined?  24 A I didn't respond.  25 Q All right. Have you had any -- same question</p>
<p style="text-align: right;">Page 10</p> <p>1 And lastly, because we have a court reporter,  2 and even if she's very good at what she does, she cannot  3 record two people at the same time, if you would please  4 let us finish getting our questions out before you  5 answer. I'll try to do the same so that we're not  6 stepping on one another. Okay?  7 A Okay.  8 Q All right. If you would just state your name  9 and what your most recent employment was and the  10 position you had at JEA.  11 A Sure. My name is Ryan Wannemacher.  12 Do you need me to spell it?  13 Sure. It's W-A-N-N-E-M-A-C-H-E-R.  14 Most recently I was employed as the chief  15 financial officer at JEA.  16 Q If you could please describe in a nutshell  17 your duties and responsibilities as CFO at JEA.  18 A Sure. So I was responsible for management of  19 treasury functions, both cash and debt, financial  20 planning, rates, accounting, budget, insurance,  21 corporate risk -- you know, like our FEMA receivables,  22 that kind of thing. And that was the extent of my  23 last -- you know, latest duties.  24 Q When did you become CFO at JEA?  25 A When Melissa was promoted to president in</p>	<p style="text-align: right;">Page 12</p> <p>1 with respect to Herschel Vinyard.  2 A The only conversation I had with Herschel was  3 a phone call about some kind of a legal invoice or  4 something like that that needed to get paid, but I don't  5 remember the specifics of it.  6 Q Sort of a carry-over --  7 A Yeah.  8 Q -- from your work responsibilities?  9 A Yes.  10 Q How about Melissa Dykes?  11 A I had some conversations with her related to  12 my termination. That was really it.  13 Q Shawn Eads?  14 A No.  15 Q Prior to Mr. Zahn being appointed to the JEA  16 board, did you have any history with him?  17 A No.  18 Q Prior to Mr. Vinyard coming on board as chief  19 administrative officer, had you had any dealings with  20 him?  21 A No.  22 Q Prior to Mr. Eads coming down to his position  23 in early 2019, had you had any dealings with Mr. Eads?  24 A No.  25 Q When do you recall your first in-depth</p>

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<p style="text-align: right;">Page 13</p> <p>1 interaction with Mr. Zahn after he was appointed to the 2 JEA board?</p> <p>3 A Really, I didn't have any interaction with him 4 until he became CEO.</p> <p>5 Q Was that in his interim CEO position or his 6 permanent position?</p> <p>7 A Interim position.</p> <p>8 MR. POWELL: Excuse me. I'm going to have to 9 step out for a minute. Can you carry on with some 10 preliminaries?</p> <p>11 MS. HARRELL: Yes.</p> <p>12 BY MS. HARRELL:</p> <p>13 Q So was it shortly after he became interim CEO 14 that you first interacted with him?</p> <p>15 A Yes.</p> <p>16 Q And tell me about that interaction.</p> <p>17 A It was a normal boss, you know, employee kind 18 of relationship.</p> <p>19 Q Okay. Let me just go back to that first. The 20 first time you -- was that the first time you had met 21 him when he became interim CEO?</p> <p>22 A Personally? Probably. You know, I didn't 23 really have any real interaction with board members.</p> <p>24 Q Okay.</p> <p>25 A So the first real substantive conversation I</p>	<p style="text-align: right;">Page 15</p> <p>1 couple weeks. I don't know specifically what the 2 timelines were, but --</p> <p>3 Q Do you remember if they were a regular date, 4 say every Tuesday at noon, for example, or --</p> <p>5 A No. They tended to bounce around depending on 6 calendars and what other meetings people were having and 7 that sort of thing.</p> <p>8 Q And who else was considered part of the staff 9 that would go to those, or who was the direct reports 10 that would go to the staff meetings?</p> <p>11 A So it was Melissa, myself, Herschel when he 12 joined, Julio Aguero was there when he joined, and then 13 Shawn Eads when Julio left.</p> <p>14 Q Okay. And what was the title that Julio, then 15 Shawn had?</p> <p>16 A Julio was, I think, chief innovation officer, 17 I believe was his title. And Shawn was -- so when Julio 18 left, Shawn kind of fulfilled that role. He didn't get 19 the title of it.</p> <p>20 He -- Shawn was the chief information officer. 21 So we didn't really have a chief innovation officer 22 after Julio per se.</p> <p>23 Q When you say per se, did somebody else assume 24 that role of innovation?</p> <p>25 A It was never really a defined -- particularly</p>
<p style="text-align: right;">Page 14</p> <p>1 would have had with him was when he became the CEO, 2 interim CEO.</p> <p>3 Q Do you remember if you went to his office or 4 did he go to yours?</p> <p>5 A I don't remember.</p> <p>6 Q So what was the gist of that conversation? I 7 know it's a --</p> <p>8 A I don't recall.</p> <p>9 Q Okay.</p> <p>10 A It was seemingly uneventful.</p> <p>11 Q And at that time, were you interim CFO at that 12 time?</p> <p>13 A Yes.</p> <p>14 Q Okay. When did you become permanent CEO?</p> <p>15 A CFO?</p> <p>16 Q CFO. Sorry.</p> <p>17 A Sometime in the fall of 2018.</p> <p>18 Q After that initial interaction with Aaron 19 Zahn, you meet -- something -- you have a conversation, 20 did you have regular meetings with him thereafter?</p> <p>21 A Yes. So he had staff meetings that he would 22 have regularly with his direct reports. He also had -- 23 we also had larger SLT meetings that he would attend.</p> <p>24 Q How often would the staff meetings occur?</p> <p>25 A I don't -- every -- it seems to be every</p>	<p style="text-align: right;">Page 16</p> <p>1 well-defined role. So I guess Shawn kind of took over 2 those duties, but for whatever those duties were, I 3 guess.</p> <p>4 Q So you, Melissa Dykes, Herschel Vinyard, and 5 Julio and then later Shawn, y'all were all the direct 6 reports to Mr. Zahn?</p> <p>7 A Yes.</p> <p>8 Q How would those meetings arise? Would 9 Mr. Zahn send you an email? Did they just kind of occur 10 organically?</p> <p>11 A Yeah, we had calendar invites that got sent 12 out. His assistant always managed his calendar, so ...</p> <p>13 Q Would the invites originate from Mr. Zahn or 14 his assistant?</p> <p>15 A Yes.</p> <p>16 Q So you -- did you have the ability to call a 17 meeting of -- of the direct reports?</p> <p>18 A I mean, I suppose.</p> <p>19 Q You say you suppose. Did you ever?</p> <p>20 A I don't recall ever calling a meeting of the 21 direct reports, no.</p> <p>22 Q Where would those meetings take place?</p> <p>23 A Generally in Aaron's office.</p> <p>24 Q And I know this is a broad question, but what 25 were -- what did y'all discuss at those meetings?</p>

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<p style="text-align: right;">Page 17</p> <p>1 A Day-to-day business, really. I mean, normal</p> <p>2 stuff. Like, I don't know.</p> <p>3 Q Did you ever use those meetings to prepare for</p> <p>4 board meetings?</p> <p>5 A Yeah, we talked about board agendas at those</p> <p>6 meetings. We -- again, it was day-to-day business,</p> <p>7 really. I mean, it was kind of normal course</p> <p>8 activities.</p> <p>9 MS. HARRELL: Okay.</p> <p>10 We started talking about staff meetings versus</p> <p>11 larger SLT meetings.</p> <p>12 BY MR. POWELL:</p> <p>13 Q Okay. How would you describe your working</p> <p>14 relationship with Mr. Zahn in the last -- and let's just</p> <p>15 use 2019, after he became the permanent CEO?</p> <p>16 A It was a pretty normal working relationship, I</p> <p>17 guess, with, you know, manager-employee type</p> <p>18 relationship.</p> <p>19 Q As CFO, you would have been a member of the</p> <p>20 senior leadership team; correct?</p> <p>21 A Correct.</p> <p>22 Q It's our understanding that Mr. Zahn made</p> <p>23 changes in the structure upon at least -- at least when</p> <p>24 he became permanent and changed the structure so that</p> <p>25 very few people reported directly to him and the other</p>	<p style="text-align: right;">Page 19</p> <p>1 Q Would you be able to describe what I view to</p> <p>2 be the evolution of the long-term incentive plan from --</p> <p>3 a long-term incentive plan to a long-term performance</p> <p>4 unit plan?</p> <p>5 A Sure. I can -- I can address that.</p> <p>6 So from my perspective on it, Aaron started</p> <p>7 talking about market-based compensation sometime around</p> <p>8 December of last year.</p> <p>9 Q Careful. We're now into 2020. So you're</p> <p>10 talking about December of 2018?</p> <p>11 A December of 2018, correct. Thank you.</p> <p>12 And that was really the first time that I</p> <p>13 remember him kind of bringing it up. The board had a</p> <p>14 policy on compensation to pay market 50th. He</p> <p>15 commissioned a study from Willis Towers Watson to look</p> <p>16 at what is the market 50th percentile for utilities.</p> <p>17 And so that study was undertaken, presented to the</p> <p>18 compensation committee.</p> <p>19 Q When?</p> <p>20 A I believe it was -- so I know there was a</p> <p>21 January compensation committee meeting. I don't</p> <p>22 remember if the compensation -- if that meeting was</p> <p>23 where it was presented or if it was a subsequent</p> <p>24 meeting. But sometime in either January or sometime in</p> <p>25 the spring, that study was presented to them.</p>
<p style="text-align: right;">Page 18</p> <p>1 members of the team reported to Melissa, or, in one case</p> <p>2 Mr. Vinyard, such that the senior leadership team</p> <p>3 evolved into a -- for want of a better way of phrasing</p> <p>4 it, a two-tier group.</p> <p>5 Would you agree with that?</p> <p>6 A So organizationally, that's correct, if you</p> <p>7 look at the org chart. I think functionally, I would</p> <p>8 not disagree -- I would not agree with that. It was</p> <p>9 a -- functionally, it functioned as really one team, in</p> <p>10 my view. We were all on the same floor. We, you know,</p> <p>11 operated as kind of one team, really.</p> <p>12 Q Did you and Mr. Zahn and Mr. Vinyard not meet</p> <p>13 as a three-party group on a fairly regular basis apart</p> <p>14 from meetings with the overall senior leadership team?</p> <p>15 A Aaron had -- so I was just discussing. Aaron</p> <p>16 had staff meetings with Melissa, myself, Herschel, Julio</p> <p>17 when he was there, and Shawn Eads after Julio left.</p> <p>18 Those were Aaron's direct reports.</p> <p>19 And as I said, organizationally, you know,</p> <p>20 from an org chart view, that was -- those meetings were</p> <p>21 every couple of weeks or so, so ... They were pretty</p> <p>22 normal meetings, though.</p> <p>23 Q All right. I would like to discuss the</p> <p>24 long-term incentive plan for a while now.</p> <p>25 A Okay.</p>	<p style="text-align: right;">Page 20</p> <p>1 It showed that short-term incentive was below</p> <p>2 market -- below market 50th. It showed that the</p> <p>3 long-term incentive plan -- you know, we had no</p> <p>4 long-term incentive plan, so that was clearly, you know,</p> <p>5 below market 50th in that it was zero.</p> <p>6 And so Aaron asked me to, you know, look at,</p> <p>7 well, if we were to do a long-term incentive plan tied</p> <p>8 to financial performance of the business, you know, what</p> <p>9 metrics would you use to determine that financial</p> <p>10 performance. Right?</p> <p>11 Q Can you help us with when that conversation</p> <p>12 took place?</p> <p>13 A I don't recall a specific date. I can say the</p> <p>14 time frame was probably May or June, something like</p> <p>15 that.</p> <p>16 Q All right. A minute ago you said that Aaron</p> <p>17 first started talking to you about a long -- I think you</p> <p>18 said a market-based compensation plan in December of</p> <p>19 '18?</p> <p>20 A Uh-huh.</p> <p>21 Q Do you recall that in January of '19, the</p> <p>22 compensation committee met and directed management,</p> <p>23 quote, to develop a compensation policy to align with</p> <p>24 talent market and guiding principles?</p> <p>25 A Yes. So as I said, I knew there was a meeting</p>

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<p style="text-align: right;">Page 21</p> <p>1 in January. I didn't recall what -- if the Willis 2 Towers Watson study was presented in January. It seems 3 as though they approved the framework, based on what 4 you're telling me now. 5 Q And does that -- do you recall that 6 development in early 2019, with respect to looking into 7 JEA's compensation policy? 8 A Yes. 9 Q All right. I believe it is true that shortly 10 after that, Willis Towers Watson was engaged to work on 11 that initiative and delivered an early -- an initial 12 draft sometime in March of 2019. 13 Does that sound about right to you? 14 A Yeah. It was sometime in the spring. I don't 15 remember a specific date, but yes. 16 Q Do you recall Mr. Zahn being particularly not 17 pleased with the long-term initiative component of the 18 Willis Towers Watson product? 19 A I don't recall anything specific. 20 Q Did you ever hear him use the term "they had 21 dropped the ball" with respect to the long-term 22 incentive component of the -- of their product? 23 A I don't remember -- I don't recall that 24 specifically. I do recall that he wanted them to -- he 25 wanted them to provide the data of what was market</p>	<p style="text-align: right;">Page 23</p> <p>1 in a public utility? 2 A I do recall that. 3 Q Did Willis Towers Watson ever tell you that 4 there was even a single other public utility in the 5 United States that had a long-term incentive plan that 6 benefited all employees? 7 A Not that benefited all employees, no. 8 Q Do you know whether they informed Mr. Zahn 9 that there was such a utility in existence? 10 A I believe they did. 11 Q Did you have a conversation with Mr. Zahn 12 about that? 13 A Yeah. We -- so -- 14 Q In other words, you're saying -- is it your 15 recollection that Mr. Zahn was informed that there were, 16 in fact, other public utilities in the United States 17 that had a long-term incentive plan that benefited all 18 employees? 19 A I'm sorry. Can you repeat the question? 20 Q I think you answered that no, you were not 21 told by Willis Towers Watson of another public utility 22 in the United States that had a long-term incentive plan 23 that benefited all employees; correct? You're not aware 24 of one? 25 A I'm not aware of one that benefited all</p>
<p style="text-align: right;">Page 22</p> <p>1 and -- and not design policy as it related to the 2 board's policy. 3 Q And you know this from direct conversations 4 with Mr. Zahn? 5 A I recall at the time -- I recall that at the 6 time, that he -- he specifically wanted them -- from 7 conversations at the time, I recall that he specifically 8 wanted them to provide the data and that was it. 9 BY MS. HARRELL: 10 Q What kind of data was he looking for? 11 A Market 50th percentile, what was -- what was 12 the market 50th percentile. So for base salaries, 13 short-term incentive, long-term incentive for utilities, 14 that was what he was looking for. 15 BY MR. POWELL: 16 Q Do you recall that -- I have to be careful 17 about my pronouns here. 18 Do you recall that Willis Towers Watson 19 informed JEA at the time of starting this work that all 20 of its data was based on private sector utilities? 21 A No. 22 Q All right. Do you recall Willis Towers Watson 23 informing that there is no comparable in the 24 industry's -- in the industry, in the utility industry, 25 for a long-term incentive plan benefiting all employees</p>	<p style="text-align: right;">Page 24</p> <p>1 employees. That's correct. 2 Q And I think you just then said that you think 3 Willis Towers Watson told Mr. Zahn that there were other 4 utilities in the United States -- 5 A No. 6 Q -- did I understand you correctly? 7 A No, no, no. So Willis Towers Watson 8 communicated that there were no other municipal 9 utilities in the United States that they knew of that 10 had a long-term incentive plan that benefited all 11 employees. 12 Q And that never changed throughout 2019; is 13 that correct? 14 A That's correct. They did not update that 15 statement. 16 MR. POWELL: All right. 17 BY MS. HARRELL: 18 Q Did Willis Towers Watson ever communicate that 19 there were municipal utilities that provided LTIs to 20 some employees? 21 A Yes. 22 Q Tell me about that. 23 A I don't remember the specific examples that 24 they used, but they communicated that there were 25 long-term incentive plans at some public utilities.</p>

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<p style="text-align: right;">Page 25</p> <p>1 Generally those were cash-based incentives and typically</p> <p>2 either tied to a combination of performance and/or</p> <p>3 time-based, you know, thresholds. So you have to stay</p> <p>4 for three years, for example; right? Like the</p> <p>5 employment threshold.</p> <p>6 Q And when you say performance-based, is that</p> <p>7 the employee's performance or the utility's performance?</p> <p>8 A Both. Yeah.</p> <p>9 Q And when these were provided to some</p> <p>10 employees, what kind of employees?</p> <p>11 A Generally senior management appointed-type</p> <p>12 employees. Managers and above, that kind of thing.</p> <p>13 Q Do you know when Willis Towers Watson told</p> <p>14 y'all this?</p> <p>15 A It would have been in the context of the study</p> <p>16 that they did in the spring of 2019.</p> <p>17 BY MR. POWELL:</p> <p>18 Q In or about that time, do you recall</p> <p>19 describing your concept of this plan to include</p> <p>20 something that could be called "phantom stock"?</p> <p>21 MR. MURPHY: You said the word "you" with the</p> <p>22 word "concept." You mean him personally or JEA's</p> <p>23 concept --</p> <p>24 MR. POWELL: Okay.</p> <p>25 MR. MURPHY: -- or Aaron Zahn's concept?</p>	<p style="text-align: right;">Page 27</p> <p>1 "phantom stock" in describing the long-term incentive</p> <p>2 plan that was contemplated at JEA in the spring of 2019?</p> <p>3 A I don't recall that. I mean, the performance</p> <p>4 units -- the concept of the performance unit is akin to,</p> <p>5 you know, a stock-type plan in a corporate-type sector.</p> <p>6 It was consistent with long-term incentive plans that</p> <p>7 give, you know, stock-based awards and that kind of</p> <p>8 thing.</p> <p>9 But I don't recall ever specifically referring</p> <p>10 it to, you know, stock. I mean, it's not stock.</p> <p>11 Q Do you recall having discussions with Mr. Zahn</p> <p>12 in the spring of '19 in the early stages of</p> <p>13 Willis Towers Watson's work that included a discussion</p> <p>14 of something akin to or called performance units?</p> <p>15 A Uh-huh.</p> <p>16 Q Is the answer to that yes?</p> <p>17 A Yes. Yeah, we looked at several different,</p> <p>18 you know, ways to try to come up with a long-term</p> <p>19 incentive-type plan. I don't really remember how we</p> <p>20 ended up at performance units, but that was one of them.</p> <p>21 Q Was this -- were the idea of performance units</p> <p>22 arrived at in discussion between you and Mr. Zahn?</p> <p>23 A Not specifically between the two of us, I</p> <p>24 don't believe.</p> <p>25 Q Where do you first recall hearing of a concept</p>
<p style="text-align: right;">Page 26</p> <p>1 MR. POWELL: With respect, you're here as a</p> <p>2 witness, and if he has any questions, I'll be more</p> <p>3 than happy to answer your questions about my --</p> <p>4 about the way I'm putting things. And if my record</p> <p>5 is messed up because I've used pronouns</p> <p>6 incorrectly, that's my problem.</p> <p>7 BY MR. POWELL:</p> <p>8 Q My question to you --</p> <p>9 MR. MURPHY: I disagree with you, first of</p> <p>10 all, that I don't have a right to clarify your</p> <p>11 questions. He has a right to have a lawyer here --</p> <p>12 MR. POWELL: He has a right to have a witness</p> <p>13 here.</p> <p>14 MR. MURPHY: Well, the witness can be a</p> <p>15 lawyer. You're saying he's not allowed to have</p> <p>16 counsel?</p> <p>17 Let's just be clear. You're saying he's not</p> <p>18 allowed to have counsel?</p> <p>19 MR. POWELL: I'm not saying he's not allowed</p> <p>20 to have counsel --</p> <p>21 MR. MURPHY: Okay.</p> <p>22 MR. POWELL: -- but your role is limited.</p> <p>23 MR. MURPHY: I disagree.</p> <p>24 BY MR. POWELL:</p> <p>25 Q Mr. Wannemacher, did you ever use the phrase</p>	<p style="text-align: right;">Page 28</p> <p>1 such as performance units in relation to the development</p> <p>2 of this long-term incentive plan?</p> <p>3 A Probably from Willis Towers Watson.</p> <p>4 Q Do you recall the performance units being</p> <p>5 described at that time by Willis Towers Watson?</p> <p>6 A Yes.</p> <p>7 Q And what -- how were they described to you as</p> <p>8 how they would work?</p> <p>9 A They were described as -- so they were</p> <p>10 described as something that would be common in a private</p> <p>11 sector incentive program where you don't have, you know,</p> <p>12 publicly traded securities. Right?</p> <p>13 So in the public company context, right,</p> <p>14 long-term incentive plans typically include some form of</p> <p>15 restricted stock or options or something of that nature.</p> <p>16 If it's a private company, you can't really give stock</p> <p>17 in that sense.</p> <p>18 And so what they described is that JEA, as</p> <p>19 somebody who doesn't have stock, is more similar to a,</p> <p>20 you know, privately held entity, and so, you know, they</p> <p>21 said this concept of performance units would be</p> <p>22 something that you would typically see in that setting</p> <p>23 where you didn't have publicly traded stock to -- or,</p> <p>24 you know, restricted stock to be able to grant.</p> <p>25 Q Did you take that information and description</p>

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<p style="text-align: right;">Page 29</p> <p>1 to Mr. Zahn and discuss it with him in the spring 2019</p> <p>2 time frame?</p> <p>3 A I believe that -- so I had pretty limited</p> <p>4 interaction with Willis Towers Watson on my own accord.</p> <p>5 Most of the interaction was in meetings, which had, you</p> <p>6 know, multiple people in it. So I wouldn't have -- I</p> <p>7 likely wouldn't have heard that individually.</p> <p>8 Q Is it fair to say there came a time when you</p> <p>9 and Mr. Zahn did discuss the performance units and</p> <p>10 decided upon that as the route to go for your long-term</p> <p>11 incentive plan?</p> <p>12 A I didn't -- I wasn't really the deciding</p> <p>13 factor on the performance units -- on the decision to,</p> <p>14 you know, choose the performance units over, you know,</p> <p>15 some other plan. I think it was -- it was a combination</p> <p>16 of, you know, trying to come up with a long-term</p> <p>17 incentive plan that worked in the public sector. And,</p> <p>18 you know, it was frankly a lot of legal work.</p> <p>19 My role in the development of the performance</p> <p>20 unit itself was pretty limited to what financial metrics</p> <p>21 would you use to tie, you know, financial performance of</p> <p>22 the business to some kind of an incentive program.</p> <p>23 And at some point along the way, he -- he</p> <p>24 wanted me to come up with a formula to get to a pool of</p> <p>25 10 percent for employees based on those financial</p>	<p style="text-align: right;">Page 31</p> <p>1 Do you recall providing a model of some sort</p> <p>2 for the Willis Towers Watson folks in the March time</p> <p>3 frame regarding these metrics?</p> <p>4 A No. I may have -- I don't remember when we</p> <p>5 came up with the financial metrics themselves. I mean,</p> <p>6 the financial metrics themselves were essentially based</p> <p>7 on earnings before dividends, which is pretty common as</p> <p>8 it relates to, you know, an incentive plan.</p> <p>9 Q Okay. Well, let me -- and this is not a</p> <p>10 gotcha-type thing. I'm just trying to kind of</p> <p>11 chronologically work through this process.</p> <p>12 A Sure.</p> <p>13 Q And I am obviously limited by documents, so to</p> <p>14 speak.</p> <p>15 But let me just show you a email from</p> <p>16 David Wathen to Patricia Maillis March 27, 2019. I</p> <p>17 don't see that you're copied on it, but there's a</p> <p>18 reference to -- it reads: Pat, thanks for the update.</p> <p>19 I think the model Ryan provided today is good for now.</p> <p>20 We'll review that and let you know.</p> <p>21 Would that help you get oriented to this time</p> <p>22 frame? And this email trail goes on for a little bit.</p> <p>23 I can share the rest of it with you.</p> <p>24 Here's the ...</p> <p>25 A I'll start back at the beginning.</p>
<p style="text-align: right;">Page 30</p> <p>1 metrics. 10 percent of value creation, you know, over</p> <p>2 the performance period.</p> <p>3 MR. POWELL: Let's go off the record for a</p> <p>4 minute.</p> <p>5 MR. MURPHY: We don't need to go off the</p> <p>6 record. I was just pointing out that you had said</p> <p>7 he has a right to have a witness --</p> <p>8 (Reporter clarification.)</p> <p>9 MR. MURPHY: The agreement that you handed to</p> <p>10 Mr. Wannemacher clearly says that he has a right to</p> <p>11 be present with counsel, so I just want to make</p> <p>12 that clear.</p> <p>13 MR. POWELL: That's fine. We won't have any</p> <p>14 problems with this as long as you limit your role</p> <p>15 to providing appropriate counsel.</p> <p>16 MR. MURPHY: Which is what I was doing</p> <p>17 clarifying your question and the word "you."</p> <p>18 THE WITNESS: I'm sorry. Can we take a</p> <p>19 bathroom break?</p> <p>20 MR. POWELL: Sure.</p> <p>21 (Recess taken from 9:50 a.m. to 9:54 a.m.)</p> <p>22 BY MR. POWELL:</p> <p>23 Q Mr. Wannemacher, before we broke for a few</p> <p>24 seconds here, you were talking about metrics and</p> <p>25 formula.</p>	<p style="text-align: right;">Page 32</p> <p>1 Good.</p> <p>2 MR. MURPHY: Uh-huh.</p> <p>3 THE WITNESS: Okay. I don't recall sending</p> <p>4 them anything, but it appears, based on that email,</p> <p>5 that I would have provided them with what they</p> <p>6 asked for in the context of historical financials</p> <p>7 and projections around, you know, net income and</p> <p>8 some of the items that were requested there.</p> <p>9 BY MR. POWELL:</p> <p>10 Q And David Wathen is with Willis Towers?</p> <p>11 A I guess so. I don't -- again, I had very</p> <p>12 limited interaction with them. It was really more HR</p> <p>13 who handled that relationship, so I don't --</p> <p>14 Q So when he refers to a model that Ryan</p> <p>15 provided today in his email to Pat Maillis, you don't</p> <p>16 know what he's talking about?</p> <p>17 A I don't recall, no.</p> <p>18 MR. POWELL: For the record, these documents</p> <p>19 that we were reviewing are the numbered JEA 0620</p> <p>20 through 0626 of the materials provided to the --</p> <p>21 Councilmen Diamond-Salem in response to their</p> <p>22 request for records for the December 16th council</p> <p>23 meeting, and we'll attach that as, I guess, our</p> <p>24 first exhibit here today.</p> <p>25 (Exhibit Number 1 was marked for</p>

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1 identification.)

2 BY MR. POWELL:

3 Q You mentioned a formula. Can you elaborate

4 and educate me a bit on this formula that you were asked

5 by Mr. Zahn to develop?

6 A Yeah. He -- I don't remember the time frame

7 that he asked me to develop it, but he wanted to come up

8 with something that paid out 10 percent of excess value

9 creation above, you know, a certain threshold over a

10 three-year period to employees, and --

11 Q Do you know where he got that number from?

12 A I don't.

13 Q And by -- it was his number, not yours?

14 A Correct.

15 Q Were the thresholds left up to you, or did he

16 also provide you with thresholds?

17 A So I don't really recall how those got set

18 other than to say that we wanted the -- so there was

19 flexibility -- as the plan was drafted, there was

20 flexibility in the plan to change those thresholds each

21 performance period so that you -- if we were to look at

22 like our three-year projections, for example, over that

23 performance period, the intent was you didn't want

24 people to have, you know, long-term incentive based on

25 just kind of status quo operations of the business.

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1 You wanted to incentivize people to make

2 decisions to create value as opposed to just getting

3 paid to, you know, keep doing, you know, status quo, so

4 to speak.

5 So if you look at our projections, for

6 example -- if you look at our projections from '19 to

7 '22, which was the contemplated first performance

8 period, you know, the 10 percent threshold for the

9 challenge target that was contemplated was largely in

10 line with kind of the -- the threshold -- like with the

11 forecast for the three-year period.

12 Q And you're saying that that could be adjusted

13 every three years?

14 A Yeah. So each -- so what was contemplated in

15 the documents was that each performance period that

16 challenge target was something that would be set --

17 reset, you know, at that time based on, you know,

18 current projections and the board's approval.

19 Q But the performance period was three years;

20 correct?

21 A Correct.

22 Q And once the performance period began, could

23 the formula be adjusted?

24 A No.

25 Q So had the -- and I'm going to use the acronym

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1 PUP. When I use that, we're talking about the

2 performance unit plan; correct?

3 A Okay.

4 Q The same one that we've been talking about?

5 A Yes. Yes.

6 Q Had the PUP been launched -- and as I

7 understand it -- and am I correct that the intent, at

8 least until late October, was to launch the PUP in

9 December of 2019?

10 A Yeah, I think that was the intent, although

11 I'll say there was a ton of legal work going on to try

12 to make sure that we could do all this. Most of the

13 activity around the PUP itself was legal work.

14 Q Right. But had the PUP launched in

15 December of '19, the formulas that you had developed

16 would have been incorporated into the PUP and become

17 locked in for the first three-year performance period?

18 A Correct.

19 Q Okay. When you first developed the formula --

20 and let me -- I know that you don't remember

21 specifically. But do you remember having this

22 discussion with Mr. Zahn about developing a formula in

23 the spring of 2019?

24 A I don't.

25 Q How about prior to the June board meeting?

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1 A Prior to the June board meeting, yes.

2 Q All right. June 2019 board meeting?

3 A Correct, yeah.

4 Q And to be clear, you were not doing any of

5 this work associated with developing a long-term

6 incentive plan and a -- which became -- and effectively

7 in the spring of '19, it was now the long-term

8 performance unit plan, was it not?

9 A At some point it turned into that, yeah.

10 Q Heading into the June '19 board meeting?

11 A Yes, although honestly, I don't really

12 remember if the plan had really been drafted at that

13 point. I believe --

14 Q I understand it might have been drafted, but

15 it was being developed, was it not?

16 A Yes, I guess it was being developed. Again, I

17 don't know that we really had -- prior to the June board

18 meeting, I don't know that we had a draft of the

19 documents, or I don't really recall if I had seen a

20 draft of the documents prior to that June board meeting.

21 Q Well, but in the spring, Mr. Zahn was

22 expressing dissatisfaction with the Willis Towers Watson

23 work on the long-term incentive plan, was he not?

24 A I don't -- again, I don't recall that he -- I

25 don't recall specific dissatisfaction. I do recall that

<p style="text-align: right;">Page 37</p> <p>1 he was -- he wanted them to provide the facts on market</p> <p>2 50th, not necessarily policy. But I don't really recall</p> <p>3 dissatisfaction, necessarily.</p> <p>4 Q And to finish my question that I didn't</p> <p>5 complete because I didn't ask it well, to be clear, you</p> <p>6 were not doing any of this work on developing a</p> <p>7 long-term incentive plan, later working on performance</p> <p>8 units and formulas -- all of that was at the direction</p> <p>9 of Mr. Zahn; was that correct?</p> <p>10 A Correct.</p> <p>11 Q Okay. So you were working on the formula</p> <p>12 prior to the June board meeting; correct?</p> <p>13 A Correct.</p> <p>14 Q In the course of working on that formula at</p> <p>15 that time, did you ever calculate the payouts from the</p> <p>16 plan at the end of the first performance period?</p> <p>17 A So the only thing that I did at that point --</p> <p>18 so, again, the formula was designed to be 10 percent of</p> <p>19 X, right? So fill in the blank for X --</p> <p>20 Q Well, did you ever fill in the blank for X</p> <p>21 based upon JEA's projected financials for the first</p> <p>22 performance period?</p> <p>23 A Yeah, so that was what was provided to the</p> <p>24 council auditor. It was based -- those projections that</p> <p>25 were based on our financial pro forma is what was</p>	<p style="text-align: right;">Page 39</p> <p>1 Q Was this 10 percent -- I'm sorry.</p> <p>2 How would we characterize the 10 percent</p> <p>3 component of the formula?</p> <p>4 A So the challenge target that was set in the</p> <p>5 formula -- that was the number that I referred to that</p> <p>6 could change with each performance period -- was set</p> <p>7 based on the three-year pro forma projections for -- you</p> <p>8 know, at that time in July, you know.</p> <p>9 And so we looked at -- again, we looked at</p> <p>10 those pro forma projections, and it showed that it was</p> <p>11 going to grow 10 percent. And so that was how we set</p> <p>12 that challenge target.</p> <p>13 Q All right. And so you're saying that it would</p> <p>14 be easy for anybody to then take that formula, and -- as</p> <p>15 long as they could get JEA's financial projections and</p> <p>16 determine what? What would I be able to have determined</p> <p>17 from that?</p> <p>18 A Well, so from --</p> <p>19 Q Assuming I could get all this other stuff.</p> <p>20 A No, I mean, from JEA's financial projections</p> <p>21 itself, you would have been able to calculate the</p> <p>22 projected pool amount of the -- of the performance unit</p> <p>23 plan at the end of that performance period.</p> <p>24 So I mean -- and again, that was -- that was</p> <p>25 what we used to set that 10 percent threshold for the</p>
<p style="text-align: right;">Page 38</p> <p>1 provided to the council auditor in the fall.</p> <p>2 Q But not until the fall of 2019?</p> <p>3 A Correct. But -- I mean, again, it was -- it</p> <p>4 was a relatively simple formula.</p> <p>5 So we have pro forma financials that we</p> <p>6 project out, you know, on a regular basis and update</p> <p>7 regularly. And so the way that we came up with that</p> <p>8 10 percent threshold for the challenge target was to</p> <p>9 look at those pro forma financials.</p> <p>10 And, you know, you look at it and you say,</p> <p>11 okay, three years from now, we expect that we were going</p> <p>12 to make, you know, this much money as far as net income.</p> <p>13 And so, you know, we need to set it at a level that's,</p> <p>14 you know, at least there, right? You can't -- again,</p> <p>15 that was the intent at that time.</p> <p>16 So you could -- you could look at our</p> <p>17 ten-year -- at our pro forma financials and, you know,</p> <p>18 go to the balance sheet and say, all right, well, that's</p> <p>19 our net position in three years, and so that grew</p> <p>20 10 percent, so 10 percent will be the challenge target.</p> <p>21 But I didn't have a spreadsheet to do that. I</p> <p>22 mean, it was --</p> <p>23 Q It was just in your head?</p> <p>24 A Yeah. You could -- I mean, I can just look at</p> <p>25 the paper and do that.</p>	<p style="text-align: right;">Page 40</p> <p>1 challenge target.</p> <p>2 Q But no spreadsheet or calculations were</p> <p>3 prepared by you until the fall of 2019?</p> <p>4 A I don't think so. Again, I -- it was a pretty</p> <p>5 straightforward calculation. I mean, you're talking</p> <p>6 about ones and -- you know, tens and -- I mean, it's</p> <p>7 just moving decimals.</p> <p>8 Q What do you recall of the presentation of the</p> <p>9 plan to the board in July of 2019?</p> <p>10 A What do I recall? Can you be more specific?</p> <p>11 Q Did you -- did you present the PUP to the</p> <p>12 board?</p> <p>13 A I did.</p> <p>14 Q And what do you recall of that presentation?</p> <p>15 A I recall presenting it. I mean, again -- I</p> <p>16 mean, is there something specific that you're --</p> <p>17 Q Well, did you take questions from the board</p> <p>18 about what the payout would be for the PUP at the end of</p> <p>19 the first performance period?</p> <p>20 A Yeah, so it was described -- so I did describe</p> <p>21 the performance unit plan. I described the</p> <p>22 calculations. I described -- my recollection -- my</p> <p>23 recollection is that I described, you know, generally</p> <p>24 how the -- how the -- how the plan worked.</p> <p>25 Q Do you recall informing the board that if</p>

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<p style="text-align: right;">Page 41</p> <p>1 there was a recapitalization event during the</p> <p>2 performance period that that would effectively end the</p> <p>3 performance period and you would perform the calculation</p> <p>4 at that time?</p> <p>5 A Yes.</p> <p>6 Q Prior to that meeting, had you performed a</p> <p>7 calculation assuming various returns to the City in the</p> <p>8 event of a sale of the agency?</p> <p>9 A No. But I mean it's -- so, again, it's</p> <p>10 10 percent above the challenge target. So pick a number</p> <p>11 and I could tell you the pool amount.</p> <p>12 So just to -- just high math, right? The</p> <p>13 challenge target -- based on the -- based on the board's</p> <p>14 minimum requirements under the ITN, there would have</p> <p>15 been no value to the performance units. They would have</p> <p>16 been worth what people put in. They would have not</p> <p>17 changed value at all.</p> <p>18 To the extent that the sale amount exceeded</p> <p>19 those minimum requirements that the board set, then</p> <p>20 again, it would have been 10 percent of any excess value</p> <p>21 above, you know, kind of those minimum requirements.</p> <p>22 When you do the math on that, when you look at</p> <p>23 those minimum requirements plus the debt that we owed,</p> <p>24 it would have been somewhere around high 7s, probably.</p> <p>25 Q High 7s what?</p>	<p style="text-align: right;">Page 43</p> <p>1 Q Okay. So dividing 100 million by 100,000 is</p> <p>2 1,000; right?</p> <p>3 A Yeah.</p> <p>4 Q And if we divide 100 million by 30,000, you</p> <p>5 get 3,333, don't we?</p> <p>6 A Uh-huh.</p> <p>7 Q So the value per unit would have been -- even</p> <p>8 had only 30,000 units been sold under your description,</p> <p>9 a unit that one purchased for \$10 would have been worth</p> <p>10 \$3,333?</p> <p>11 A Yeah.</p> <p>12 Q Did you have that awareness in July of 2019</p> <p>13 when this plan was presented to the board and approved?</p> <p>14 A Yeah, I -- again, the work that was done was</p> <p>15 related to the calculation of the pool itself. Look, I</p> <p>16 understand the optics of your statement.</p> <p>17 Q Well -- and I appreciate that. But it is a</p> <p>18 bit more than optics, and so let me just -- let me just</p> <p>19 try to ask and get some -- we need to get a little</p> <p>20 succinctness here, if you don't mind.</p> <p>21 A Okay.</p> <p>22 Q But I do want you to explain your answers if</p> <p>23 you need to. I understand that.</p> <p>24 A Yeah.</p> <p>25 Q So when I ask if you had an awareness at the</p>
<p style="text-align: right;">Page 42</p> <p>1 A For the enterprise value. Call it just under</p> <p>2 8 billion, would have been the minimum that you would</p> <p>3 have had to sell the enterprise for in order to have any</p> <p>4 value created by those performance units.</p> <p>5 So -- but again, beyond that, it was</p> <p>6 10 percent. So for -- so if you go from, you know, call</p> <p>7 it 8 billion to 9 billion, it's 10 percent of that, is</p> <p>8 what was contemplated. So \$100 million for the pool in</p> <p>9 that instance.</p> <p>10 Q So \$100 million for the performance unit pool,</p> <p>11 and if there are 100,000 units -- if 100,000 units had</p> <p>12 been purchased, help me on the math, what's the value</p> <p>13 per performance unit?</p> <p>14 A So --</p> <p>15 Q 100 million divided by 100,000. Is that what</p> <p>16 it is?</p> <p>17 A Well, so the 100,000 units is what was</p> <p>18 authorized under the plan. There was never any</p> <p>19 discussion that I was a party to related to allocating</p> <p>20 more than -- you know, what was contemplated with the</p> <p>21 board was, you know, roughly a third of those units.</p> <p>22 And so the plan was designed to be a multiyear</p> <p>23 plan, but the allocations that were contemplated by the</p> <p>24 board -- or what was presented to the board -- and</p> <p>25 that's how you get to the 10 percent.</p>	<p style="text-align: right;">Page 44</p> <p>1 time this plan was presented to the board in July 23 of</p> <p>2 this potential of a -- a return of \$3,333 on a \$10</p> <p>3 investment in the event of a recapitalization event</p> <p>4 within the performance period -- that's just a yes or</p> <p>5 no. Did you -- did you appreciate that potential when</p> <p>6 this plan was presented to the board in July of 2019?</p> <p>7 A I appreciated that the pool was equal to</p> <p>8 10 percent of whatever value creation was created and</p> <p>9 that you could divide that by 30,000 to get the value</p> <p>10 per unit.</p> <p>11 Q All right. And had you ever run out that</p> <p>12 calculation even in your mind and realized that there</p> <p>13 would be this sort of return on a \$10 investment at the</p> <p>14 time of the July board meeting?</p> <p>15 A Yeah, so again, the -- it was -- it was never</p> <p>16 positioned as an investment. It was intended to be a</p> <p>17 long-term incentive plan.</p> <p>18 The -- where it ended up where it did in the</p> <p>19 context of the performance units being purchased as</p> <p>20 opposed to granted and the calculations around what was</p> <p>21 the purchase price and all that sort of thing was really</p> <p>22 an outflow of the legal work that was done to try to</p> <p>23 develop something that worked in the public sector.</p> <p>24 So, again, the conversation from my</p> <p>25 perspective was really more around how do you get to</p>

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<p style="text-align: right;">Page 45</p> <p>1 10 percent of the value creation above, you know, a</p> <p>2 certain -- a certain challenge amount. And beyond that,</p> <p>3 the legal work was done to try to shoehorn something</p> <p>4 into something that was -- you know, would work, again,</p> <p>5 in the public sector.</p> <p>6 Q All right.</p> <p>7 A It was never an investment plan. It was</p> <p>8 intended to be a long-term incentive plan.</p> <p>9 Q Was Mr. Zahn fully aware of your appreciation</p> <p>10 of the potential of this plan when this was presented to</p> <p>11 the board in July of 2019?</p> <p>12 A Yes.</p> <p>13 Q There was really nothing you knew about the</p> <p>14 plan that he did not know; is that fair to say?</p> <p>15 A Absolutely.</p> <p>16 Q And although it's a completely other topic</p> <p>17 that we will come back to, there is an overlap with the</p> <p>18 issue of the recapitalization or sale of JEA; correct?</p> <p>19 A Timing-wise, yes.</p> <p>20 Q And the discussion of recapitalization or sale</p> <p>21 of the agency was in the mix at the time of the July 23</p> <p>22 board meeting, was it not?</p> <p>23 A Yes.</p> <p>24 Q And, in fact, it was one of the action items</p> <p>25 presented to the board, was it not?</p>	<p style="text-align: right;">Page 47</p> <p>1 interplay specifically, around the purchase price and</p> <p>2 the purchase -- and the unit price at the end. We did</p> <p>3 discuss the -- we were all fully aware of the fact that</p> <p>4 it was 10 percent of value creation.</p> <p>5 Again, it was -- it was never intended to be</p> <p>6 an investment plan. It was a long-term incentive plan.</p> <p>7 The --</p> <p>8 Q But would you agree that when you intertwine</p> <p>9 the recapitalization event with the plan during the</p> <p>10 performance period that it effectively becomes an</p> <p>11 investment plan? I mean, isn't that the end result of</p> <p>12 it?</p> <p>13 A Well, so -- look, even the concept of having</p> <p>14 them purchased developed very late in July as the</p> <p>15 lawyers were working to try to develop the plan. It</p> <p>16 was -- the original concept of it was that they would be</p> <p>17 granted to employees.</p> <p>18 The -- for whatever reason, it was determined</p> <p>19 that it would -- there were some legal -- again, I'm not</p> <p>20 a lawyer, so I -- for whatever reason, the lawyers</p> <p>21 determined that there was some legal reason why</p> <p>22 purchasing it would be better. Again, and I don't know</p> <p>23 what the reason for that was.</p> <p>24 I relied on attorneys a lot as it related to</p> <p>25 the documents themselves. I mean, there were -- we had</p>
<p style="text-align: right;">Page 46</p> <p>1 A Correct.</p> <p>2 And to be clear, what was presented to the</p> <p>3 board at the July 23rd board meeting was a request,</p> <p>4 really, to allow us to explore nongovernmental ownership</p> <p>5 structures.</p> <p>6 Q I appreciate that clarification.</p> <p>7 A Yeah.</p> <p>8 Q But it was also at that board meeting that the</p> <p>9 performance unit plan was presented for approval, and it</p> <p>10 was approved, was it not?</p> <p>11 A It was.</p> <p>12 Q Prior to that meeting, the July 23 board</p> <p>13 meeting 2019, did you and Mr. Zahn have a discussion</p> <p>14 about that interplay between the performance unit plan</p> <p>15 that you were proposing and the authority you were</p> <p>16 seeking to pursue the recapitalization or restructuring</p> <p>17 of JEA?</p> <p>18 A Yes.</p> <p>19 Q Did you discuss the potential that should the</p> <p>20 agency sell within the performance unit period, prior to</p> <p>21 the end of it, for -- let's use your 8 or \$9 billion</p> <p>22 target, that the performance units would have this</p> <p>23 higher value relative to what they were purchased for?</p> <p>24 A I don't know that we discussed the -- I don't</p> <p>25 recall if we discussed the specifics around the -- that</p>	<p style="text-align: right;">Page 48</p> <p>1 literally dozens and dozens of attorneys looking at all</p> <p>2 aspects of this from both OGC and specialty counsel.</p> <p>3 BY MS. HARRELL:</p> <p>4 Q When you say that the concept of having them</p> <p>5 purchased was developed in late July, was that before or</p> <p>6 after the July 23rd board meeting?</p> <p>7 A Before, but it was -- as the documents were</p> <p>8 being drafted in July, the concept of purchasing them</p> <p>9 kind of grew some legs, and then the question was just,</p> <p>10 well, what's the right number, what's the right dollar</p> <p>11 amount for the -- I mean, again, you could have done</p> <p>12 \$100 units and done, you know -- you know, 10,000 units</p> <p>13 instead of 100,000 units. It was just -- again, you're</p> <p>14 kind of just moving numbers, right? So --</p> <p>15 Q So how was the \$10 amount?</p> <p>16 A I don't -- I remember that there was some</p> <p>17 discussion at a meeting in July that was at the -- so as</p> <p>18 we moved into the July board meeting, all of the -- all</p> <p>19 of the July agenda items really kind of came together</p> <p>20 like the second or third week of July. And so we had</p> <p>21 kind of an all-hands meeting here in Jacksonville with,</p> <p>22 geez, probably 40 or 50 people.</p> <p>23 BY MR. POWELL:</p> <p>24 Q Would that have been the meeting at the</p> <p>25 Club Continental?</p>

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<p style="text-align: right;">Page 49</p> <p>1 A Yes.</p> <p>2 Q And that meeting was attended by you,</p> <p>3 Mr. Zahn, Mr. Vinyard, Ms. Dykes, and Mr. Hendricks; is</p> <p>4 that right?</p> <p>5 A Kendrick?</p> <p>6 Q Kendrick.</p> <p>7 A Yeah. And I believe that -- I believe John</p> <p>8 McCarthy was there.</p> <p>9 Q Do you remember anybody else from the senior</p> <p>10 leadership team being there?</p> <p>11 A Boy. Let me think.</p> <p>12 I don't recall anybody else from the senior</p> <p>13 leadership team being there.</p> <p>14 Q While we're on the topic, can you tell me</p> <p>15 what -- you were about -- I think you were describing</p> <p>16 that meeting.</p> <p>17 Could you share what that meeting was all</p> <p>18 about and --</p> <p>19 A Yeah. It was basically to get all the</p> <p>20 documents in order for the July board meeting. So</p> <p>21 essentially everything that you saw on the agenda at the</p> <p>22 July board meeting really kind of came together those</p> <p>23 couple of days.</p> <p>24 Q Do you remember the dates of the</p> <p>25 Club Continental gathering?</p>	<p style="text-align: right;">Page 51</p> <p>1 back and forth. I think he was concerned about</p> <p>2 incomplete documents kind of getting out and not having</p> <p>3 control necessarily of the narrative, if that makes</p> <p>4 sense.</p> <p>5 BY MS. HARRELL:</p> <p>6 Q When you say "the work we were doing," what</p> <p>7 do you mean, "the work we were doing"?</p> <p>8 A All the work that we were doing related to the</p> <p>9 July board agenda, the items on the -- that were</p> <p>10 presented in July.</p> <p>11 BY MR. POWELL:</p> <p>12 Q What narrative was Mr. Zahn trying to control?</p> <p>13 A What you saw at the July board meeting. He</p> <p>14 wanted to present it as a package.</p> <p>15 BY MS. HARRELL:</p> <p>16 Q So when you talk about "the work we were</p> <p>17 doing," are you talking about Scenario 1, Scenario 2,</p> <p>18 Scenario 3 that was presented at the July 23 board</p> <p>19 meeting?</p> <p>20 A No. All the documents -- well, so partially,</p> <p>21 I guess, it was the whole thing, right, all the</p> <p>22 documents that were prepared up to that. We had WARN</p> <p>23 notices ready to go out. We had -- I mean, we had a</p> <p>24 list of employees, you know, that were going to be</p> <p>25 RIF'd. I mean, so that's all really sensitive</p>
<p style="text-align: right;">Page 50</p> <p>1 A It was the middle of July, probably that week</p> <p>2 after the 4th. You know, second or third week in July,</p> <p>3 something like that.</p> <p>4 It was an all-out sprint, I mean, to get</p> <p>5 everything from -- I mean, from where we stood in June,</p> <p>6 we basically had nothing done as it related to the July</p> <p>7 items. And so, you know, it was all hands on deck to</p> <p>8 try to get everything put together.</p> <p>9 Q Sort of begs the question. Why the rush?</p> <p>10 A Aaron was concerned about leaks.</p> <p>11 Q About leaks?</p> <p>12 A Yeah. He --</p> <p>13 Q Explain, please.</p> <p>14 A So he was concerned that the longer we took,</p> <p>15 the more likely it was that, you know, somehow</p> <p>16 information would get out about the work we were doing</p> <p>17 and that, you know, you'd have public records requests</p> <p>18 and all of that. So he wanted to act efficiently and,</p> <p>19 you know, pull everything together.</p> <p>20 Q Why would public awareness have been a bad</p> <p>21 thing?</p> <p>22 A I think he was concerned -- I mean, obviously</p> <p>23 public awareness was a given. It's a public entity. I</p> <p>24 think he was concerned about drafts and that kind of</p> <p>25 thing. I mean, as work's being done, things are going</p>	<p style="text-align: right;">Page 52</p> <p>1 information, right?</p> <p>2 We already had employees that were on edge,</p> <p>3 and so, you know, it was that whole package, right?</p> <p>4 Again, he didn't want the employee list to get</p> <p>5 requested, given the fact that there were names on that.</p> <p>6 Q And the whole package included the long-term</p> <p>7 incentive plan?</p> <p>8 A Yes.</p> <p>9 Q And all the Willis Towers Watson stuff?</p> <p>10 A I don't remember if we presented Willis Towers</p> <p>11 Watson again in July. I think the compensation</p> <p>12 committee report out was in June, if I recall correctly,</p> <p>13 to the board, and then the board directed us to put</p> <p>14 together a plan that was consistent and bring it back.</p> <p>15 And so that was what was presented in July.</p> <p>16 I don't know there was anything regarding</p> <p>17 Willis Towers Watson that was presented in July.</p> <p>18 BY MR. POWELL:</p> <p>19 Q I'm going to ask if you could look at a</p> <p>20 document for me and clarify something. This is a</p> <p>21 document that's -- and, again, this is from the</p> <p>22 Diamond-Salem production, and these are JEA documents</p> <p>23 Number 0295 through 0335, and the first page is a cover</p> <p>24 sheet of Total Market Compensation Strategy. It says</p> <p>25 June of 2018.</p>

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<p style="text-align: right;">Page 53</p> <p>1 A Yeah.</p> <p>2 Q Is that a typo?</p> <p>3 A That is a typo, yeah.</p> <p>4 Q Okay.</p> <p>5 A Yeah, I believe --</p> <p>6 Q So this is the 2019 --</p> <p>7 A That's correct. Yeah.</p> <p>8 Q That was my understanding.</p> <p>9 A Yeah.</p> <p>10 Q I appreciate you clarifying that for me --</p> <p>11 A Yeah.</p> <p>12 Q -- because I've been scratching my head for --</p> <p>13 I didn't know who to ask, but I figured I could ask you</p> <p>14 and you'd straighten it out for me.</p> <p>15 A I believe that was a typo.</p> <p>16 Q All right.</p> <p>17 So if we go over here to Page 0305, this is</p> <p>18 the Long-Term Incentive Plan Design; correct? That's</p> <p>19 what it says?</p> <p>20 A That's what it says.</p> <p>21 Q And you roll down through it, and we see at</p> <p>22 the bottom an Estimated Cost. And by the way, it</p> <p>23 includes the payout range you've talked about, the</p> <p>24 threshold 50 percent of target, maximum 150 percent of</p> <p>25 target.</p>	<p style="text-align: right;">Page 55</p> <p>1 A That's what they wrote there, yes.</p> <p>2 Q All right. And do you know where they got</p> <p>3 their number?</p> <p>4 A No.</p> <p>5 Q Was any other number presented to the board of</p> <p>6 directors prior to their approval of the plan in July</p> <p>7 regarding the estimated cost of the performance unit</p> <p>8 awards at the end of the performance period?</p> <p>9 A I don't know. I don't -- I don't -- I don't</p> <p>10 recall.</p> <p>11 Q After the -- let's move beyond the July 23</p> <p>12 board meeting for a moment.</p> <p>13 Do you recall in late August getting an email</p> <p>14 from Jessica Lutrin with the Pillsbury firm regarding</p> <p>15 conversations with Michael Kirwan at Foley indicating</p> <p>16 that based on his calculations, the PUP formula is</p> <p>17 spitting out much larger numbers than we anticipated?</p> <p>18 A I do recall that email, yes.</p> <p>19 Q All right. Did you ever see these</p> <p>20 calculations that Mr. Kirwan -- I'm sorry -- the --</p> <p>21 these calculations by Mr. Kirwan that Ms. Lutrin is</p> <p>22 talking about?</p> <p>23 A I don't believe so.</p> <p>24 Q The email replied -- and so she sent that on</p> <p>25 August 23 at 10:11 a.m., and you replied at 10:37:</p>
<p style="text-align: right;">Page 54</p> <p>1 Is that a cap?</p> <p>2 A So that slide was a slide that</p> <p>3 Willis Towers Watson did. That was their</p> <p>4 recommendation, I believe. We didn't -- we didn't -- or</p> <p>5 at least to my knowledge, we didn't make that slide. I</p> <p>6 think that's a Willis Towers Watson slide.</p> <p>7 Q This was presented to the compensation</p> <p>8 committee in June of '19; correct?</p> <p>9 A Yes, according to that presentation.</p> <p>10 Q All right. And you agree that the typo --</p> <p>11 A Yeah, it's a typo. Yeah, that's right.</p> <p>12 Q Do you remember these slides being presented</p> <p>13 to the compensation committee in June of 2019?</p> <p>14 A I believe they were, based on the package of</p> <p>15 information here. I don't really recall the specific,</p> <p>16 but I believe they were.</p> <p>17 Q All right. And do you see at the bottom down</p> <p>18 there where it also says Estimated Cost, it reads:</p> <p>19 Estimated cost of annual performance unit awards to all</p> <p>20 employees based on current incumbent base salaries is</p> <p>21 \$3.4 million.</p> <p>22 A Uh-huh.</p> <p>23 Q You see that?</p> <p>24 Was that \$3.4 million a year in annual cost of</p> <p>25 this plan going forward?</p>	<p style="text-align: right;">Page 56</p> <p>1 Jessica, thanks for following it up. I agree that it</p> <p>2 makes sense to clarify that the contribution to the City</p> <p>3 should not include the debt payoff. It should be any</p> <p>4 amounts after the payment of debt.</p> <p>5 And to me, that's a disconnect. I don't</p> <p>6 understand the response to the concern expressed by</p> <p>7 Ms. Lutrin, and I was hoping you could explain it to us.</p> <p>8 A Yeah, so she followed up. We had a</p> <p>9 conversation. I don't -- I think it was both with her</p> <p>10 and the Foley attorney that you referenced.</p> <p>11 Q Within that 16-minute period?</p> <p>12 A Yes. So they had a -- they were misapplying</p> <p>13 the formula. He was -- I don't remember the specifics</p> <p>14 of like what he was doing, but he was doing something</p> <p>15 with the debt where he was kind of counting that as</p> <p>16 value to the City, the debt being paid off or some way.</p> <p>17 And so he was just -- he was misapplying the formula.</p> <p>18 And so we talked about it. I said, okay,</p> <p>19 well, I understand how you got that. It's not -- it's</p> <p>20 not what's intended. And so we agreed to try to clarify</p> <p>21 that formula in the -- in the plan document.</p> <p>22 Q Was that done?</p> <p>23 A I believe so. Again, I --</p> <p>24 Q I know, the lawyers --</p> <p>25 A Much of this -- yeah. I mean, again, I didn't</p>

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<p style="text-align: right;">Page 57</p> <p>1 draft any of the document and frankly really didn't</p> <p>2 have -- I wasn't in the loop on the drafts going back</p> <p>3 and forth or anything like that.</p> <p>4 To the extent I needed to get engaged on</p> <p>5 something, they would reach out, but generally didn't --</p> <p>6 again, it was lawyers, mostly, at that point.</p> <p>7 Q Well, but were you and Mr. Zahn kept informed,</p> <p>8 kept abreast of developments by the lawyers?</p> <p>9 A Again, only to the extent that it was</p> <p>10 something I needed to provide input on. I don't know</p> <p>11 what -- I don't know what they were doing with Aaron as</p> <p>12 far as the documents and that kind of thing.</p> <p>13 But, again, from time to time they would reach</p> <p>14 out and say, hey, can you make sure this is</p> <p>15 characterized correctly or whatever, and, you know, I'd</p> <p>16 respond.</p> <p>17 Q Is it -- so the -- to your thinking, the</p> <p>18 formula got fixed in -- after this exchange with</p> <p>19 Ms. Lutrin?</p> <p>20 A As it related to those -- to that email, yes.</p> <p>21 Q All right. So the formula that was ultimately</p> <p>22 evaluated by the council auditor in October and into</p> <p>23 November was, from your perspective, the correct</p> <p>24 formula?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 59</p> <p>1 over that three-year time period. We pay about</p> <p>2 \$500 million to employees over three years.</p> <p>3 So it was functionally zero as it related to</p> <p>4 the long-term incentive as, you know, a percentage of</p> <p>5 payroll -- in the context of the pool, it was, you know,</p> <p>6 one -- again, about 1.6, \$1.7 million per year if you</p> <p>7 were to annualize it. On an annual salary budget of</p> <p>8 165 million or so, somewhere in that ballpark. It goes</p> <p>9 up about 10 million a year.</p> <p>10 Q So is this a number that's comparable to the</p> <p>11 3.4 million that we were talking about a minute ago, the</p> <p>12 annual cost of the performance unit plan that had been</p> <p>13 estimated by Willis Towers?</p> <p>14 A Again, I don't know where the \$3.4 million</p> <p>15 came from, but again, if you take \$5 million, which is</p> <p>16 the value of what this would have been, assuming the</p> <p>17 30,000 units, divided by 3, yeah, it's \$1.7 million</p> <p>18 annually would have been the cost.</p> <p>19 And that was really how I viewed it. It was a</p> <p>20 long-term incentive plan.</p> <p>21 Q Up until the -- I'm just going to use the end</p> <p>22 of October as a benchmark, but -- because I know it</p> <p>23 leaked a little bit into November.</p> <p>24 But at least at the end -- at the end of</p> <p>25 October, would you say that it was the prevailing</p>
<p style="text-align: right;">Page 58</p> <p>1 Q All right.</p> <p>2 A Yeah. And I verified that with them. And I</p> <p>3 think that's what you have there.</p> <p>4 Q So there was an email exchange between you and</p> <p>5 Kim Taylor, November 13. You returned the updated</p> <p>6 spreadsheet. You said your methodology is correct. You</p> <p>7 filled in a table with 2019 unaudited and projected 2022</p> <p>8 numbers, and at the end of this performance period, your</p> <p>9 formula generated a value per performance unit of</p> <p>10 \$167.78.</p> <p>11 Do you recall that?</p> <p>12 A I recall that spreadsheet, yes.</p> <p>13 Q Okay.</p> <p>14 A So to put it into context --</p> <p>15 Q And again, just so I'm understanding --</p> <p>16 A Yeah.</p> <p>17 Q -- that would mean that if I had purchased</p> <p>18 a -- if I had been eligible to purchase a performance</p> <p>19 unit and I had purchased one at the end of 2019 for \$10</p> <p>20 that it would have been worth \$167.78 at the end of the</p> <p>21 first performance period?</p> <p>22 A Correct. And so, again, just to put some</p> <p>23 context around that, so if you do the math on 167 or</p> <p>24 \$168 times 30,000 units, you're talking somewhere around</p> <p>25 5 million bucks or so, which is 1 percent of payroll</p>	<p style="text-align: right;">Page 60</p> <p>1 thought among the senior leadership team that JEA would</p> <p>2 be sold pursuant to the ITN?</p> <p>3 A I can't speak to what the prevailing thought</p> <p>4 amongst the senior leadership team was. I guess, I --</p> <p>5 Q All right. I'll --</p> <p>6 A I'm not --</p> <p>7 Q Sure. That's fair. All right.</p> <p>8 On the other hand, you are a member of the</p> <p>9 senior leadership team --</p> <p>10 A Right.</p> <p>11 Q -- and you interact with them, so I didn't</p> <p>12 think it was an entirely unfair question.</p> <p>13 But let me ask you this -- the same question</p> <p>14 then about your conversations with Mr. Zahn. During</p> <p>15 October, leading to the end of October, in your</p> <p>16 conversations with Mr. Zahn, were the two of you of a</p> <p>17 view that JEA would most likely be sold pursuant to the</p> <p>18 ITN?</p> <p>19 A So I can speak for me personally. I thought</p> <p>20 that there was a lot of wood to chop.</p> <p>21 Q A lot of what?</p> <p>22 A A lot of wood to chop as it related to getting</p> <p>23 to an outcome under the ITN. If you go back to the</p> <p>24 time, right, you had -- you had a City Council that</p> <p>25 seemed to be very against it. You had a lot of articles</p>

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<p style="text-align: right;">Page 61</p> <p>1 in the media. It's no secret that Aaron was -- had a  2 lot of articles -- you know, negative articles written  3 about him and the process and all of that.  4 So I think that there was a hope that we would  5 get to a proposal. As far as whether or not the utility  6 would be sold pursuant to that proposal, boy, I didn't  7 think the chances were all that high, because you had to  8 go through City Council and then you had to go to a  9 referendum. And so, you know, hard to say I expected  10 all of that to sort of line up, really.  11 Q Was it Mr. -- would you -- based upon your  12 conversations with him, would you say that it was  13 Mr. Zahn's at least hope and expectation during the  14 October time frame that JEA would be sold pursuant to  15 the ITN?  16 A I don't know. So we had a lot of  17 conversations about the initial public offering as an  18 option. Personally, I thought that was a pretty good  19 option in that it kept JEA, you know, as JEA. So --  20 Q But that would privatize JEA?  21 A Correct. It would change the form of  22 ownership, but it wasn't -- it wasn't pursuant to the  23 ITN. So --  24 Q Fair enough.  25 A -- again, we were looking at -- just to</p>	<p style="text-align: right;">Page 63</p> <p>1 A Yeah.  2 Q Was there anybody in the group that worked  3 more closely with Mr. Zahn than you?  4 A I don't know about more closely. I would say  5 equally as close. Anybody that reported directly to  6 him --  7 Q Okay.  8 A -- likely talked to him on a daily basis.  9 Q And you would agree that Mr. Zahn's  10 overriding -- or would you agree that Mr. Zahn's  11 overriding focus and attention as CEO was the strategic  12 future of JEA? Correct?  13 A Correct.  14 Q He was not a day-to-day hands-on with the  15 operations of JEA; fair to say?  16 A Correct.  17 Q All right.  18 A Fair to say.  19 Q Based upon your working -- your close working  20 relationship with him, as we've established, would you  21 be of the view that in the August, September, October  22 time frame that Mr. Zahn's hope and expectation was that  23 JEA would get to a recapitalization event in the --  24 within a one- or two-year period?  25 A I think that Aaron saw the recapitalization</p>
<p style="text-align: right;">Page 62</p> <p>1 clarify your question.  2 I'm not sure that anyone, you know, had a --  3 had a view that like the result of the ITN was going to  4 be the ultimate answer. I think it was an answer. I  5 think it was a possible answer. I don't know what Aaron  6 hoped for or what he thought was the likely outcome.  7 There's no way for me to know that.  8 Q You know, I appreciate your answer there,  9 because you are reminding me that all of these possible  10 outcomes are all under the -- under the interesting  11 umbrella of the recapitalization event; correct?  12 Because you could recapitalize through an IPO --  13 A IPO, concession. There was one proposal that  14 was proposed that would put the assets into a pension  15 fund. There's a -- there's a utility in Indiana that's  16 a public trust, public charitable trust. There -- we  17 looked at co-op structures where you give ownership  18 directly to customers.  19 Q All right. So let me ask the question more --  20 perhaps more accurately.  21 Based upon your conversations with Mr. Zahn --  22 and you -- you were right there. You were a daily  23 conversant with Mr. Zahn, were you not?  24 A Yes.  25 Q All right.</p>	<p style="text-align: right;">Page 64</p> <p>1 event as the most likely way to remove the constraints  2 impacting the business, principally, you know, related  3 to government ownership.  4 Now, as far as which recapitalization event, I  5 don't know.  6 Q And that's why I asked the question --  7 A Yeah.  8 Q -- the second time the way I did.  9 But you would not disagree, would you, that  10 Mr. Zahn's driving objective as CEO of JEA was to  11 accomplish this fundamental change of the agency --  12 A I don't think --  13 Q -- through -- through a recapitalization event  14 of some kind?  15 A I don't know that it was his driving intent to  16 recapitalize the business. My observation in working  17 with him was that he wanted to lay out all of the  18 options and say, look, here are the -- here's the menu,  19 do what you want, and we'll -- we'll do whichever  20 direction you want us to.  21 For example, my team worked a lot on -- you  22 know, we did cost of service studies on, you know, what  23 kind of rate changes we would need in the future,  24 specifically around the plant Vogtle obligation, you  25 know, falling sales and what that looked like, how we</p>

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<p style="text-align: right;">Page 65</p> <p>1 would need to, you know, change the rate structure as a  2 government. We had plans on how that would work.  3 And frankly, from my standpoint as the CFO --  4 look, my job is to balance the books, right? So you  5 sort of give me the constraints that I'm working under,  6 and I -- you know, here's the answer, right?  7 Q Mr. Wannemacher, I'm not suggesting that you  8 were the driving force of any of this. I just know  9 that -- I mean, I only have a few people that are  10 working closely day to day with Mr. Zahn, and you're  11 working with him on these matters.  12 I understand you have all those other  13 responsibilities and perhaps more fundamental  14 responsibilities, but --  15 A Yeah.  16 Q -- you were working hand-in-hand with him  17 through the spring and summer of 2019 to develop not  18 only the long-term incentive plan that became the  19 long-term performance unit plan and presenting proposals  20 to the board and developing them in, you know, a all-out  21 push effort in July of 2019 to get this package of  22 proposals and concepts and plans to the board for  23 approval on July 23, were you not?  24 A Yes, I worked with him.  25 Q All right. And did you-all obtain -- did the</p>	<p style="text-align: right;">Page 67</p> <p>1 for JEA.  2 A So the board authorized us to look at what the  3 options would look like under a nongovernmental -- you  4 know, how a nongovernmental ownership structure might  5 look and what -- you know, what that path might look  6 like.  7 Q And Mr. Zahn desired that authority, did he  8 not?  9 A Correct.  10 Q Okay.  11 A There was no functional way that we could have  12 done that work without board approval. I mean, it's  13 Sunshine. I mean, there was no -- we needed so much  14 effort to do that work to actually get to an answer  15 that --  16 Q No, I know that. But Mr. Zahn wanted the  17 authority to do that work, did he not?  18 A Yes, he did.  19 Q And that was the principal focus of all that  20 effort in July, including the gathering at  21 Club Continental, was it not?  22 A Yes.  23 So I will say the gathering at  24 Club Continental was more than just the nongovernmental  25 ownership discussion. There was a lot of work done</p>
<p style="text-align: right;">Page 66</p> <p>1 board provide you with the outcomes you were seeking on  2 July 23, 2019?  3 A To authorize us to explore additional  4 scenarios related to nongovernmental ownership  5 structures.  6 Q Plus the PUP; correct?  7 A Oh, yes.  8 Q And plus a host of employment contracts?  9 A Employment contracts and -- yes.  10 Again, to answer your question specifically  11 around my observations of working with Aaron, I believe  12 from my observations of working with him that there was  13 an honest assessment done of all of the possible  14 scenarios as it related to strategic planning. I didn't  15 see a predetermined outcome as it related to the end of  16 the road there.  17 Q Did the -- were the board's decisions at the  18 July 23 meeting with respect to authorizing work to  19 reconstitute the agency in a nongovernmental fashion,  20 was that Mr. Zahn's desired objective at that meeting?  21 A The board's approval was -- I'm sorry.  22 Can you maybe repeat the question or clarify  23 it again?  24 Q Well, how about you tell me what the board did  25 on July 23 with respect to the recapitalization options</p>	<p style="text-align: right;">Page 68</p> <p>1 that -- well, it was the entire board package, right?  2 So there was a lot of work done that was related to the  3 rest of the board package at that meeting. So it was --  4 it was the whole meeting, really, yeah.  5 Q I appreciate that. But there was no other  6 component of what you were asking the board to  7 authorize, was there, in the -- what I would call the  8 bucket of JEA's future structure?  9 A No, we did, we asked them to either authorize  10 us to do the traditional utility response, which would  11 have included layoffs, rate increases, you know, other  12 cost cuts, that kind of thing, or -- because we  13 presented that plan, right -- or, you know, pursue other  14 options to try to remove the constraints.  15 Q And was it not Mr. Zahn's preferred outcome  16 that the board approve the other option to pursue other  17 structural forms to move forward?  18 A Yeah, I think it was all of our preferred  19 outcomes to not lay people off. And raise rates without  20 at least exploring those.  21 Q All right. So --  22 THE WITNESS: I'm sorry. Can we take another  23 break?  24 MR. POWELL: Sure. And, in fact, we've been  25 going -- let's go off for a minute.</p>

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<p style="text-align: right;">Page 69</p> <p>1 (Recess taken from 11:05 a.m. to 11:13 a.m.)</p> <p>2 BY MR. POWELL:</p> <p>3 Q I know we covered this a little bit, but I</p> <p>4 can't recall what you said in terms of timing here.</p> <p>5 At the time of the July 23 board meeting, do</p> <p>6 you recall being aware -- and I know it was the lawyer's</p> <p>7 problem or issues, but do you recall being aware at that</p> <p>8 time that employees would be required to purchase the</p> <p>9 performance units as opposed to them being granted to</p> <p>10 them?</p> <p>11 A Yes.</p> <p>12 Q And so the \$10 per unit figure had been</p> <p>13 arrived at prior to the July 23 board meeting?</p> <p>14 A Yeah, it was arrived at in that meeting at</p> <p>15 the -- in Orange Park at Continental Club or</p> <p>16 Club Continental?</p> <p>17 Q Club Continental?</p> <p>18 A Yeah.</p> <p>19 (Discussion off the record.)</p> <p>20 MR. POWELL: I'm going to turn this over to</p> <p>21 Ms. Harrell for some questions, and I think</p> <p>22 Ms. Teodorescu at the end will have some as well --</p> <p>23 on this topic, on this topic of the --</p> <p>24 MS. HARRELL: On the PUP.</p> <p>25 MR. POWELL: -- long-term incentive plan and</p>	<p style="text-align: right;">Page 71</p> <p>1 A No. It was -- it was around plan design and</p> <p>2 the board's policy around, you know, the overall</p> <p>3 philosophy.</p> <p>4 Q Was Towers Watson saying it doesn't have to be</p> <p>5 50th percentile?</p> <p>6 A No. They didn't have an issue with the 50th</p> <p>7 percentile. I think it was just a function of how you</p> <p>8 get there, right? So it was do you do it all at once,</p> <p>9 or do you do it over a long period of time, or do you</p> <p>10 kind of ignore long-term incentive altogether or -- you</p> <p>11 know, is it multiyear, multistep. It was that kind of a</p> <p>12 discussion that Aaron was pushing back on.</p> <p>13 BY MS. HARRELL:</p> <p>14 Q Okay. I'm going to show you what was part of</p> <p>15 the notebook at the Diamond-Salem hearings. It's hard</p> <p>16 to tell from here, but it was labeled as JEA 0306.</p> <p>17 Does that look like one of the Willis Towers</p> <p>18 documents?</p> <p>19 A This does -- yeah. So given the color scheme</p> <p>20 here, it does appear to be a Willis Towers slide,</p> <p>21 although it does say, Market data provided by JEA. So I</p> <p>22 don't know what that is, but --</p> <p>23 Q Okay. I'm going to show you another copy of</p> <p>24 that. It looks like it's a -- it looks like it's from</p> <p>25 the compensation committee. It's dated June 18th, 2019,</p>
<p style="text-align: right;">Page 70</p> <p>1 the PUP.</p> <p>2 BY MS. HARRELL:</p> <p>3 Q I believe you said earlier that Mr. Zahn was</p> <p>4 not happy with Willis Towers Watson because he wanted</p> <p>5 them to provide data, not design policy; is that a fair</p> <p>6 statement?</p> <p>7 A Again, I don't -- I don't really remember him</p> <p>8 being necessarily agitated or anything like that. He --</p> <p>9 I do remember him making a comment that he wanted them</p> <p>10 to provide the data for what is market 50th. He didn't</p> <p>11 want them to develop policy around, you know, the</p> <p>12 board's decisions.</p> <p>13 Q Okay. Do you know what kind of policies they</p> <p>14 were providing?</p> <p>15 A I think it was around recommendation -- I</p> <p>16 think there was some discussion around recommendation</p> <p>17 around how to get to, you know, market 50th, and what</p> <p>18 that looked like. Again -- but I don't really remember</p> <p>19 the specifics, I guess, around what -- what they were</p> <p>20 saying --</p> <p>21 Q Okay.</p> <p>22 A -- what Towers Watson was saying.</p> <p>23 BY MS. TEODORESCU:</p> <p>24 Q Are you basically saying there was a</p> <p>25 disagreement over the definition of the market?</p>	<p style="text-align: right;">Page 72</p> <p>1 and it's also marked as Page 32, as is JEA 0306. And it</p> <p>2 has information on it that says it was provided by</p> <p>3 Willis Towers Watson.</p> <p>4 A Right.</p> <p>5 Q So does that -- is that consistent with you</p> <p>6 looking at the color scheme on the one that's in color</p> <p>7 and it's a Willis Towers Watson document?</p> <p>8 A Yeah, again --</p> <p>9 Q Okay.</p> <p>10 A -- so this purple shading was their formatting</p> <p>11 and all that, so that's why I believe it was a Willis</p> <p>12 Towers Watson, although, again, I note that the note</p> <p>13 says, Market data provided by JEA, so ...</p> <p>14 Q Okay. And the reason I'm asking you about</p> <p>15 this other one is it also says, Note: Market data</p> <p>16 provided by JEA, and it's got Willis Towers Watson's</p> <p>17 logo and copyright on there and all that too.</p> <p>18 So why -- did you provide the market data to</p> <p>19 Willis Towers Watson at any time?</p> <p>20 A No.</p> <p>21 Q Okay. Do you know who would have provided it</p> <p>22 to them?</p> <p>23 A I don't. Maybe someone in HR.</p> <p>24 Q Okay. Do you know --</p> <p>25 A No, I wouldn't have had that data.</p>

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1 Q Okay.

2 A I mean, as part of my job, I don't really do

3 compensation, I mean, as far as individual -- individual

4 employees.

5 Q Okay.

6 A Yeah.

7 Q That makes sense.

8 Do you know if that was the data that Mr. Zahn

9 was concerned about or that he had said he wanted

10 Willis Towers Watson to provide rather than policy?

11 A He -- so I don't know about this data

12 specifically. Again, he -- the nature of the request to

13 Willis Towers Watson was what is the market 50th

14 percentile for, you know, our employees.

15 Q Okay. And why would you need to hire an

16 outside firm to get that?

17 A Because they -- that's what they do. I mean,

18 they do market compensation studies.

19 Q Okay. JEA wouldn't have that information?

20 A Not in -- I mean, I guess we could

21 theoretically do our own study somehow, but I don't know

22 how we would get that data.

23 Q Okay.

24 A Again, that's principally what they do for

25 business is market compensation studies.

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1 Q And then --

2 A And we've used them for years prior to this.

3 Q Yeah.

4 A I mean, this is a long-term kind of

5 relationship.

6 Q And so is it your understanding that once

7 Willis Towers Watson provided JEA with the data, then

8 JEA senior leadership team, direct reports to Aaron

9 Zahn, would design the policy to meet the compensation

10 goals?

11 A The board designs the policy. I mean, that

12 was completely in their arena.

13 Q Okay. Well, did the board design the PUP?

14 A Not the specific plan, no. But the board sets

15 the policy around market compensation. As the board --

16 the compensation committee's directive around how JEA

17 shall, you know, compensate employees was -- was what we

18 were operating under.

19 Q And that's done with input from senior

20 leadership; right?

21 A I guess to some degree. Again, it's -- I

22 don't know where that board policy originated. I mean,

23 it had been in place for a number of years. Aaron

24 worked with the compensation committee to update it to

25 reflect the four measures of value and sort of make some

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1 edits to that respect, but -- so I -- it goes back

2 probably before I even arrived at JEA, frankly. Yeah.

3 Q Okay. You said earlier that y'all were

4 looking at several different ways for long-term

5 incentives.

6 What other ideas were tossed out other than

7 performance units?

8 A So at one point we looked at whether or not we

9 could -- we could give employees bonds. So, again, we

10 don't have stock as a public entity, but we do have

11 bonds.

12 And so it was a question of whether or not we

13 could do something similar and design a bond that, you

14 know, had, you know, some coupon that would pay out and

15 act as compensation.

16 We did chase that down at least on a high

17 level. I don't know that we did a ton of work on it.

18 But it was pretty clear that that wasn't going to work

19 for a number of reasons. We had bond counsel look at

20 it. And so --

21 Q Do you know when that took place, when, for

22 instance, bond counsel looked at it?

23 A It was in the spring of '19, you know, kind of

24 around the same time period. April, May, somewhere in

25 there, maybe.

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1 Q Okay.

2 A I don't know exactly, but it was sometime in

3 the spring.

4 Q What were some of the other things that were

5 looked at, if you remember?

6 A Looked at time-based awards, you know, just if

7 you stay for three years, you will get a payment of X,

8 right? That was, I think, dismissed because it didn't

9 provide -- provide incentive as a -- it provided

10 incentive to stick your, you know, butt in the seat, so

11 to speak, but it didn't provide incentive to create the

12 value related to the four measures of value, you know,

13 that the board laid out in the framework.

14 Q Okay. Is there anything else you can think

15 of?

16 A Not specifically that I can recall right now.

17 Q Do you remember if the bonds, the time-based

18 awards, anything else, any of those were discussed at

19 the Club Continental meeting?

20 A No. I think by that point we had ruled out

21 those options.

22 Q Y'all -- your focus was on --

23 A On the PUPs, yeah.

24 Q I know you said the formula is simple and

25 you've got it in your head; is that correct? Is that

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1 fair to say?

2 A Again, you can -- it's numbers on the balance

3 sheet. You add them up. It's pretty -- in my

4 perspective, pretty straightforward.

5 Q If you were going to tell -- let's say I'm

6 starting a business and I want to give a long-term

7 incentive program.

8 A Yeah.

9 Q And I want to do something like the PUP that

10 was proposed. I want to use your formula.

11 How would you tell me to calculate it?

12 A So you take -- you can look at the balance

13 sheet. You can look at your net position.

14 Q Okay.

15 A You can look at the change in net position

16 over that three-year period. You look at any dividends

17 that were paid to the City in terms of the contribution,

18 and the change in dividends, so you look at the

19 contribution to the City day one versus the contribution

20 to the City, you know, year three. You add those two

21 together, and then any additional amounts paid to or

22 distributed to customers.

23 And those are the three numbers you add

24 together, and any -- you know, any amount above that

25 challenge target, 10 percent of that's the pool.

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1 Q Okay. And your challenge target was

2 10 percent above your --

3 A Current.

4 Q -- current --

5 A Yeah.

6 Q -- value?

7 A Current value.

8 Q So in three years, your goal is to --

9 A Exceed 10 percent.

10 Q -- is to get the combination of the net

11 position, the dividends to the City, and the payments to

12 customers --

13 A Higher than --

14 Q -- higher than 10 percent?

15 A Yeah. 110 percent of the, yeah, original --

16 Q Okay.

17 A -- number.

18 Q And then anything over that 110 percent gets

19 paid out as the PUP?

20 A Gets -- yeah, it would get allocated to the

21 performance units -- 10 percent of that would get

22 allocated to the performance units.

23 Q Okay. You've got two 10 percents.

24 A Yeah, I know. It's a little -- that's

25 correct. You've got two 10 percent numbers.

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1 MS. HARRELL: Okay.

2 BY MR. POWELL:

3 Q Was there any consideration given to excluding

4 any windfall from a recapitalization event as part of

5 the redemption price or value of the performance units?

6 A Not that I can recall. Again, the incentive

7 was designed to incentivize value creation, ostensibly,

8 right? To incentivize employees to maximize that

9 financial value of JEA.

10 Q Were you not principally thinking of or

11 contemplating that employees would work to improve the

12 year-to-year operations of JEA as opposed to working for

13 some difficult-to-define, unknown concept of total value

14 in the event of a recapitalization event?

15 A I'm not sure I understand the question.

16 Q Well, you have year-to-year performance and

17 you can measure that, correct, of the company?

18 A Financial statements, yes.

19 Q Excuse me, of the agency.

20 A Yes, you have financial statements that

21 measure financial performance.

22 Q And wasn't it the -- your primary thinking

23 that employees would be working to improve the bottom

24 line, so to speak, year to year with their effort, and

25 in return for that, they would be compensated or

Page 80

1 rewarded through this incentive plan at the end of each

2 performance period?

3 A Yeah, that was the concept of the plan.

4 The -- so --

5 Q Did it ever occur to you in the runup to the

6 July 23 board meeting and into the fall that you had

7 this potential windfall return through the performance

8 incentive plan that was really unrelated to an

9 employee's year-to-year performance?

10 A Well, I don't know that they're unrelated.

11 There was a lot of action that was taken by employees as

12 it related to the strategic planning that people were

13 doing. So I don't know --

14 Q Well, I agree that there were a lot of

15 employees on the 16th floor working on strategic

16 planning, but the employees that are out there fixing

17 things and making the lights stay on and the water

18 running had nothing to do with strategic planning, did

19 they?

20 A As it related to operating the utility well,

21 they sure did. I mean, you know -- and it wasn't

22 just -- I mean, I would -- I would -- I wouldn't

23 characterize the strategic planning as just being, you

24 know, SLT. There was -- you know, there was a lot of

25 people involved in a lot of aspects of this,

20 (Pages 77 to 80)

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<p style="text-align: right;">Page 81</p> <p>1 particularly on my team, far down in the organization</p> <p>2 that -- you know, on many aspects of the strategic</p> <p>3 planning exercise.</p> <p>4 And so I -- but, you know, to say that it</p> <p>5 wasn't for effort on behalf of employees, I'm not sure</p> <p>6 that's a correct characterization.</p> <p>7 Q I hear what you're saying.</p> <p>8 But you would agree that there's a more direct</p> <p>9 correlation between effort and year-to-year results than</p> <p>10 effort and the downstream value that somebody decides to</p> <p>11 pay for JEA?</p> <p>12 A It would have been a whole lot easier to focus</p> <p>13 on year-to-year results than go through the process we</p> <p>14 just went through.</p> <p>15 Q Yeah, I can hear that.</p> <p>16 So did you and Mr. Zahn at any point in the</p> <p>17 runup to July 23 and then frankly beyond until things</p> <p>18 ended have a discussion about the fact that you had this</p> <p>19 potential windfall built into the performance unit plan</p> <p>20 in the event of a recapitalization event?</p> <p>21 A I don't -- I guess -- I don't know what you</p> <p>22 mean by windfall. It was --</p> <p>23 Q Mr. Wannemacher --</p> <p>24 A -- it was known that it was going to be</p> <p>25 10 percent of anything above the challenge target.</p>	<p style="text-align: right;">Page 83</p> <p>1 pursue efforts to restructure JEA and get it out of its</p> <p>2 governmental -- out of its public sector into the</p> <p>3 private, at the same time, that if those both moved</p> <p>4 along at the same time and you had the recap event, that</p> <p>5 you would have this extreme -- this high return on a \$10</p> <p>6 performance unit? Did you have that discussion?</p> <p>7 A I don't recall having the discussion around</p> <p>8 the price of the performance unit specifically, because</p> <p>9 it wasn't an investment plan; it was a incentive plan.</p> <p>10 So there was conversation around the size of the pool</p> <p>11 being 10 percent of anything above the -- the challenge</p> <p>12 target.</p> <p>13 But again, it was speculative to know -- I</p> <p>14 don't know what that pool was, I mean, because it was --</p> <p>15 it was 10 percent. We hadn't received bids.</p> <p>16 Q So y'all never talked about carving out --</p> <p>17 making some sort of exception in the return to the --</p> <p>18 return in value on the performance units in the event of</p> <p>19 a recap event? You never talked about that?</p> <p>20 A On the price of the performance unit?</p> <p>21 Q Okay, we'll use -- okay, fine.</p> <p>22 If you want to call it that, fine. But it's</p> <p>23 the same question, isn't it?</p> <p>24 A Can you repeat the question?</p> <p>25 Q Just simply this, so are you telling me -- are</p>
<p style="text-align: right;">Page 82</p> <p>1 Q We talked earlier about a \$3,333 value per</p> <p>2 performance unit on a \$10 investment. Do you recall</p> <p>3 that?</p> <p>4 A Yes.</p> <p>5 MR. MURPHY: With a lot of assumptions.</p> <p>6 THE WITNESS: So yeah. Again, I --</p> <p>7 BY MR. POWELL:</p> <p>8 Q Well, those were your assumptions, and you</p> <p>9 provided them to me.</p> <p>10 So do you not consider 3,333 back on a \$10</p> <p>11 investment to be a windfall?</p> <p>12 A It was never -- it was never contemplated as</p> <p>13 an investment plan.</p> <p>14 Q I understand that.</p> <p>15 A It was contemplated --</p> <p>16 MR. MURPHY: Let him finish, Steve.</p> <p>17 THE WITNESS: It was contemplated as an</p> <p>18 incentive plan.</p> <p>19 BY MR. POWELL:</p> <p>20 Q I do understand that, but that wasn't my</p> <p>21 question. My question was, did you and Mr. Zahn have a</p> <p>22 discussion -- call it an aha moment -- in the runup to</p> <p>23 the July 23 board meeting that because you were pursuing</p> <p>24 dual tracks, the performance unit plan on the one hand</p> <p>25 and you were also seeking authority from the board to</p>	<p style="text-align: right;">Page 84</p> <p>1 you telling the board of directors, because when you're</p> <p>2 answering here today, that's who you're talking to.</p> <p>3 Are you telling the board of directors that</p> <p>4 you and Mr. Zahn never had a discussion about a change</p> <p>5 or modification to this performance unit plan that would</p> <p>6 have carved out that windfall in the event of a recap</p> <p>7 event that would have yielded the kinds of returns that</p> <p>8 we talked about earlier that you gave me in your</p> <p>9 analysis of the numbers?</p> <p>10 A So we didn't have a discussion -- I don't</p> <p>11 recall having a discussion around any caps, you know,</p> <p>12 prior to that July board meeting.</p> <p>13 Q All right. Do you remember coming over and</p> <p>14 meeting with the council auditors on October 31 to talk</p> <p>15 about the PUP?</p> <p>16 A Yes.</p> <p>17 Q Do you remember any discussion at that meeting</p> <p>18 about excluding the recapitalization receipts from the</p> <p>19 PUP plan payout?</p> <p>20 A I don't recall that specifically. There was</p> <p>21 some conversation around a cap at that meeting. Based</p> <p>22 on the council auditor's follow-up to that meeting,</p> <p>23 they -- you know, they had some recommendations and that</p> <p>24 kind of thing.</p> <p>25 We went back and sat down those with --</p>

21 (Pages 81 to 84)

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<p style="text-align: right;">Page 85</p> <p>1 Herschel and I sat down. We called -- we had a phone  2 call with Foley to go through them. And there was some  3 discussion around putting a cap in at that time, around  4 some of the changes that they recommended.  5 They had a number of changes. A lot of them,  6 frankly, I think were good suggestions. You know, one  7 of them was to have the -- have, you know, independent  8 auditors sign off on the calculation. We -- you know,  9 we agreed that that was a good change to make.  10 There was some work being done by Foley after  11 that as it related to, I think, those suggestions, or  12 they -- there were some takeaways that they were going  13 to look at.  14 Q After the October 31 meeting?  15 A After the October 31 meeting.  16 But at some point in the time frame between  17 the October 31 meeting and any of those changes coming  18 to fruition, OGC, you know, determined that they  19 couldn't get there from a structure standpoint of the  20 plan.  21 And again, there was -- there was lawyers  22 continuing to look at this, you know, all over the  23 place. And so ultimately the plan got pulled and so,  24 you know, those -- those changes to the documents never  25 materialized.</p>	<p style="text-align: right;">Page 87</p> <p>1 maybe there was some financial magic in it that I didn't  2 understand and you could help me with.  3 A No, there's not.  4 Q Does that sentence make any sense to you?  5 A Can you read it again?  6 Q "The decision to not implement the plan is  7 based in the incongruity of the plan's long-term nature  8 and the very real potential short-term implications of  9 the JEA's strategic planning process."  10 A I can guess, but I mean -- I can't  11 speculate -- I don't want to speculate.  12 Q All right. So let's not speculate.  13 Did you and Mr. Zahn talk about the decision  14 that he reached that is -- was communicated in this  15 November 12 memo to the General Counsel?  16 A Yeah, I think the short answer is that the  17 lawyers couldn't get comfortable with it, and so we had  18 to pull it. Again, you know, there was -- there was  19 attorneys --  20 Q Well, there's nothing in that sentence --  21 MR. MURPHY: Let him finish, Steve. He was  22 middle of his answer.  23 MR. POWELL: All right.  24 THE WITNESS: There was attorneys looking at  25 this thing, you know, all over the place. And, you</p>
<p style="text-align: right;">Page 86</p> <p>1 Q Was Mr. Zahn involved in these discussions  2 after the October 31 meeting about potential changes to  3 the plan?  4 A So Herschel and I briefed him on the  5 conversation with the council auditor and their  6 suggestions and -- and talked through some of that with  7 him. He was not on the call with Foley, I don't  8 believe. I think Pillsbury was on that call too.  9 Q Did you assist Mr. Zahn in writing his  10 November 12 letter to the General Counsel regarding the  11 plan?  12 A No.  13 Q Okay. Did you ever read it?  14 A I don't recall if I ever read -- I'm aware of  15 the letter. I don't know that I ever really read it.  16 Q Okay. I'm going to read to you a sentence  17 from that letter and see if you can explain it to me.  18 Quote: The decision to not implement the plan  19 is based in the incongruity of the plan's long-term  20 nature and the very real potential short-term  21 implications of the JEA's strategic planning process.  22 A I don't know that I can -- I'm not sure I can  23 speak for Aaron as to what that means.  24 Q I'm just trying to figure out from an English  25 language standpoint what that means. I was hoping that</p>	<p style="text-align: right;">Page 88</p> <p>1 know, we were -- we were relying on them,  2 essentially, to be able to design a plan that  3 worked and was, you know -- you know, doable under  4 our -- under our structure. And so I think  5 ultimately, you know, they couldn't figure out how  6 to get there.  7 BY MR. POWELL:  8 Q Is it fair to say that nothing was done at JEA  9 by Aaron Zahn, to your knowledge, to address this  10 potential high-value return to the performance units, as  11 we've been discussing, between the July 23 board meeting  12 and the end of October?  13 A Other than the conversation that we had based  14 on the council auditor's feedback where we did talk  15 about, you know, their comments, including the cap,  16 those -- that was really the only conversation --  17 frankly, there wasn't a whole lot of conversation that I  18 can recall between the July board meeting and the  19 council auditor's questions.  20 Q Well, thank you. You've reminded me of  21 another thing I wanted to understand.  22 So were you aware of the intent of Mr. Zahn to  23 brief the members of the senior leadership team  24 one-on-one about the performance unit plan to explain it  25 after the board approved it on July 23?</p>

22 (Pages 85 to 88)

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<p style="text-align: right;">Page 89</p> <p>1 A I don't think so. I don't recall.</p> <p>2 Q You and Mr. Zahn never talked about the need</p> <p>3 to educate the members of the senior leadership team on</p> <p>4 how the performance unit plan was going to work?</p> <p>5 A There was -- it wasn't -- I don't recall it</p> <p>6 being specific to the senior leadership team. There</p> <p>7 was -- there was some discussion around -- it's a little</p> <p>8 bit fuzzy.</p> <p>9 I do remember there was some discussion around</p> <p>10 how you explain this to employees and, you know, what</p> <p>11 steps does that look like broadly. Again, I don't</p> <p>12 remember it being specific to SLT members.</p> <p>13 But as far as I know, our communications folks</p> <p>14 really kind of handled that. They were working on some</p> <p>15 employee communication plans around, you know,</p> <p>16 explaining it.</p> <p>17 Q Because my understanding is correct, is it</p> <p>18 not, that the individual members of the senior</p> <p>19 leadership team and what we've talked about being that</p> <p>20 second tier level of members were not educated along the</p> <p>21 way on the development of the performance unit plan?</p> <p>22 A I think that's correct.</p> <p>23 Q All right. So your upper tier -- are you</p> <p>24 telling me that your upper tier -- you and Mr. Zahn and</p> <p>25 Mr. Vinyard and Ms. Dykes -- never talked about the fact</p>	<p style="text-align: right;">Page 91</p> <p>1 Q Did you ever have any discussions with</p> <p>2 Mr. Zahn or -- let's just say with Mr. Zahn for the</p> <p>3 moment, about the number of shares that members of the</p> <p>4 senior leadership -- I'm sorry -- number of units that</p> <p>5 the members of the senior leadership team would be</p> <p>6 entitled to purchase?</p> <p>7 A No.</p> <p>8 Q Did you ever have any discussions with anybody</p> <p>9 inside JEA about the number of shares that members of</p> <p>10 the senior leadership team -- units -- excuse me --</p> <p>11 would be allowed to purchase?</p> <p>12 A No.</p> <p>13 Q Any discussions outside of JEA on that topic?</p> <p>14 A No.</p> <p>15 Q Up to and including when the plug was pulled</p> <p>16 on the plan; is that right?</p> <p>17 A I know Aaron was working on allocations, but</p> <p>18 he never shared the information with me.</p> <p>19 Q Okay. How do you -- if you could elaborate.</p> <p>20 How do you know he was working on allocations, and what</p> <p>21 does that mean? What do you mean by that?</p> <p>22 A He was working on allocating the performance</p> <p>23 units to -- you know, what his recommendation would be</p> <p>24 as it related to those performance units.</p> <p>25 Q How do you know that?</p>
<p style="text-align: right;">Page 90</p> <p>1 that as you're going to move forward and roll this plan</p> <p>2 out that it wouldn't be important to at least make sure</p> <p>3 that the second-tier level of senior management</p> <p>4 understood this plan so that they could respond to folks</p> <p>5 sending questions up their way?</p> <p>6 A Again, I think it was part of the overall</p> <p>7 communication plan with employees.</p> <p>8 And by the way, I need to correct. Our HR --</p> <p>9 you know, Jon Kendrick, our chief HR officer, and Angie</p> <p>10 Hiers, before Jon -- Angie left somewhere in the middle</p> <p>11 here of this -- they were aware of the program. And</p> <p>12 that HR role is -- was part of that SLT, so ...</p> <p>13 And also, Kerri Stewart was aware. She worked</p> <p>14 on the -- she was our communications person, so she was</p> <p>15 working on the communications elements.</p> <p>16 And Lynne Rhode with OGC was obviously heavily</p> <p>17 involved in the legal elements of it and, you know, that</p> <p>18 whole part of it.</p> <p>19 Q But suffice it to say, you don't know whether</p> <p>20 Mr. Zahn intended to go around and have a meeting</p> <p>21 one-on-one with each member of the team to bring them up</p> <p>22 to speed after the board action?</p> <p>23 A Individually?</p> <p>24 Q Yes.</p> <p>25 A No, I don't know if he intended to do that.</p>	<p style="text-align: right;">Page 92</p> <p>1 A Because he told me. And he asked for a list</p> <p>2 of employees from Melissa. He was -- again, he asked</p> <p>3 for -- I'm trying to think what else he asked for.</p> <p>4 He asked for employees and their rating --</p> <p>5 performance ratings and rankings. It was after -- it</p> <p>6 was right around the same time it got pulled is when all</p> <p>7 this was happening.</p> <p>8 Q When it got pulled?</p> <p>9 A When the -- when the program got pulled. We</p> <p>10 had just finished our end-of-year performance reviews.</p> <p>11 He communicated that he planned to in some way factor</p> <p>12 performance rating and ranking into the allocations.</p> <p>13 But again, he never shared those allocations with me or,</p> <p>14 to my knowledge, with anyone.</p> <p>15 Q As the chief financial officer -- and I know</p> <p>16 that you weren't going to be administering the plan.</p> <p>17 But as chief financial officer, as you're moving into</p> <p>18 late October, you were aware, were you not, that the</p> <p>19 goal was to launch this plan in December; yes?</p> <p>20 A Yes.</p> <p>21 Q At any point up to the point where -- I mean,</p> <p>22 you understood that Mr. Zahn was working on allocations,</p> <p>23 did it -- did it occur to you that this really needed to</p> <p>24 get done and there needed to be clarity so that this</p> <p>25 plan could actually be implemented on schedule?</p>

23 (Pages 89 to 92)

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<p style="text-align: right;">Page 93</p> <p>1 A Yeah, there was a lot of wood to chop on  2 getting it to where it could be implemented in December,  3 again, particularly around the legal work. As we -- as  4 we moved in and they were -- they were still making  5 changes to the documents, they were -- I believe they  6 had asked the State Attorney General for an advisory  7 opinion at that point. There was a discussion around  8 then asking the State ethics office for an opinion.  9 The -- so I think there was a -- there was  10 a -- there was a goal to try to get it done in December  11 because you had to. It was -- it was structured as a  12 deferred compensation program, so you had to make the  13 deferral the year before.  14 But to my knowledge, they weren't going to do  15 anything until they got all the legal boxes checked.  16 Q All right. Well, I'm looking at a email dated  17 October 3, 2019, from Lynne Rhode to Jessica Lutrin.  18 It's JEA document 0666 in the Diamond-Salem package.  19 "Kevin and Jessica, attached are the" -- all  20 caps -- "final versions of the plan and the plan  21 agreement."  22 And you can see the attachments, JEA form of  23 long-term performance unit agreement as revised, final.  24 JEA long-term performance unit plan as revised, final.  25 "Going out October 3. It's -- the plan is</p>	<p style="text-align: right;">Page 95</p> <p>1 seen.  2 MR. POWELL: I'm just looking at -- I just  3 read the email. I don't have the attachment.  4 BY MR. POWELL:  5 Q I'm just asking you, how can there be a final  6 version of the plan if the allocation of the units  7 hasn't been determined?  8 A Well, it's two separate things. The plan is  9 the legal documents. The operation -- or, you know,  10 administration of the plan is a separate, you know,  11 item.  12 Q Okay. So the plan might have said the units  13 will be allocated by the plan administrator? I mean,  14 that may be the answer to that; yes?  15 A I don't know what the plan said specifically.  16 But the plan was the framework for the plan. The  17 implementation is a separate work product.  18 Q All right. Would -- were you aware that as  19 far as Lynne Rhode was concerned, the plan was done as  20 of October 3?  21 A Not that -- not that I can recall. And the  22 reason I say that is because there was a lot of  23 conversation about like Attorney General opinion and --  24 like there was a lot of stuff still going on.  25 So I'm a little confused by you reading that</p>
<p style="text-align: right;">Page 94</p> <p>1 done October 3. Legal is finished."  2 So no discussions even at that point through  3 the end of October until the time when the plan was  4 pulled, you had no discussions with Mr. Zahn about  5 allocations of the units?  6 A As I said, I know that he was working on the  7 allocations of the units. I asked him for the  8 spreadsheet. He said he was working on it, and he  9 wasn't providing it.  10 Q Did he -- do you know that he actually  11 prepared a spreadsheet, that something -- that a  12 spreadsheet actually exists?  13 A So I have to assume there's something, but  14 it's an assumption. Again, I -- he was working on it.  15 He asked for employee, you know, lists from Melissa.  16 And I believe -- again, I believe he asked for the  17 ratings and rankings -- you know, performance ratings  18 and rankings and all that, bargaining units and all that  19 information. So he was working on something.  20 Q How could there be a final version of the plan  21 if the allocation of units had not been determined?  22 A Well --  23 MR. MURPHY: Calls for a legal conclusion.  24 You want to show him the document too? You're just  25 reading from something that he hasn't presumably</p>	<p style="text-align: right;">Page 96</p> <p>1 email, I guess. I don't -- again, I wasn't part of that  2 email. I mean, you'd have to ask Lynne as to what  3 she --  4 Q I grant you that, you're not copied here.  5 A Yeah. Yeah, you'd have to ask Lynne as to  6 what she meant by that.  7 But there was a lot of work that was, from my  8 perception, still going on related to making sure we,  9 you know, did all the legal work around it.  10 Q Okay. What would you have had to have done as  11 CFO? What -- would you have had a role in the rollout  12 of this plan?  13 A I don't know. I don't know what my role  14 necessarily would have been, specifically. It would  15 have been to calculate the -- you know, as designed in  16 the document, I would have had to calculate the starting  17 point based on the audited financials as those came in  18 in December. And we would have set the challenge target  19 based on those, you know, which would have been the 10  20 percent, you know, higher number. And I think that  21 really would have been my principal role in that.  22 MR. POWELL: Okay. Well, that does get us to  23 a breaking point, as far as I'm concerned --  24 MR. MURPHY: Sure.  25 MR. POWELL: -- at noon. And so let's take a</p>

24 (Pages 93 to 96)



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1 break for now if we can.

2 THE WITNESS: Okay.

3 MR. POWELL: And rather than rush too hard,

4 why don't we target 1:15 and --

5 MR. MURPHY: Let's just do 1:00. I think an

6 hour's long enough for lunch.

7 MR. POWELL: Well, let's --

8 MR. MURPHY: I know how you work at the City,

9 but an hour's fine with us.

10 MR. POWELL: Well, I need until 1:15. So

11 we'll --

12 MR. MURPHY: Okay.

13 MR. POWELL: -- come back here at 1:15.

14 (Recess taken from 12:00 p.m. to 1:10 p.m.)

15 BY MR. POWELL:

16 Q Mr. Wannemacher, I just have, I hope, a few

17 short questions, and then I'm going to turn it over to

18 Ms. Harrell for some questions.

19 So we had talked kind of early in our

20 discussion, you went through the -- back in the

21 napkin-type calculation of a sale at -- I think it was 8

22 or 9 billion, and you ended up with \$100 million in the

23 plan to be paid out.

24 Do you remember that discussion?

25 A Yes.

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1 Q At some point within the -- you know, in

2 October or November, did you also do a calculation that

3 arrived at \$60 million that would be available to be

4 paid out in the plan?

5 A In October or November?

6 Q Or even prior to that.

7 Did you ever do a calculation that resulted in

8 a plan pool of \$60 million?

9 A I don't recall.

10 Q Okay. Harking back to the document, the slide

11 from Willis Towers Watson that was in the June 2019

12 compensation committee presentation that's JEA Number

13 0305 -- and we'll copy this and attach it because we've

14 referred to it a couple of times.

15 And this was the one that had the \$3.4 million

16 annual at the bottom.

17 Recall also that it had a maximum 150 percent

18 of target on it. Was that effectively a cap on the --

19 on the payout?

20 A So I don't recall talking to Towers Watson

21 about this slide, so I couldn't answer that. I mean,

22 I --

23 Q Well, I mean --

24 A -- from looking at the slide, yes, I think

25 that that --

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1 Q Because it has a payout range.

2 A Right.

3 So I think from looking at what's noted on the

4 slide, I agree that that seems to suggest they're

5 suggesting a cap.

6 Q All right. And in the plan that was presented

7 to and approved by the board in July of 2019, there was

8 no cap on the plan; is that correct?

9 A That's correct.

10 Q Do you know why there was no cap on the plan?

11 A I do not.

12 Q Did you and Mr. Zahn discuss whether -- in

13 advance of the July 23 meeting, whether there should be

14 a cap on the plan?

15 A I don't recall. I do recall having a

16 conversation with him about the cap in October after the

17 council auditor's suggestions.

18 (Exhibit Number 2 was marked for

19 identification.)

20 BY MR. POWELL:

21 Q Okay. You were present at the Diamond-Salem

22 hearing on December 16, City Council; correct?

23 A Correct.

24 Q At that hearing, in response to questions from

25 Councilman Salem regarding the -- this very issue, the

Page 100

1 3.4 million and the cap, in response to Councilman

2 Salem, you know, there was a back and forth about the

3 plan and approval and so on.

4 At the 1:03:50 mark in the hearing, Mr. Zahn

5 refers to an error in judgment that the board --

6 referring to the board also considering the recap at the

7 same time that it considered the PUP plan, correct, in

8 July?

9 A Sorry. I don't understand the question.

10 Q Well, there's no question yet.

11 He refers to the board having considered the

12 recapitalization option or restructuring option that we

13 talked about at the July meeting at the same time that

14 you-all were presenting the PUP plan for approval;

15 correct?

16 A They were presented at the same board meeting,

17 yes.

18 Q And he says: There was a lot going on at that

19 time. And then, quote: The long-term nature of the

20 plan had short-term implications. And he says that he

21 as CEO should have pulled back the PUP and recommended

22 it not be approved at that time and come back with a

23 final plan later.

24 Do you recall him saying that?

25 A In the meeting?

25 (Pages 97 to 100)

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<p style="text-align: right;">Page 101</p> <p>1 Q Yes.</p> <p>2 MR. MURPHY: You mean --</p> <p>3 THE WITNESS: At the -- at the --</p> <p>4 MR. MURPHY: At the --</p> <p>5 (Simultaneous crosstalk.)</p> <p>6 MR. POWELL: At the Diamond-Salem hearing,</p> <p>7 yes.</p> <p>8 MR. MURPHY: You mean the City Council</p> <p>9 meeting?</p> <p>10 MR. POWELL: Yes.</p> <p>11 MR. MURPHY: Okay. I didn't know -- I didn't</p> <p>12 know you refer to that as a two-commissioner</p> <p>13 meeting. Is it a council meeting or --</p> <p>14 BY MR. POWELL:</p> <p>15 Q It was the Diamond-Salem hearing. You were</p> <p>16 there where --</p> <p>17 A I know the meeting you're referring to, yeah.</p> <p>18 I don't recall --</p> <p>19 Q Sent your attorney the link to watch it</p> <p>20 yesterday. Okay.</p> <p>21 A Yeah.</p> <p>22 MR. MURPHY: That's what you're referring to?</p> <p>23 THE WITNESS: I don't recall Aaron's specific</p> <p>24 comments at that meeting.</p> <p>25</p>	<p style="text-align: right;">Page 103</p> <p>1 as a transcription. This is not a transcription.</p> <p>2 Those are handwritten notes by some person that</p> <p>3 created them later.</p> <p>4 MR. POWELL: Okay.</p> <p>5 MR. MURPHY: So let the record reflect that</p> <p>6 you misrepresented what you were reading from.</p> <p>7 MR. POWELL: It was our transcription of the</p> <p>8 minutes. All right.</p> <p>9 MR. MURPHY: It's not --</p> <p>10 MR. POWELL: I don't know why you're behaving</p> <p>11 as you are, Counselor. Here's the --</p> <p>12 MR. MURPHY: You're asking questions that are</p> <p>13 inappropriate --</p> <p>14 MR. POWELL: -- question -- here's the</p> <p>15 question, Mr. Wannemacher, do you agree --</p> <p>16 MR. MURPHY: And you're essentially bullying</p> <p>17 him into certain answers that aren't accurate.</p> <p>18 BY MR. POWELL:</p> <p>19 Q Are you feeling bullied, sir?</p> <p>20 A I don't understand --</p> <p>21 Q That's all I'm asking. If you don't</p> <p>22 understand my question, tell me. I'll start over.</p> <p>23 A Yeah.</p> <p>24 Q My simple question is this, do you think that</p> <p>25 the PUP proposal should have been pulled back from the</p>
<p style="text-align: right;">Page 102</p> <p>1 BY MR. POWELL:</p> <p>2 Q Sitting here today, what is your reaction</p> <p>3 to -- assuming that this is true, and I'm going to</p> <p>4 represent to you that we transcribed it as accurately as</p> <p>5 we could -- that he told that hearing that the long-term</p> <p>6 nature of the plan had short-term implications and that,</p> <p>7 I guess in retrospect, he should have pulled the PUP</p> <p>8 back at that time and not have it approved at the time</p> <p>9 of the other proposals.</p> <p>10 Do you have a reaction to that statement by</p> <p>11 Mr. Zahn?</p> <p>12 A No.</p> <p>13 Q As the CFO and as somebody who was intimately</p> <p>14 involved in developing this plan, do you agree with</p> <p>15 that?</p> <p>16 A That it should --</p> <p>17 Can I see the statement, please?</p> <p>18 Q (Tenders.) It's right here. And I have a</p> <p>19 note when he reached that conclusion, but (indicates).</p> <p>20 MR. MURPHY: This is --</p> <p>21 MR. POWELL: Okay.</p> <p>22 MR. MURPHY: Just for the record, this is not</p> <p>23 a transcription. Just to --</p> <p>24 MR. POWELL: Okay.</p> <p>25 MR. MURPHY: -- be clear, you represented this</p>	<p style="text-align: right;">Page 104</p> <p>1 board at the July 23 meeting because you were also</p> <p>2 asking the board to consider the other restructuring</p> <p>3 option that we've talked about?</p> <p>4 That's it. You don't need to read anything to</p> <p>5 answer that question.</p> <p>6 A I think in hindsight, there's probably a</p> <p>7 number of things that we would have done differently.</p> <p>8 Q All right. Did you ever discuss with Mr. Zahn</p> <p>9 his second thoughts on the timing and the presentation</p> <p>10 to the board on -- in July of 2019?</p> <p>11 A Prior to July of 2019?</p> <p>12 Q No, subsequent to it. And frankly, before</p> <p>13 this meeting that was chaired by Council Members Diamond</p> <p>14 and Salem.</p> <p>15 A I did not talk to him about it before</p> <p>16 July of 2019. I don't recall -- I don't recall any</p> <p>17 conversations that we had up to that meeting</p> <p>18 specifically, no.</p> <p>19 Q All right. And that was sort of a natural</p> <p>20 follow-on to the -- to my question. Did you have any</p> <p>21 meetings with Mr. Zahn to prepare for the December 16</p> <p>22 meeting -- public meeting that was chaired by Council</p> <p>23 Members Diamond and Salem?</p> <p>24 A Unfortunately, not really. So we were -- I</p> <p>25 was frankly completely unprepared for that meeting.</p>

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<p style="text-align: right;">Page 105</p> <p>1 I -- the first time I saw the documents was when I</p> <p>2 walked into that meeting.</p> <p>3 And so there was a meeting that was scheduled</p> <p>4 where we did get together the weekend before, and it was</p> <p>5 at that time that we became aware of the conversations</p> <p>6 around the board getting ready to fire Aaron. That</p> <p>7 was -- it was the weekend before the -- I think it was</p> <p>8 the Sunday, Saturday or Sunday, before that board</p> <p>9 meeting on -- the Tuesday that he was -- that he was --</p> <p>10 that he was let go.</p> <p>11 So you had the weekend, and then you had the</p> <p>12 Diamond-Salem meeting on Monday, and then the board</p> <p>13 meeting was on Tuesday.</p> <p>14 That was -- I think it was the intent -- the</p> <p>15 intended purpose of that meeting was to kind of get</p> <p>16 together and chat about the hearing, but it got</p> <p>17 sidetracked pretty quickly with the news of Aaron.</p> <p>18 Melissa ended up leaving because she was a</p> <p>19 little bit shaken, and, you know, it just -- it never</p> <p>20 really -- frankly, it never really amounted to much of a</p> <p>21 conversation.</p> <p>22 Q Okay. So you did not get with him and prepare</p> <p>23 for the meeting, other than --</p> <p>24 A Other than that, that's correct, yeah.</p> <p>25 Q Do you know -- and I think I did ask you</p>	<p style="text-align: right;">Page 107</p> <p>1 for a fact.</p> <p>2 Q Okay. Were these meetings in the budget?</p> <p>3 Were these budgeted expenses?</p> <p>4 A So we don't budget down to like line item -- I</p> <p>5 mean, you know, we wouldn't budget like to that level of</p> <p>6 granularity.</p> <p>7 We have a \$1.8 billion annual budget, so --</p> <p>8 but yes, they were within the budget that was approved</p> <p>9 by the City Council as far as the authorized, you know,</p> <p>10 appropriations. They were within that 1.8 billion.</p> <p>11 Q Well, I'm sure that's true. But obviously</p> <p>12 within the 1.8 billion, you have a more detailed budget,</p> <p>13 do you not?</p> <p>14 A We do, but not to that level of detail.</p> <p>15 Q Well, I can appreciate that. But where --</p> <p>16 what account would expenses for meetings like this be</p> <p>17 paid out of? You are the CFO.</p> <p>18 A It would probably be in Aaron's cost center.</p> <p>19 Q And do you know whether the total expenses for</p> <p>20 these four meetings, April 4, June 11, August 19 and 20,</p> <p>21 were within his cost center budget as approved by City</p> <p>22 Council?</p> <p>23 A I don't know.</p> <p>24 Q Okay. Same question with respect to the costs</p> <p>25 of the Club Continental meeting in July?</p>
<p style="text-align: right;">Page 106</p> <p>1 whether you had talked to Mr. Zahn about his rethinking</p> <p>2 of the timing of the presentation of the PUP to the</p> <p>3 board, and you're saying you don't remember talking to</p> <p>4 him about that before the hearing here?</p> <p>5 A I don't recall before the hearing. And I'm --</p> <p>6 and I'm pretty sure that we didn't talk about it before</p> <p>7 July.</p> <p>8 Q So if he had reached that second thought place</p> <p>9 in his mind, you don't know when he reached that</p> <p>10 conclusion?</p> <p>11 A I do not.</p> <p>12 Q I'm aware of -- we -- we are aware of four</p> <p>13 off-site meetings at Ponte Vedra in 2019 to work on what</p> <p>14 I'm going to globally call the strategic plan and</p> <p>15 long-term incentive plans and such; recapitalization,</p> <p>16 restructuring of JEA, all of that stuff; correct?</p> <p>17 A Yes, everything that was encompassed in the</p> <p>18 strategic planning process generally was discussed in</p> <p>19 those off-sites.</p> <p>20 Q Just out of curiosity, why the need to meet</p> <p>21 off-site with your senior leadership team to do this</p> <p>22 work?</p> <p>23 A I don't know. It wasn't my decision.</p> <p>24 Q Whose decision was it?</p> <p>25 A I assume it was Aaron's, but I don't know that</p>	<p style="text-align: right;">Page 108</p> <p>1 A So I believe that was -- I believe Foley</p> <p>2 booked that, maybe, and billed it through as a -- you</p> <p>3 know, on their invoice, you know, as far as --</p> <p>4 Q Yes, I used to work in a private firm.</p> <p>5 A Does that make sense?</p> <p>6 Q Sure.</p> <p>7 A So I believe Foley billed that through, and</p> <p>8 that would have hit our legal -- it's professional</p> <p>9 services. I mean, there's a broad bucket of</p> <p>10 professional services.</p> <p>11 Q All right. Speaking of outside expenses</p> <p>12 through the law firms, are you aware of a second</p> <p>13 contract that McKinsey entered into with Pillsbury to</p> <p>14 provide services associated with the strategic planning</p> <p>15 process?</p> <p>16 A I know that -- yes, I'm aware of it. I don't</p> <p>17 know the details of it. I didn't negotiate that</p> <p>18 contract.</p> <p>19 Shawn Eads worked with McKinsey. He was kind</p> <p>20 of the McKinsey, I don't know, liaison, if you will, in</p> <p>21 terms of the -- that relationship, so he would probably</p> <p>22 have been much more intimately familiar with it than I</p> <p>23 was.</p> <p>24 Q All right. But to be clear, JEA entered into</p> <p>25 a contract with McKinsey to work on the strategic</p>

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<p style="text-align: right;">Page 109</p> <p>1 planning; correct?</p> <p>2 A Uh-huh.</p> <p>3 Q And do you recall that there were a couple of</p> <p>4 amendments to that?</p> <p>5 A I believe there were, yeah. I don't -- I</p> <p>6 don't know the specifics of it, because I think it was</p> <p>7 pretty narrowly focused at the very beginning, and then</p> <p>8 I think as the strategic planning process progressed,</p> <p>9 there were probably some needs for changes.</p> <p>10 Q Do you recall what the maximum authorized</p> <p>11 amount of that contract was through May of 2019?</p> <p>12 A I do not.</p> <p>13 Q Would it surprise you that it was slightly in</p> <p>14 excess of \$1 million?</p> <p>15 A No.</p> <p>16 Q Okay. The billing by Pillsbury to McKinsey in</p> <p>17 late August and September of 2019 -- there may be more,</p> <p>18 but I've seen two billings of \$100,000 where those</p> <p>19 charges are being passed back to JEA through Pillsbury.</p> <p>20 Do you know what it was McKinsey was doing for</p> <p>21 Pillsbury when it came to the strategic planning</p> <p>22 process?</p> <p>23 A McKinsey was working on our behalf. The</p> <p>24 contracting was through Pillsbury as a subcontractor.</p> <p>25 But McKinsey was working on our behalf. I don't know if</p>	<p style="text-align: right;">Page 111</p> <p>1 summit?</p> <p>2 A I don't recall that, no.</p> <p>3 Q Don't have any recollection of that being</p> <p>4 passed over to the Jacksonville Chamber of Commerce to</p> <p>5 pay and then rebill JEA?</p> <p>6 A No.</p> <p>7 Q Okay.</p> <p>8 A I was pretty -- I don't think I was really</p> <p>9 involved in that innovation summit planning in any real</p> <p>10 material capacity.</p> <p>11 Q I'm simply asking as the --</p> <p>12 A Yeah.</p> <p>13 Q -- CFO and whether something like that would</p> <p>14 come to your attention if it was a special --</p> <p>15 A Yeah.</p> <p>16 Q -- discrete bill of that nature.</p> <p>17 A No. Generally something that size would not</p> <p>18 rise to -- you know, on an individual basis.</p> <p>19 Q Do you have any recollection of JEA</p> <p>20 contracting with Deno Hicks to provide consulting</p> <p>21 services for the innovation summit?</p> <p>22 A No.</p> <p>23 Q Are you familiar with a monthly stipend that</p> <p>24 was contracted to -- for with Susie Wiles to provide</p> <p>25 consulting services during Mr. Zahn's tenure?</p>
<p style="text-align: right;">Page 110</p> <p>1 they were performing additional work for Pillsbury</p> <p>2 outside of that, that, you know --</p> <p>3 Q Well, JEA was being billed for it if they</p> <p>4 were. So that's my question, why was it necessary for</p> <p>5 there to be a contractual relationship between Pillsbury</p> <p>6 and McKinsey following on the million-dollar-plus</p> <p>7 contract that JEA had with McKinsey for strategic</p> <p>8 planning? Do you have any --</p> <p>9 A I don't know.</p> <p>10 Q -- idea? All right.</p> <p>11 A Yeah, I don't know.</p> <p>12 Q Are you familiar with the innovation summit</p> <p>13 that took place back in 2018?</p> <p>14 A Uh-huh. Yes.</p> <p>15 Q Do you recall the date of that event?</p> <p>16 A I don't recall the date. It was sometime in</p> <p>17 the fall is my recollection.</p> <p>18 Q Do you recall a consulting bill having been</p> <p>19 presented to JEA by Deno Hicks for services associated</p> <p>20 with that -- the planning for that work, for that</p> <p>21 summit?</p> <p>22 A I don't recall that.</p> <p>23 Q So you don't have a recollection of being</p> <p>24 presented with a consulting -- a bill to pay Deno Hicks</p> <p>25 for \$25,000 of consulting services for the innovation</p>	<p style="text-align: right;">Page 112</p> <p>1 A I'm aware that Susie performed some work for</p> <p>2 us. I don't -- I don't recall what she was paid,</p> <p>3 necessarily.</p> <p>4 Q All right. Is there a maximum amount that</p> <p>5 someone could be paid for such services within the</p> <p>6 procurement rules at JEA on an annual basis?</p> <p>7 A Not specifically. It depends on the nature of</p> <p>8 the contract, how it was awarded. I mean, there's --</p> <p>9 it's subject to the P code.</p> <p>10 Q All right. Do you have any recollection of a</p> <p>11 consulting agreement with Susie Wiles hitting the</p> <p>12 ceiling, so to speak, necessitating the need to pay her</p> <p>13 for her services via invoice to Holland &amp; Knight?</p> <p>14 A No.</p> <p>15 Q Where would I find those records, if they</p> <p>16 exist at JEA?</p> <p>17 A The records of having to -- what, I guess?</p> <p>18 Q Well, to pay an invoice from Holland &amp; Knight</p> <p>19 for Susie Wiles' services for JEA, to be specific.</p> <p>20 A So she was working on plant Vogtle litigation.</p> <p>21 So she was helping us with -- specifically in Washington</p> <p>22 with the Department of Energy around trying to, you</p> <p>23 know, come to some kind of resolution on our plant</p> <p>24 Vogtle dispute.</p> <p>25 And so my assumption would be that the reason</p>

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<p style="text-align: right;">Page 113</p> <p>1 that she was paid through Holland &amp; Knight in that</p> <p>2 instance was because that's what she was doing.</p> <p>3 Q Do you recall being directed by Mr. Zahn to</p> <p>4 approve payment of an invoice to Holland &amp; Knight for</p> <p>5 Susie Wiles' services?</p> <p>6 A I don't recall being directed by Aaron to do</p> <p>7 that, but legal invoices would typically come to me. I</p> <p>8 would see them.</p> <p>9 They ran through OGC first, and typically the</p> <p>10 OGC attorney reviewed it with -- reviewed the</p> <p>11 documentation and the invoice and all that and provide</p> <p>12 sign-off as far as the validity of the expenses and --</p> <p>13 that those services were indeed received.</p> <p>14 And then it would also come to me for, you</p> <p>15 know, kind of a check clearance.</p> <p>16 Q Did you work closely enough with Mr. Zahn that</p> <p>17 you would recognize his hand notes on a -- on a typed</p> <p>18 document?</p> <p>19 A I don't know. I've seen his handwriting</p> <p>20 before. I don't know that I could -- I'm not a</p> <p>21 handwriting expert. So I'm not sure that I could stand</p> <p>22 here and definitively tell you what is or is not his</p> <p>23 handwriting.</p> <p>24 Q All right. I'm going to show you a document</p> <p>25 and -- that's got some hand notes on it. And my simple</p>	<p style="text-align: right;">Page 115</p> <p>1 question because you're not a handwriting expert. Is</p> <p>2 that what you're saying?</p> <p>3 MR. MURPHY: That's not fair.</p> <p>4 BY MR. POWELL:</p> <p>5 Q Is that your answer?</p> <p>6 A I can't definitively say whether or not those</p> <p>7 are his notes based on handwriting. I mean, that</p> <p>8 doesn't --</p> <p>9 Q Well, that's a different answer. And I</p> <p>10 appreciate that.</p> <p>11 A But that's -- but that's what you asked me, is</p> <p>12 whether or not I could definitively say if those are his</p> <p>13 notes based on the handwriting.</p> <p>14 Q I don't think I used the word "definitive."</p> <p>15 You used the word "definitive."</p> <p>16 You don't -- you don't -- you can't tell</p> <p>17 whether those are Mr. Zahn's notes? It's just a simple</p> <p>18 question.</p> <p>19 A I cannot tell --</p> <p>20 Q Okay.</p> <p>21 A -- definitively if those are his notes.</p> <p>22 BY MS. HARRELL:</p> <p>23 Q Does the handwriting look familiar to you?</p> <p>24 A Again, I -- so -- I don't know -- look, again</p> <p>25 I can't say definitively whether or not it's his. I --</p>
<p style="text-align: right;">Page 114</p> <p>1 question is whether you recognize these notes to be by</p> <p>2 Aaron Zahn.</p> <p>3 A Okay.</p> <p>4 Again, I'm not a handwriting expert, so I</p> <p>5 don't think that I can definitively say whether or not</p> <p>6 these were written by Mr. Zahn.</p> <p>7 Q All right. Do you think -- do those appear to</p> <p>8 be Aaron Zahn's notes?</p> <p>9 MR. MURPHY: It calls for speculation. He's</p> <p>10 not a handwriting expert. Come on.</p> <p>11 MR. POWELL: This is an evidentiary thing.</p> <p>12 BY MR. POWELL:</p> <p>13 Q I'm just asking you, you've seen the man. You</p> <p>14 worked with the man. I'm showing you notes. And you</p> <p>15 won't -- and you're going to lay it off on not being a</p> <p>16 handwriting expert?</p> <p>17 MR. MURPHY: He's answered the question. Move</p> <p>18 on.</p> <p>19 BY MR. POWELL:</p> <p>20 Q Be a lay opinion. Be a lay witness. Do those</p> <p>21 look like notes made by Aaron Zahn? It's just a simple</p> <p>22 question.</p> <p>23 A Again, I am not a handwriting expert. I</p> <p>24 can't -- this is a --</p> <p>25 Q All right. You don't want to answer the</p>	<p style="text-align: right;">Page 116</p> <p>1 Q I'm not asking you if it's definitive.</p> <p>2 Does the handwriting look familiar to you?</p> <p>3 A So I will say in the context of this document</p> <p>4 that you're showing me here and given these goals, I</p> <p>5 would say that it could have been written by either</p> <p>6 Melissa Charleroy, whose name is at the top, or Aaron.</p> <p>7 BY MR. POWELL:</p> <p>8 Q Thank you. I appreciate it.</p> <p>9 Do you know anything about a wife grade being</p> <p>10 incorporated into Melissa Charleroy's performance</p> <p>11 objectives by Mr. Zahn?</p> <p>12 A I had no input into Melissa Charleroy's --</p> <p>13 Q That's not the question.</p> <p>14 A No.</p> <p>15 Q Did Mr. Zahn discuss with you -- did he ever</p> <p>16 talk to you about the fact that one of his criteria for</p> <p>17 grading Melissa Charleroy's performance was his family</p> <p>18 balance and that she was going to get a grade for how</p> <p>19 satisfied his wife was with her job performance?</p> <p>20 A I don't recall having that conversation</p> <p>21 specifically, no.</p> <p>22 Q Okay. I appreciate it.</p> <p>23 A No.</p> <p>24 MR. POWELL: Okay.</p> <p>25</p>

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<p style="text-align: right;">Page 117</p> <p>1 BY MS. HARRELL:</p> <p>2 Q I'm going to ask some follow-up questions on</p> <p>3 what Steve asked, just some general follow-up --</p> <p>4 A Yeah.</p> <p>5 Q -- then I have some -- need to introduce a new</p> <p>6 topic.</p> <p>7 Were you given any printed materials at the</p> <p>8 Club Continental meeting?</p> <p>9 A There were some drafts of -- draft documents</p> <p>10 that were -- that were provided related to the board</p> <p>11 materials.</p> <p>12 Q Okay.</p> <p>13 A We had a draft of the -- we began working on</p> <p>14 the invitation to negotiate, you know, documentation and</p> <p>15 some of that stuff. And so there were some drafts of</p> <p>16 that information that was going around.</p> <p>17 Q Okay. Were there drafts of employment</p> <p>18 agreements?</p> <p>19 A I believe so.</p> <p>20 Q Do you remember discussing employment</p> <p>21 agreements at that meeting?</p> <p>22 A Yes, I do. Again, that was part of the total</p> <p>23 package. That would have been something that was --</p> <p>24 that was discussed at those meetings.</p> <p>25 Q Yeah, because that was on --</p>	<p style="text-align: right;">Page 119</p> <p>1 talked to you recently about a legal invoice that needed</p> <p>2 to get paid.</p> <p>3 Do you know who that was from?</p> <p>4 A I don't -- I don't recall. There's a lot of</p> <p>5 attorneys that we hired. I'm sorry.</p> <p>6 Q Okay. That's okay. And it was a recent</p> <p>7 conversation?</p> <p>8 A It was, but, again, I -- there's just been so</p> <p>9 many attorneys. I don't remember the specific</p> <p>10 conversation.</p> <p>11 Q Do you remember the amount of the invoice?</p> <p>12 A No.</p> <p>13 Q Do you know why Mr. Vinyard called you about</p> <p>14 it?</p> <p>15 A I don't know -- no, I called him about it.</p> <p>16 Q Okay.</p> <p>17 A I got an email about something that was still</p> <p>18 outstanding. I called him and I said, hey, you know, we</p> <p>19 need to take care of this.</p> <p>20 But I don't remember -- again, I'm sorry. I</p> <p>21 don't remember who -- like what the specific invoice was</p> <p>22 or even who it was from.</p> <p>23 Q Do you know who emailed you?</p> <p>24 A No.</p> <p>25 Q Was it on your --</p>
<p style="text-align: right;">Page 118</p> <p>1 A Yeah.</p> <p>2 Q -- the board agenda; right?</p> <p>3 A Yeah, yeah.</p> <p>4 Q Was one of those your employment agreements --</p> <p>5 or your employment agreement?</p> <p>6 A Yeah, my employment agreement was on the board</p> <p>7 agenda for July, and so that would have been something</p> <p>8 that would have been worked on at that meeting.</p> <p>9 Q Did you have an employment agreement before</p> <p>10 that meeting?</p> <p>11 A No.</p> <p>12 Q Okay. Were there drafts sent around regarding</p> <p>13 the presentation of the various scenarios, like status</p> <p>14 quo, traditional utility response, and the other one?</p> <p>15 Do you remember any of those?</p> <p>16 A I don't recall specifically on those</p> <p>17 presentations. Again, I would suspect that they</p> <p>18 probably were, you know, passed around, but I don't -- I</p> <p>19 don't recall specifically.</p> <p>20 Q Okay. Do you remember if there was an agenda</p> <p>21 for that meeting, for the Club Continental meeting?</p> <p>22 A No, I don't recall. No.</p> <p>23 Q Steve may have asked you this, and I apologize</p> <p>24 if I'm being redundant. But you said at the very</p> <p>25 beginning of today's meeting that Herschel Vinyard had</p>	<p style="text-align: right;">Page 120</p> <p>1 A I'm sorry.</p> <p>2 Q Was it on your JEA --</p> <p>3 A It would have been on my JEA email, yeah. So</p> <p>4 you -- I mean, you could --</p> <p>5 Q Yeah.</p> <p>6 A I'm sure you can find it.</p> <p>7 Q Okay.</p> <p>8 A I'm sure I forwarded it or something to him.</p> <p>9 Q Thanks.</p> <p>10 I want to talk to you a little bit -- earlier</p> <p>11 you mentioned that you -- you were talking about</p> <p>12 strategic planning and all the different scenarios.</p> <p>13 Had you been involved in strategic planning at</p> <p>14 JEA before Mr. Zahn arrived?</p> <p>15 A Not on the scale that we were doing. The last</p> <p>16 full-scale strategic plan was done, I think, in like</p> <p>17 2012, maybe, something like that, somewhere in that time</p> <p>18 frame. That was before I arrived at JEA.</p> <p>19 Q Okay.</p> <p>20 A On a year-to-year basis we did shorter-term</p> <p>21 strategic planning, and I was involved in those. We had</p> <p>22 cascade meetings with -- you know, where all of the</p> <p>23 appointed and -- and even further on down, they would</p> <p>24 record the meetings and, you know, roll it out to the</p> <p>25 entire workforce and use that to align goal setting and,</p>

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<p style="text-align: right;">Page 121</p> <p>1 you know, the strategic plan for the year and what we  2 wanted to accomplish and all that sort of thing.  3 But not on the scale that we had -- that this  4 round was. The last time we did that kind of an  5 activity was 2012.  6 Q Prior to this round, while you were at JEA --  7 so not talking about the 2012 strategic planning, but  8 prior to this round, were financial projections ever  9 discussed during strategic planning?  10 A I'm sure they were.  11 (Discussion off the record.)  12 THE WITNESS: I'm sure they were, at least for  13 me. I was always focused on the financial  14 projections.  15 BY MS. HARRELL:  16 Q Yeah. That's your job; right?  17 A So it's a little hard for me to say perhaps  18 what was -- what got through to the front lines, so to  19 speak.  20 But finances have always -- again, from my  21 perspective, finances have always been part of the  22 strategic plan, and you know, what do the financials  23 look like, you know, what's the rate path look like,  24 what's the, you know, rating agency conversations,  25 investor conversations. I mean, that was part of my</p>	<p style="text-align: right;">Page 123</p> <p>1 couple of reasons.  2 The technology facing -- the technology  3 advancements that have been made really kind of hit us a  4 lot harder than maybe some other places because of the  5 nature of our -- just our geography and where we're  6 located.  7 We have both a summer and a winter peak. So  8 when you think about your -- at home, your HVAC unit.  9 Well, when you switch out your HVAC unit, right, it's  10 both your cooling mechanism but also your heating  11 mechanism.  12 And so in areas that are further north, you  13 typically have gas heat. So when you switch out those  14 newer HVAC units and that kind of thing that are much  15 more efficient and use less energy, it drops off some  16 load in the summertime but really doesn't impact the  17 winter load.  18 Conversely, further south, you don't really  19 have heating load, right? It's too warm in the winter.  20 It's beautiful weather in Miami this time of year. And  21 so same issue there, right? So you don't have as much  22 load tied to both seasons. And so I think there are  23 some things that magnified it here.  24 The other thing was just our balance sheet.  25 We had a lot of debt, and that created some additional</p>
<p style="text-align: right;">Page 122</p> <p>1 day-to-day job.  2 Q Okay. So in any of the prior strategic  3 planning, was there ever a conversation you had with  4 anybody about these numbers are looking bad for JEA?  5 A Well, so to be clear, our current numbers  6 don't look bad. I think part of the concern is given  7 the nature of the electric industry in particular, there  8 were some real challenges facing the business,  9 particularly around a combination of things; you know,  10 rising costs. You know, costs continue to rise. The  11 volume of our sales are declining, and we had a rate  12 structure that was highly tied to that volume, to that  13 consumption.  14 And so you end up with a situation where  15 revenues, you know, are at best flat to declining, and  16 costs continue to increase. And at some point you have  17 to take action and either cut those costs or raise  18 rates.  19 Q And that's something that's not just  20 particular to JEA --  21 A No.  22 Q -- right?  23 A No, that's really the whole industry. You  24 know, that's -- that's kind of a nationwide issue. I  25 think it's a little bit magnified in our instance for a</p>	<p style="text-align: right;">Page 124</p> <p>1 pressure that I think maybe some other utilities didn't  2 necessarily face.  3 Q So the summer and winter peaks you mentioned,  4 that's always existed; right?  5 A Oh, the peaks? Yes. The peaks have always  6 existed.  7 Q That's not something that's a 21st century  8 problem?  9 A No, not the peaks. The peaks have always  10 existed. I think the 21st century problem is the fact  11 that HVAC units have gotten a whole lot more efficient.  12 And so what sort of used to just be kind of steady Eddy,  13 you know, type load growth for 100 years really kind of  14 changed with the advancement of technology.  15 I mean, I'm sure you see it in your own home  16 with LED lightbulbs, programmable thermostats. Every  17 time you switch out an appliance, it's more efficient.  18 Q And that's an industry-wide problem?  19 A It is. Yeah, it is.  20 Q Not just JEA?  21 A That's correct.  22 Q So that's always been kind of in the back of  23 your mind, these issues, as --  24 A As someone who knows the business, yes.  25 Q Okay.</p>

<p style="text-align: right;">Page 125</p> <p>1 A Yeah.</p> <p>2 Q So what -- why the change in the strategic</p> <p>3 planning, then, when Mr. Zahn came on board? Why was</p> <p>4 this -- why this big shift?</p> <p>5 A I don't know that it was really -- so from my</p> <p>6 perspective, it wasn't really a big shift. I think the</p> <p>7 shift was the fact that we -- that we were talking about</p> <p>8 it more.</p> <p>9 Aaron was much more -- look, he was a</p> <p>10 different kind of CEO, right? He was much more sort of</p> <p>11 out there, willing to really talk about, hey, these are</p> <p>12 real challenges for the business. You know, nobody</p> <p>13 likes to say things are hard, right? Things are not</p> <p>14 doing so good. These are -- you know, these are real</p> <p>15 challenges.</p> <p>16 And so I think there's -- you know, generally</p> <p>17 there was always a -- an attitude, I guess, of, well,</p> <p>18 we'll just -- we'll figure it out, it'll be fine, we'll</p> <p>19 get there.</p> <p>20 So the difference, I think, was the fact that</p> <p>21 we were more forceful in talking about it. It wasn't a</p> <p>22 new problem, and in fact, we had been talking about it,</p> <p>23 I think since 2012, really. I mean, since Melissa --</p> <p>24 Melissa, as CFO, when I reported to her, I mean, these</p> <p>25 were conversations that were -- you know, we were</p>	<p style="text-align: right;">Page 127</p> <p>1 presentation.</p> <p>2 A So there was a lot of people that worked on</p> <p>3 the presentation. I was, yeah, certainly reviewing it</p> <p>4 and that sort of thing.</p> <p>5 Q Did you have to provide data for the</p> <p>6 presentations?</p> <p>7 A So as it related to the financial projections,</p> <p>8 my team worked with McKinsey. That work was done at a</p> <p>9 much lower level in the organization as far as the</p> <p>10 actual, like, you know, nuts and bolts calculations,</p> <p>11 that kind of thing.</p> <p>12 Q When were you involved with McKinsey in</p> <p>13 providing information and otherwise working with them?</p> <p>14 When did that start?</p> <p>15 A Yeah, again, it was more of a -- so I was</p> <p>16 involved working with them, you know, from the time they</p> <p>17 started working on it in probably January of 2019,</p> <p>18 somewhere in that time frame is when they started. And</p> <p>19 it took several months of work. They were on-site four</p> <p>20 days a week digging in on all various aspects of the</p> <p>21 business and operations and finances and all that.</p> <p>22 And, you know, that was sort of the genesis of</p> <p>23 the status quo or Scenario 1 process, was really just to</p> <p>24 say, look, if we do nothing, absolutely nothing, you</p> <p>25 know, what does -- what does this look like if we just</p>
<p style="text-align: right;">Page 126</p> <p>1 constantly talking about the impact of solar and new</p> <p>2 appliances and energy efficiency and all that, I mean,</p> <p>3 from a financial standpoint.</p> <p>4 I think it was just the fact that maybe it was</p> <p>5 a broader conversation with Aaron.</p> <p>6 Q How were you involved in putting together the</p> <p>7 board presentations regarding the various scenarios?</p> <p>8 And again, Scenario 1, status quo -- is that a familiar</p> <p>9 concept?</p> <p>10 A Yeah, yeah.</p> <p>11 Q Okay. So if I refer to Scenario 1, we're both</p> <p>12 talking about status quo?</p> <p>13 A Sure.</p> <p>14 Q Scenario 2 is the traditional utility</p> <p>15 response, Scenario 2A is the traditional utility</p> <p>16 response with some law changes, charter changes, things</p> <p>17 like that. And then Scenario 3 is the ITN, the recap --</p> <p>18 or the recap?</p> <p>19 A The various other nongovernmental --</p> <p>20 Q Okay.</p> <p>21 A -- structures.</p> <p>22 Q Yeah. So what was your involvement in putting</p> <p>23 that together?</p> <p>24 A So as far as the actual presentation?</p> <p>25 Q Well, let's -- yeah. Let's start with the</p>	<p style="text-align: right;">Page 128</p> <p>1 set it on autopilot and kind of go. And that was --</p> <p>2 that was the genesis of that -- of that first round.</p> <p>3 I certainly got updates on that as it was</p> <p>4 progressing, and they would give, you know, status</p> <p>5 updates on, hey, here's what we're seeing for solar</p> <p>6 penetration; here's what we're seeing for electric</p> <p>7 vehicle adoption; here's what we're seeing for energy</p> <p>8 efficiency.</p> <p>9 And they would give us updates on how they</p> <p>10 came to those assumptions and the modeling they used and</p> <p>11 the data sets that they had and all that sort of thing.</p> <p>12 Q Did you ever look at any of those data sets</p> <p>13 and think, wow, this can't be right?</p> <p>14 A No. You know, those data sets -- well, so I</p> <p>15 never saw the data sets specifically. The data sets</p> <p>16 were data sets that they had internally based on their</p> <p>17 studies that they had done in the industry, and -- you</p> <p>18 know, they do a lot of kind of academic-type research,</p> <p>19 so to speak.</p> <p>20 And so it was -- they referenced those data</p> <p>21 sets. I never actually saw the data sets, but I got</p> <p>22 output, you know, charts and things like that to say,</p> <p>23 well, for example, here's the solar adoption curve as</p> <p>24 the price of solar approaches parity for the local</p> <p>25 service territory.</p>

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<p style="text-align: right;">Page 129</p> <p>1           So if you look at -- you can look across the</p> <p>2 country, right, and you can say, all right -- you can</p> <p>3 kind of see a little bit of a crystal ball. If you look</p> <p>4 at places where electricity prices are higher and you</p> <p>5 can see what's happened to solar penetration and solar</p> <p>6 adoption. As solar prices have come down and it's</p> <p>7 become more close to the utility pricing, what happens</p> <p>8 to that adoption curve.</p> <p>9           And you can draw a regression line on that,</p> <p>10 and you can sort of say, okay, so prior to parity it</p> <p>11 sort of looks here, and once you get to parity and past</p> <p>12 parity, you start to see this kind of really almost</p> <p>13 expedient type adoption rate where you get, you know,</p> <p>14 1 to 2 percent or so of your customers going to solar,</p> <p>15 you know, like each year, right?</p> <p>16           So it was more of those types of conversations</p> <p>17 around the data as opposed to actually seeing the data</p> <p>18 set.</p> <p>19           From my observation, there was -- I don't</p> <p>20 recall anything that was like totally, you know, crazy</p> <p>21 as far as their assumptions.</p> <p>22           Q Do you remember anything in Scenario 2 or 2A</p> <p>23 about rate increases? Did McKinsey propose anything</p> <p>24 with regard to rate increases?</p> <p>25           A So the financial numbers as far as the rate</p>	<p style="text-align: right;">Page 131</p> <p>1           A We used existing models. You know, we do</p> <p>2 financial projections like constantly. I mean --</p> <p>3           Q Sure.</p> <p>4           A -- that -- it's -- you know, it's one thing --</p> <p>5 like literally there's a whole group that that's what</p> <p>6 they do is different sensitivities and financial</p> <p>7 projections, and they're always updating it every month.</p> <p>8 And you just, you know, like -- that was a regular kind</p> <p>9 of activity for that group, and that was the group that</p> <p>10 worked on it.</p> <p>11           Q And Scenario 2 using those was you've got to</p> <p>12 have a rate increase?</p> <p>13           A Uh-huh.</p> <p>14           Q Or we have to lay off workers?</p> <p>15           A No, it would have been both. The reduction in</p> <p>16 force was to try to limit some of the rate increases</p> <p>17 that would have been necessary.</p> <p>18           Q Did that proposed reduction in force take into</p> <p>19 account the closing of the SJRPP?</p> <p>20           A No. That had already been done at that point.</p> <p>21           Q Was a different financial pro forma prepared</p> <p>22 for the rating agencies in February of 2019?</p> <p>23           A I don't recall what we prepared for the rating</p> <p>24 agencies in February of 2019. That would have been</p> <p>25 before we had done the work with -- like completed the</p>
<p style="text-align: right;">Page 130</p> <p>1 increases were all done internally by staff.</p> <p>2           Q Internally by your staff?</p> <p>3           A By my staff, yeah.</p> <p>4           So McKinsey would look at -- so we would put</p> <p>5 together a financial pro forma based on the changes,</p> <p>6 right? So you've got sales changes associated with, you</p> <p>7 know, the things we talked about in terms of solar</p> <p>8 penetration, electric vehicles, you know, coming in.</p> <p>9 Batteries, energy efficiency, all that sort of thing.</p> <p>10 So you've got those projections.</p> <p>11           You've got cost curves associated with ongoing</p> <p>12 inflation, things of that nature. And so, you know, in</p> <p>13 some ways it's a little bit of an A plus B plus C equals</p> <p>14 D. And you look at a total revenue requirement number,</p> <p>15 and that's -- you know, that's how much of a base rate</p> <p>16 increase you need.</p> <p>17           Everything was done on a base rate basis, and</p> <p>18 that's how we -- that's how we've always done rates is</p> <p>19 base rates. I mean, that's the part of the rates that</p> <p>20 we control. So we'd look at base revenue requirements,</p> <p>21 and, you know, that was -- that was how the -- that was</p> <p>22 how we determined, you know, the need for rate</p> <p>23 increases.</p> <p>24           Q Did you have to put together the financial pro</p> <p>25 forma from scratch for McKinsey?</p>	<p style="text-align: right;">Page 132</p> <p>1 work with McKinsey around those -- the granular kind of</p> <p>2 drill-ins on each of those kind of areas as far as the</p> <p>3 impact.</p> <p>4           Q Could you have just given the -- what you</p> <p>5 prepared for the rating agencies to McKinsey?</p> <p>6           A Yeah, I'm sure -- I'm sure we did, frankly. I</p> <p>7 mean, I don't recall, but that would have been a logical</p> <p>8 thing that we would have provided them with to say, hey,</p> <p>9 here's kind of where we're coming from at the start.</p> <p>10           To provide a little bit of context, we had</p> <p>11 really been showing the rating agencies like flat sales</p> <p>12 for a number of years, and our financial plan had been</p> <p>13 done on flat sales for a number of years.</p> <p>14           You know, our financial plan and the rating</p> <p>15 agency forecast period is typically a one- to three-year</p> <p>16 period. So, you know, given extraneous impacts of</p> <p>17 weather and all of that sort of thing, you know, flat</p> <p>18 sales was, I think, deemed by all of us to be pretty</p> <p>19 good for, you know, kind of a financial forecast for a</p> <p>20 one- to three-year period, right?</p> <p>21           Beyond the one- to three-year period, frankly,</p> <p>22 we didn't -- I mean, we had models that went out longer,</p> <p>23 but we didn't really pay attention on a -- on a</p> <p>24 long-term basis really much beyond that, because so much</p> <p>25 changes -- after three years, I mean, who knows, right?</p>

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1 There's a lot of uncertainty.

2 Q Well, don't you -- you have to give ten-year

3 plans, though, to the PSC; right?

4 A We don't give ten-year financial projections

5 to the PSC. The PSC requires a ten-year site plan for

6 generation planning. That ten-year site plan -- and

7 again, I'm not the VP of planning. I don't prepare that

8 ten-year site plan.

9 But the ten-year site plan is intended to show

10 our plan for meeting the necessary generation capacity

11 to serve our peak plus the required reserve margin,

12 which is 15 percent. So that's the purpose of that

13 ten-year site plan.

14 Q Okay. But then -- but the rating agencies are

15 getting something different?

16 A Yes.

17 Q That's your financial health, not your ability

18 to generate electricity --

19 A That's right. That's right.

20 Q Okay.

21 A They're two different -- two different

22 purposes.

23 Q And let me get off the July board meeting and

24 go back to the February rating agencies.

25 You went up and met with the rating agencies?

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1 A We met with them regularly, yeah. I mean, so

2 we -- I do generally recall meeting with them at that

3 time. I don't remember really the specific

4 conversations, to be honest, but I do remember meeting

5 with them in New York.

6 Q And you had prepared a lot of stuff to go up

7 there?

8 A Uh-huh.

9 Q And that was based on your financial

10 pro formas, all your numbers?

11 A Uh-huh. Again, I think it had the 12 million

12 flat. Typically, did some sensitivity for them, but --

13 but typically 12 million flat was our -- was our

14 forecast that we would work from from a planning

15 perspective -- from a financial planning perspective

16 since -- really since I was there in -- since I joined

17 in 2015, I guess it was.

18 Q In February of 2019, when the rating agency

19 stuff is going on, did you raise a recapitalization

20 event with the rating agencies?

21 A No.

22 Q Why not?

23 A Wasn't contemplated at that time, at least to

24 my knowledge.

25 Q Okay. Did you work with Mr. Zahn in preparing

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1 the materials for the rating agencies?

2 A Yes, he would have been involved in that,

3 reviewing it, and he had a role in the presentation

4 and -- so, yeah, he would have been involved in that.

5 Q What was his role in the presentation?

6 A To be the CEO. I don't -- I mean, yeah, I --

7 I don't -- you know, I don't recall the specifics. We

8 would have given an update on the -- on the four

9 measures of value, the framework for the strategic

10 planning, you know, that kind of thing.

11 We would have given updates on where that

12 stood and what that process was, you know, contemplated

13 to look like. And that would have been the stuff that

14 he would have addressed.

15 Q And when you say strategic planning, are you

16 talking about the McKinsey involvement?

17 A Not necessarily specifically McKinsey. I'm

18 not sure the rating agencies really would have cared so

19 much about, you know, the specifics of that engagement,

20 but more so the process itself.

21 You know, again, he -- in the fall, he had

22 worked with the board, City Council, the rest of the

23 staff to put together the four measures of value, the

24 guiding principles, the framework.

25 Q In the fall of '18?

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1 A In the fall of '18. I'm sorry. Yes.

2 And so that would have been -- and then we

3 would have been kicking off the strategic planning-type

4 process based on that work to say, all right, now that

5 we've got the four measures of value, we've got the

6 guiding principles, this is what the board says we

7 should do, now we go design a strategic plan based on

8 that framework. And that's what he would have delivered

9 as far as a message to the rating agencies.

10 BY MR. POWELL:

11 Q Was that message, on the whole, a positive

12 one?

13 A For who, I guess? For the rating agencies

14 or --

15 Q No, for JEA. That presentation to the rating

16 agencies, on the whole, a positive forecast for JEA, at

17 least over the one- to three-year period?

18 A Generally, I think that's probably right over

19 the one- to three-year period. There were some concerns

20 about Vogtle at that time, but that would have been

21 principally the main concern, was the impact of Vogtle

22 on the financials, as far as the meeting goes at that

23 time. I'm sure they asked -- they always ask questions

24 about Vogtle.

25 BY MS. HARRELL:

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<p style="text-align: right;">Page 137</p> <p>1 Q Do you remember what you told them about 2 Vogtle?</p> <p>3 A At that time, no, I don't recall.</p> <p>4 Q Would that have been addressed in the 5 materials you provided to the rating agencies?</p> <p>6 A I don't know, because we were in active 7 litigation, so I'm not sure we would have provided 8 materials about Vogtle specifically. You know, there 9 was -- there was -- typically, what we tried to do was 10 to provide information that had been provided publicly 11 by Southern Company or by MEAG in those presentations. 12 That was typically how we handled it.</p> <p>13 Q What was the ultimate result from the meetings 14 with the rating agencies, good, bad?</p> <p>15 A Well, no change to ratings at that time, so I 16 guess that's a good outcome.</p> <p>17 Q I mean, from -- you're the financial guy.</p> <p>18 A From my perspective --</p> <p>19 Q Is it a good outcome?</p> <p>20 A Well, so I didn't always agree with all the 21 rating agencies' assessments. But yes, coming out of 22 that meeting with no rating change was a perfectly 23 acceptable outcome from my perspective.</p> <p>24 Q Was it your belief at that time that JEA was 25 financially strong?</p>	<p style="text-align: right;">Page 139</p> <p>1 all of those loads and do generation projects on behalf 2 of those customers. And they have contracts to provide 3 that generation and that power.</p> <p>4 And then essentially they securitize it, 5 securitize those contracts and the revenues associated 6 with those contracts and sell bonds to finance those 7 projects.</p> <p>8 Q Is there another organization that covers 9 larger municipal utilities like OUC, JEA?</p> <p>10 A Not really similar to FMPA. So larger 11 utilities typically manage their own loads. So JEA, 12 OUC -- I don't know -- OUC may have some involvement 13 with FMPA, although I don't know exactly what the nature 14 of that relationship is.</p> <p>15 But I do believe OUC has some of their own 16 generation too. So I don't know if they just 17 participate in a couple of projects or what that 18 relationship is.</p> <p>19 But generally the larger utilities are similar 20 to us in that they have their own generation fleet and 21 manage their own balancing area and, you know, all of 22 that activity.</p> <p>23 Q Okay. All of those municipal utilities, 24 though, are bound by some of the governmental 25 constraints that JEA mentioned in Scenario 2 and was</p>
<p style="text-align: right;">Page 138</p> <p>1 A Yeah, and it's still financially strong today.</p> <p>2 Q Even without any rate increases?</p> <p>3 A As we sit here today, yes. There will be 4 substantial rate increases in the future. That's my -- 5 based on my knowledge of the business and the challenges 6 facing the business that there will -- there will be 7 rate increases.</p> <p>8 Q When you were working on the rating agency 9 presentations, did you consult at all with the FMPA?</p> <p>10 A No.</p> <p>11 Q Okay. Why do you -- you're looking at me like 12 no, like -- you're --</p> <p>13 A No --</p> <p>14 Q -- looking like you think that's a silly 15 idea --</p> <p>16 A I'm sorry. No, that would not be normal 17 course of business for us.</p> <p>18 Q Okay. What's the purpose of FMPA?</p> <p>19 A So we're not a member of FMPA. FMPA is a 20 wholesale municipal electric -- essentially, a joint 21 action agency that is -- has a lot of smaller utilities 22 around the state that really aren't large enough to be 23 able to justify their own -- or their own generation 24 portfolio.</p> <p>25 And so FMPA's role is basically to aggregate</p>	<p style="text-align: right;">Page 140</p> <p>1 trying to get rid of in Scenario 2A; right?</p> <p>2 A Uh-huh.</p> <p>3 Q So did you ever discuss with any other 4 municipal utilities, associations, whatever, about the 5 problems for the future of the industry with -- caused 6 by Sunshine law, State law, Constitutional issues?</p> <p>7 A Yeah, so I had some conversations with my 8 counterpart at Orlando Utilities, at OUC. You know, 9 they're the closest, you know, animal to us, so to 10 speak, in the state. And we talked about some of the 11 issues.</p> <p>12 And, you know, her -- her take on it was, 13 look, they're seeing -- they're seeing certainly some of 14 the same challenges in terms of loss of, you know, 15 consumption per customer and that sort of thing. 16 They're seeing pretty substantial growth in Orlando in 17 terms of population growth. There's a lot of new 18 apartments and developments going up and that sort of 19 thing. And so she said some of that has muted some of 20 the impact of lower consumption per customer.</p> <p>21 She said a lot of what they were doing -- they 22 recognize some of the same constraints. She said a lot 23 of what they were doing was trying to work with other 24 city agencies and fellow, you know, municipal-type 25 brethren, so to speak, cousins, within the Orlando</p>

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1 family, so to speak. The airport, for example --

2 Q Okay.

3 A -- right? They did some work with the airport

4 to provide chilled water and backup generation and some

5 things like that.

6 Q When did you have these conversations with

7 her?

8 A Sometime over the summer.

9 Q Summer --

10 A Summer of '19.

11 Q -- of '19?

12 A Yeah.

13 Q Was it before or after the July 23rd board

14 meeting?

15 A I don't recall. I don't recall if it was

16 before or after. I'm sorry.

17 Q Was it done during the process of developing

18 the presentation to the board about Scenario 2 or 2A?

19 A It wasn't specific to -- it wasn't specific to

20 the development of those proposals.

21 You know, as you might imagine, I had

22 conversation -- I had relationships, you know, across

23 the industry. You know, I've been in the utility

24 sector -- in the public utility sector for my entire

25 career, essentially. And so, you know, I've got

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1 relationships across the industry. It was not uncommon

2 to have conversations at industry events or, you know,

3 that kind of thing about business.

4 Q Did you consult with anybody that you knew in

5 that realm in preparing for the July 23rd --

6 A In conjunction with the board materials?

7 Q Yeah.

8 A Not specifically -- not specifically related

9 to that, you know, preparation, no.

10 Q Did you ever hear the term "death spiral" used

11 in reference to JEA?

12 A I've heard it many times over the last several

13 months.

14 Q When was the first time you heard it?

15 A I don't recall.

16 Q Do you remember who said it?

17 A My understanding was that it was a board

18 member at some board meeting, but I don't remember

19 who -- which board member it was.

20 Q And did you agree with that statement?

21 A I think I do. I think it's the pace of the

22 death spiral is the question.

23 I think that -- you know, look, if you -- if

24 you go out in time, I do believe that a connection to

25 the grid will be optional. I mean, you're already

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1 starting to see it. And so absent some kind of

2 regulatory framework to say you have to connect, you

3 know, I think there will be very viable options to not

4 take electric service. So in that respect --

5 Q So the entire industry is in a death spiral?

6 A Yeah. I mean, I think -- again, absent

7 regulatory framework to allow for the collection of the

8 costs that have been incurred, I mean, that's -- you

9 know, that's going to be an issue that we're going to

10 have to face.

11 And interestingly enough, I had -- so in one

12 of the conversations with the CFO at OUC, we had this

13 conversation. And one thing she pointed out was, you

14 know, if -- if you think about the role of the Public

15 Service Commission, the role of the Public Service

16 Commission is to regulate what would otherwise be a

17 monopoly, right? And to provide, basically, a fair

18 market playing field for, you know, both consumer and

19 provider, right?

20 You know, her point was kind of an interesting

21 one that I had actually never heard anybody raise

22 before, but she said something to the effect of, well,

23 if -- if electric service is optional and there really

24 is true competition, why do you need a Public Service

25 Commission to regulate price? Which was almost kind of

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1 a mind-blowing observation, really, to me at that time.

2 But when you think about it, you know, if

3 there is a viable market and there is the viable

4 alternative to having a wired connection, you know, it's

5 really no different than, you know, what you saw with

6 landline telephones when cell phones came into effect.

7 I mean, you didn't have to regulate the telephone

8 companies anymore because now there was competitive

9 options that the market was providing.

10 And so that was kind of an interesting

11 observation that she had. Now, we're not going to have

12 that next year, I mean, you know.

13 But so -- do I agree with the term "death

14 spiral"? Yeah, more or less. I think we can argue

15 about the -- about the pace and how people respond to it

16 and whether or not there's regulatory changes associated

17 to recover stranded costs and is there an orderly

18 decline and -- you know, there's all kinds of what-ifs.

19 Q Did you discuss the term "death spiral" or the

20 board member saying "death spiral" with Mr. Zahn?

21 A I don't think so. I don't recall. I don't

22 recall a specific conversation about the word "death" --

23 or the term "death spiral," no.

24 Q Did you discuss the rating agency actions with

25 Mr. Zahn in -- after the February meetings?

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<p style="text-align: right;">Page 145</p> <p>1 A That the ratings were unchanged?</p> <p>2 Q Yeah.</p> <p>3 A Yeah, I would have made him aware of that.</p> <p>4 Q Do you remember his reaction?</p> <p>5 A No, I don't.</p> <p>6 Q When did -- when did the rating agencies make</p> <p>7 their decisions? After your presentation to the board</p> <p>8 in February 2019?</p> <p>9 A When did they?</p> <p>10 Q Yeah.</p> <p>11 A I don't recall specifically. Typically, if</p> <p>12 they're going to issue a report, they'll issue a report</p> <p>13 in, I don't know, a few weeks.</p> <p>14 Q So it would have been --</p> <p>15 A A few weeks to a month, something like that,</p> <p>16 yeah.</p> <p>17 Q It would have been before y'all started the</p> <p>18 heavy work on the --</p> <p>19 A Yes.</p> <p>20 Q -- preparing for the board?</p> <p>21 A Yeah.</p> <p>22 Q How much of the rate increase was -- was there</p> <p>23 a number tied to the rate increases that were presented</p> <p>24 to the rating agencies?</p> <p>25 A In February?</p>	<p style="text-align: right;">Page 147</p> <p>1 that kind of thing, really wasn't -- it was much more of</p> <p>2 a high-level revenue requirement number. We hadn't</p> <p>3 gotten into rate design specifically at that time.</p> <p>4 Q Did you have to get into rate design with the</p> <p>5 presentations to the rating agencies?</p> <p>6 A No.</p> <p>7 Q Here's what I don't understand --</p> <p>8 A Okay.</p> <p>9 Q -- February '19, you go to the rating</p> <p>10 agencies. You got this fabulous presentation, and you</p> <p>11 come back, it's not changed, which is good; right?</p> <p>12 A The ratings?</p> <p>13 Q Your ratings are not changed.</p> <p>14 A Are unchanged, yes. The ratings are</p> <p>15 unchanged, that's good.</p> <p>16 Q And that's good --</p> <p>17 A Yes.</p> <p>18 Q -- you said earlier?</p> <p>19 So why under that same scenario, which is</p> <p>20 Scenario 2, in July, and I think even before when you</p> <p>21 present that to the board, Scenario 2 is not acceptable</p> <p>22 and you've got to move on to Scenario 3?</p> <p>23 A So I think -- again, I think that was --</p> <p>24 there's a couple of things there.</p> <p>25 Again, the first thing you got to remember is</p>
<p style="text-align: right;">Page 146</p> <p>1 Q Yeah.</p> <p>2 A I don't recall what we showed as far as rate</p> <p>3 increases in February. We also did a rating agency</p> <p>4 presentation in, I think, August.</p> <p>5 Q Okay. I'll ask you about that in a minute.</p> <p>6 A Yeah.</p> <p>7 Q Do you know if there was a number associated</p> <p>8 with the rate increases that were discussed as part</p> <p>9 of -- as part of Scenario 2?</p> <p>10 A With the board?</p> <p>11 Q Yeah, with the board.</p> <p>12 A So there was a conversation about the rate</p> <p>13 increase as part of Scenario 2. It was in the context</p> <p>14 of a ten-year period. So we looked at -- again, back to</p> <p>15 the comment about how we did the analysis.</p> <p>16 We looked at what's our revenue requirement</p> <p>17 today, you know, in our current state; what does the</p> <p>18 ten-year horizon look like in terms of all these changes</p> <p>19 and ins and outs facing the industry; and what's the</p> <p>20 impact of cost cuts that we can get; and, you know,</p> <p>21 basically what's the revenue requirement in year ten.</p> <p>22 And, you know, one divided by the other one is the rate</p> <p>23 increase, right?</p> <p>24 I mean, so we didn't -- at that time, the</p> <p>25 level of sort of the rate increases, the timing of them,</p>	<p style="text-align: right;">Page 148</p> <p>1 the timeline. So in the context of the timeline that</p> <p>2 the rating agencies are looking at, they really don't</p> <p>3 look at a ten-year period. Again, their rating horizon</p> <p>4 is a one- to three-year period, and their ratings are</p> <p>5 based on their outlook for that one- to three-year</p> <p>6 period, really.</p> <p>7 They might make notes of challenges facing the</p> <p>8 business. They would -- that wouldn't be uncommon for</p> <p>9 them to, you know, make a comment or something like that</p> <p>10 in their rating report. But the rating itself would --</p> <p>11 would be based on a, you know, again kind of a one- to</p> <p>12 three-year time horizon.</p> <p>13 The conversation with the board was a ten-year</p> <p>14 conversation. The rate increases were over a ten-year</p> <p>15 period. And the work with McKinsey around the very</p> <p>16 granular like build of the sales forecast was done after</p> <p>17 that February meeting.</p> <p>18 So, again, in the February meeting we were</p> <p>19 talking about 12 million megawatt hours flat, flat sales</p> <p>20 for the electric system. That -- you know, again, that</p> <p>21 was pretty consistent with what we had shown them over a</p> <p>22 number of years.</p> <p>23 We had never done the kind of like fundamental</p> <p>24 build that McKinsey did with us that spring. I think it</p> <p>25 was much more of a kind of estimate trying to get to</p>

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<p style="text-align: right;">Page 149</p> <p>1 some reasonable financial projection around</p> <p>2 weather-adjusted sales. We always wanted to be</p> <p>3 conservative around the weather.</p> <p>4 So if you look at our sales, our actual sales</p> <p>5 that come in, anywhere from 12 million -- a couple years</p> <p>6 ago it was like right at 12 or just over 12 million --</p> <p>7 to 12.4 million megawatt hours, something like that.</p> <p>8 And that's largely just driven by weather fluctuations,</p> <p>9 hot summer, cold winter, that kind of thing.</p> <p>10 So we typically tried to be -- put a</p> <p>11 reasonable forecast together for the rating agencies</p> <p>12 that kind of reflected a weather forecast that, you</p> <p>13 know, we thought, hey, depending on what happens with</p> <p>14 weather, we think we can hit these numbers.</p> <p>15 Q Okay. Did you get into the weather discussion</p> <p>16 with the board?</p> <p>17 A In July?</p> <p>18 Q Yeah. Was that part of Scenario 2?</p> <p>19 A So there was a -- I don't remember if we</p> <p>20 talked about it with the board specifically.</p> <p>21 There was a note, I think, on one of the</p> <p>22 slides where we kind of gave a range of sales in, you</p> <p>23 know, 2030 based on weather, you know, because there was</p> <p>24 sort of the weather normalized number which was kind of</p> <p>25 talked from.</p>	<p style="text-align: right;">Page 151</p> <p>1 and what we did was we said, hey -- you know, we didn't</p> <p>2 have audited financials at that point. We weren't going</p> <p>3 to have them to meet their timeline. The -- and they</p> <p>4 agreed to take, you know, unaudited results, and that</p> <p>5 was okay. So we sent them unaudited results after the</p> <p>6 end of the fiscal year in September.</p> <p>7 Q Did you include the Scenario 3 information?</p> <p>8 A So we -- I think we probably gave them an</p> <p>9 update on the strategic planning process in August when</p> <p>10 we sat down. We would have walked them through what the</p> <p>11 board had done. We would have talked to them about the,</p> <p>12 you know, different nongovernmental structures. We</p> <p>13 would have, you know, given them an update on what was</p> <p>14 going on.</p> <p>15 Q Did you advise them about the PUP?</p> <p>16 A I don't recall that ever coming up, no.</p> <p>17 Q Would that have been important?</p> <p>18 A No.</p> <p>19 Q Why not? To a rating agency.</p> <p>20 A It's immaterial.</p> <p>21 Q Why is it immaterial?</p> <p>22 A It -- again, from a rating agency standpoint,</p> <p>23 something of a couple million -- or, you know, several</p> <p>24 million dollars on a -- on a program that's designed to</p> <p>25 increase the financial health of the business whereby</p>
<p style="text-align: right;">Page 150</p> <p>1 But there was a range, I think, that was maybe</p> <p>2 pointed out in one of the slides, or at least in one of</p> <p>3 the drafts there was a range. I don't remember if it</p> <p>4 ended up in the board package.</p> <p>5 Q Okay. I know that you provided an update in</p> <p>6 August 2019 to the rating agencies. Why was that done?</p> <p>7 A A couple of the rating agencies -- I think it</p> <p>8 was S&amp;P and Fitch -- were on a timeline where they had</p> <p>9 to publish an update. And so they called us and said,</p> <p>10 hey -- I guess they have some period of time where they</p> <p>11 have to refresh the reports.</p> <p>12 I guess they didn't do a full report in</p> <p>13 February, and they needed to do a full report. They</p> <p>14 sometimes will do like little notes. But they have</p> <p>15 bigger reports that they do that are more fulsome, and</p> <p>16 they have to do those, I think, every so often. And so</p> <p>17 I think their requirements were coming up that they</p> <p>18 needed to do those.</p> <p>19 Q Did they reach out to you for that update?</p> <p>20 A Yes. Yeah, S&amp;P in particular. I don't</p> <p>21 remember -- I don't remember how the conversation</p> <p>22 started with Fitch, but S&amp;P did in particular.</p> <p>23 Q Was the -- and so what did you provide to</p> <p>24 them?</p> <p>25 A Well, so we went in and gave them an update,</p>	<p style="text-align: right;">Page 152</p> <p>1 90 percent of any value that's created improves the</p> <p>2 financial health of the business, there's not really --</p> <p>3 from a rating agency standpoint, that wouldn't be an</p> <p>4 issue for them.</p> <p>5 Q What if the program was uncapped?</p> <p>6 A No matter what the -- no matter what the</p> <p>7 program -- no matter what the outcome is, 90 percent of</p> <p>8 the value that's created stays with the organization and</p> <p>9 would accrue to the benefit of bondholders, presumably,</p> <p>10 in the sense of increased -- you know, increased</p> <p>11 coverage and, you know, all the good things that they</p> <p>12 care about in terms of balance sheet and financial</p> <p>13 metrics.</p> <p>14 So it would have been aligned to positive</p> <p>15 financial outcomes, from their perspective.</p> <p>16 Q I'm going to show you an email that you were</p> <p>17 cc'd on. It's an email from Mr. Zahn about -- and he</p> <p>18 says rating agencies are actively inserting themselves.</p> <p>19 Do you remember seeing that email?</p> <p>20 A I don't recall this email specifically.</p> <p>21 Q Do you know what he's talking about, rating</p> <p>22 agencies inserting themselves?</p> <p>23 A Yeah, so I can surmise based on the date of</p> <p>24 this being October 18, 2018, and based on who is copied</p> <p>25 on the email -- without seeing the slides themselves,</p>

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<p style="text-align: right;">Page 153</p> <p>1 which are attached -- I would say the topic was probably</p> <p>2 related to the litigation that was filed against -- in</p> <p>3 regards to MEAG and plant Vogtle.</p> <p>4 The rating agencies did not like the lawsuit</p> <p>5 that was filed. There's no secret. Moody's downgraded</p> <p>6 us. So my guess is that there was some element of this</p> <p>7 presentation which referenced the lawsuit, and so that's</p> <p>8 probably what it's referring to.</p> <p>9 Q Do you know who the Jim Fuller is that's</p> <p>10 referenced in the last line of that email?</p> <p>11 A Yeah, that's why -- that's why I say that.</p> <p>12 Jim Fuller is the CEO at MEAG Power.</p> <p>13 Q Okay.</p> <p>14 A So that's why I came to that conclusion.</p> <p>15 MS. HARRELL: Okay. Can we take a break?</p> <p>16 (Discussion off the record.)</p> <p>17 (Recess taken from 2:34 p.m. to 2:43 p.m.)</p> <p>18 BY MS. TEODORESCU:</p> <p>19 Q I have one brief question. I'm going to show</p> <p>20 you this document. I'm going to tell you that it comes</p> <p>21 from the June 25th package that went to the board.</p> <p>22 I'm giving you the first page and the last</p> <p>23 page just for context. I'm really curious about the</p> <p>24 slide in the middle.</p> <p>25 If you can explain what that disclaimer is</p>	<p style="text-align: right;">Page 155</p> <p>1 quarters coming and that kind of thing.</p> <p>2 And so that was the reason for that disclaimer</p> <p>3 was to basically tell people, hey, these could be</p> <p>4 wrong, basically. It's common, though, in the</p> <p>5 industry -- or with anybody that has publicly</p> <p>6 traded securities.</p> <p>7 BY MS. TEODORESCU:</p> <p>8 Q This document is from the July 23rd packet to</p> <p>9 the board. Unfortunately, this one is very, very small.</p> <p>10 It's right at the top. It's a disclaimer that seems to</p> <p>11 be quite similar to this. Can you help us --</p> <p>12 A Yeah, I think it would have been a similar</p> <p>13 disclaimer. I think at one point -- and I don't really</p> <p>14 recall how -- what the genesis of it was. But at one</p> <p>15 point we just put it on every page of the document, and</p> <p>16 so I'm sure that was how it ended up here. I'm sure</p> <p>17 that was the idea there.</p> <p>18 Q So what is this saying about the current</p> <p>19 situation -- well, current at the time, you know,</p> <p>20 June 25th, July 23rd? What is it saying about the</p> <p>21 situation of JEA on those particular dates?</p> <p>22 A What does the disclaimer say about this?</p> <p>23 Q Yes.</p> <p>24 A Well, it doesn't really address anything -- I</p> <p>25 mean, it's a disclaimer. It's a disclaimer about the</p>
<p style="text-align: right;">Page 154</p> <p>1 actually saying.</p> <p>2 MR. POWELL: And for the record, that slide</p> <p>3 that you're looking at, Page 2 of that, is part of</p> <p>4 the June -- the June 2019 presentation.</p> <p>5 THE WITNESS: So this was a statement that we</p> <p>6 worked with counsel on regarding forward-looking</p> <p>7 statements. So in the context of -- you know, we</p> <p>8 have 4 -- well, sorry -- \$3.4 billion or so of</p> <p>9 publicly traded securities that are governed as</p> <p>10 publicly traded securities, right? Bonds. They're</p> <p>11 governed by the SEC and securities rules.</p> <p>12 One of the requirements of disclosure related</p> <p>13 to those rules is that if you're -- if you're</p> <p>14 having conversations that you reasonably expect to</p> <p>15 reach, you know, the investing community -- which</p> <p>16 certainly something like this would have risen to</p> <p>17 that -- you need to be very clear about what is a</p> <p>18 forward-looking statement, right?</p> <p>19 So as to be -- and you'll see this in --</p> <p>20 you'll see it commonly in quarterly earnings</p> <p>21 reports. If you dial into a conference call or</p> <p>22 something like that, you typically will have</p> <p>23 conversations about what they expect to happen,</p> <p>24 projections. You know, they talk about the future</p> <p>25 of the business and where they see the next</p>	<p style="text-align: right;">Page 156</p> <p>1 fact that there are projections that may vary, you know,</p> <p>2 based on any number of factors. So --</p> <p>3 Q And some of those factors may be wrong?</p> <p>4 A Of course. That's why the disclaimer is</p> <p>5 there.</p> <p>6 BY MR. POWELL:</p> <p>7 Q So what you're saying is that this disclaimer</p> <p>8 was not really -- or not intended by the presenters to</p> <p>9 alert the board of directors to the fact that some of</p> <p>10 these projections might not be reliable; rather, you</p> <p>11 intended it to be communicating to investors that some</p> <p>12 of these projections that you were presenting to the</p> <p>13 board of directors to act on might not be reliable?</p> <p>14 A Yeah, so -- yeah, so I'll clarify that.</p> <p>15 That's correct. The disclaimer was directed toward</p> <p>16 investors.</p> <p>17 It's important to note that we don't typically</p> <p>18 present ten-year financial projections. In fact, to my</p> <p>19 knowledge, I don't know that we had ever projected</p> <p>20 ten-year financial projections in a public setting,</p> <p>21 right? Like we typically really shied away from it even</p> <p>22 with the rating agencies.</p> <p>23 Up until the last couple of years, I'm not</p> <p>24 sure we provided anything beyond five to the rating</p> <p>25 agencies, and we typically tried to keep it to five</p>

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<p style="text-align: right;">Page 157</p> <p>1 unless they specifically asked, you know, follow-up</p> <p>2 information and that kind of thing.</p> <p>3 So was unusual to have numbers that showed</p> <p>4 financial performance over a ten-year period.</p> <p>5 Obviously, a lot can happen in ten years. So we were</p> <p>6 concerned about the fact that this is information that</p> <p>7 wasn't available prior to, you know, these kinds of --</p> <p>8 these board meetings. And so, as such, one of the</p> <p>9 things we did was work with bond counsel to, you know,</p> <p>10 make sure that we had appropriate, you know, disclaimer</p> <p>11 language in the presentation.</p> <p>12 BY MS. TEODORESCU:</p> <p>13 Q So Scenario 2, the traditional response, it</p> <p>14 was a response projected for sometime in the future?</p> <p>15 A I guess I don't understand the question.</p> <p>16 Q Well, if you look Page 1, the one just before</p> <p>17 the disclaimer --</p> <p>18 A Yeah.</p> <p>19 Q It talked about strategic planning overview.</p> <p>20 There's a Scenario 1 and a Scenario 2, traditional</p> <p>21 response. Then you turn the page and you have the</p> <p>22 disclaimer, and it says --</p> <p>23 A Right.</p> <p>24 Q -- whatever it says to the investors.</p> <p>25 A There were financial projections in the</p>	<p style="text-align: right;">Page 159</p> <p>1 about the -- about the reduction in force, timing of it,</p> <p>2 that kind of thing. Part of the problem is, you know,</p> <p>3 as a government, you're not very good at like letting</p> <p>4 people go, honestly. I mean, it just doesn't happen. I</p> <p>5 mean, you guys all know. It's very unusual.</p> <p>6 And so part of the discussion around the</p> <p>7 timing was really just the fact that, you know, you kind</p> <p>8 of had to rip the Band-Aid off and almost go as far as</p> <p>9 you thought you needed to go, and then if you needed to</p> <p>10 add people, you'd go back, right?</p> <p>11 Because if you tried to go the other way and</p> <p>12 like slowly decrease through attrition or whatever,</p> <p>13 you'd never get to an appropriate number from a cost</p> <p>14 reduction standpoint.</p> <p>15 BY MR. POWELL:</p> <p>16 Q Well --</p> <p>17 A That was the feeling from a management</p> <p>18 standpoint.</p> <p>19 Q That does raise an interesting look at it,</p> <p>20 though, because six months earlier or less, you were up</p> <p>21 in New York projecting a solid one- to three-year</p> <p>22 forecast; correct?</p> <p>23 A Uh-huh. Uh-huh.</p> <p>24 Q You present the traditional response in the</p> <p>25 summer. And you're representing that there's a need for</p>
<p style="text-align: right;">Page 158</p> <p>1 presentation, yes.</p> <p>2 Q And they were for the future?</p> <p>3 A Yes.</p> <p>4 Q Not --</p> <p>5 A Not past.</p> <p>6 Q -- for the moment? And not for the present?</p> <p>7 A I think we showed a starting point of where we</p> <p>8 are today and then, you know, where we expect -- you</p> <p>9 know, based on whatever scenarios and options, where we</p> <p>10 project it to be at the end of the ten-year period,</p> <p>11 2030.</p> <p>12 Q And the traditional response would have kicked</p> <p>13 in when?</p> <p>14 A The way it was modeled was immediately. The</p> <p>15 cost reductions were immediate. Again, I don't recall</p> <p>16 the timing of rate actions. Again, the rate -- the rate</p> <p>17 conversation was really more of a -- just looking at the</p> <p>18 end and saying what's the revenue requirement in year</p> <p>19 ten and, you know, kind of what's the change over that</p> <p>20 time period.</p> <p>21 Q So the cost reductions were seen as necessary</p> <p>22 immediately?</p> <p>23 A That was how they were modeled, and that's how</p> <p>24 I think it was contemplated.</p> <p>25 You know, Melissa and I had this conversation</p>	<p style="text-align: right;">Page 160</p> <p>1 immediate reductions in force. And I gather fairly</p> <p>2 immediate rate increases; yes?</p> <p>3 A Yeah, again, I don't remember the timing of</p> <p>4 the rate increases.</p> <p>5 Q But you had, did you not, from your</p> <p>6 representations to the rating agencies, three years to</p> <p>7 work with? Am I not interpreting all of this correctly?</p> <p>8 A No, I think -- so what I would say is, you</p> <p>9 know, it's fair to say that today the agency is good</p> <p>10 financially. I think that, you know, it comes down a</p> <p>11 little bit to what is the right time to -- to stop doing</p> <p>12 something that's unsustainable, right?</p> <p>13 So, you know, the longer you wait, the harder</p> <p>14 it gets to respond in terms of the timing, right? So if</p> <p>15 you wait till solar panels are, you know, cheaper than</p> <p>16 the cost to provide service, well, then you're kind of</p> <p>17 really in a tough spot, because now you've got to raise</p> <p>18 rates and people have an option to jump off the grid,</p> <p>19 right? So you've now just perpetuated your problem,</p> <p>20 right?</p> <p>21 So, you know, I think the conversation's kind</p> <p>22 of like, well, look, we're in pretty good shape today,</p> <p>23 and we've got a runway to be able to make some of these</p> <p>24 changes, but the longer you wait, the less runway you</p> <p>25 get, right? So --</p>

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<p style="text-align: right;">Page 161</p> <p>1 Q I understand what you're saying. I'm simply</p> <p>2 asking whether that runway -- it seems me that the</p> <p>3 runway was fairly lengthy and that the changes that</p> <p>4 you're talking about that take a long time to make, for</p> <p>5 example, a substantial reduction in the number of</p> <p>6 employees, could be accommodated by that rather lengthy</p> <p>7 runway as opposed to a need for the immediacy, which</p> <p>8 was, I believe, contained in the materials.</p> <p>9 A I think --</p> <p>10 Q Do you disagree -- I mean, do you see what I'm</p> <p>11 saying, and do you have any thoughts on that?</p> <p>12 A Yeah, I see what you're saying. I think the</p> <p>13 longer you push it, the more the impact -- the more</p> <p>14 action you have to take. Because you -- so, for</p> <p>15 example, if you were to do it immediately, you could pay</p> <p>16 down more debt more quickly, which would reduce the need</p> <p>17 for additional rate increases in the future, and it</p> <p>18 would allow you to have more of a smooth transition to</p> <p>19 where if you didn't -- if you didn't take any of the</p> <p>20 action and you tried to cut costs but you didn't do</p> <p>21 anything -- you know, you didn't do any rate increases</p> <p>22 and all that sort of thing, then yeah, you could have</p> <p>23 raised rates at some point in the future and paid down</p> <p>24 debt then, but then you're raising your rates at some</p> <p>25 point in the future when solar is more economical for</p>	<p style="text-align: right;">Page 163</p> <p>1 Q At a minimum, at a --</p> <p>2 A In orders of magnitude, it was -- my</p> <p>3 recollection -- and I'm sorry, I can't remember. My</p> <p>4 recollection is orders of magnitude, it was similar to</p> <p>5 what we had done over the prior 10 years. So from the</p> <p>6 prior 10 or 12-year period or so, since '06, '07 kind of</p> <p>7 time frame, we cut a little over 400 employees.</p> <p>8 And it was somewhere in the same kind of</p> <p>9 ballpark, I think. But I don't remember the specific</p> <p>10 number.</p> <p>11 BY MS. TEODORESCU:</p> <p>12 Q And when would they have been laid off, by</p> <p>13 what date?</p> <p>14 A I don't know. I do know that they're working</p> <p>15 on WARN notices -- the WARN notice. And we had</p> <p>16 provided -- all the senior leadership team had provided,</p> <p>17 you know, who -- a list of -- I think they did it by</p> <p>18 position. I don't know that we did it by specific name,</p> <p>19 but I think we did it by like position title.</p> <p>20 So, you know, I would get rid of one analyst,</p> <p>21 for example, right? And so that was how -- that was how</p> <p>22 we came up with the number. Ultimately it was</p> <p>23 basically -- the question that was posed to the SLT was,</p> <p>24 you know, what's your bare-bones staff to be able to</p> <p>25 continue to operate the business; what does that look</p>
<p style="text-align: right;">Page 162</p> <p>1 people to disconnect, you know, from the system.</p> <p>2 So, I mean, you could have the debate on</p> <p>3 timing. That's sort of a business kind of conversation.</p> <p>4 But I think if you look at -- if you look at the</p> <p>5 problems facing the business, it is logical to come to a</p> <p>6 conclusion where the quicker you take action, the less</p> <p>7 the action ultimately needs to be over the long term.</p> <p>8 BY MS. TEODORESCU:</p> <p>9 Q How many people were going to be laid off</p> <p>10 under Scenario 2, approximately?</p> <p>11 A Gosh, I wish I could remember the specific</p> <p>12 number. It was several hundred, but I don't remember --</p> <p>13 Q It was closer to 200 or 800?</p> <p>14 A No, it was -- I don't -- I wish I had the</p> <p>15 materials. I don't have --</p> <p>16 Q It was more than 200 --</p> <p>17 A It was more than 200, yes. It was less than</p> <p>18 800.</p> <p>19 Q Okay. You think it was more than 500?</p> <p>20 A I don't remember.</p> <p>21 BY MR. POWELL:</p> <p>22 Q But certainly at least 10 percent of the</p> <p>23 workforce?</p> <p>24 A Oh, yeah. 10 percent would have been 200</p> <p>25 people, yeah.</p>	<p style="text-align: right;">Page 164</p> <p>1 like in terms of numbers and head count and that kind of</p> <p>2 thing.</p> <p>3 Q But do you recall approximately when it would</p> <p>4 have happened, by October 1st, by the beginning of the</p> <p>5 new fiscal year?</p> <p>6 A I don't recall.</p> <p>7 Q Was it going to be this year -- I mean, 2019</p> <p>8 or ...</p> <p>9 A If the board would have approved it -- are you</p> <p>10 asking if the board would have approved it in July, how</p> <p>11 long would it have taken?</p> <p>12 Q Yes.</p> <p>13 A So I don't -- I don't recall like a specific</p> <p>14 conversation around it. My guess is it probably would</p> <p>15 have been taken, you know -- call it a year, six months</p> <p>16 to a year, something like that, to --</p> <p>17 Q So it wouldn't have happened yet by today?</p> <p>18 A It would have been right around now, yeah.</p> <p>19 Q Could have been?</p> <p>20 A Yeah.</p> <p>21 Q And today JEA is in good financial health?</p> <p>22 A Yeah, the balance sheet -- so they still have</p> <p>23 too much debt. Financially, if you look at kind of</p> <p>24 coverage metrics and, you know, the liquidity and things</p> <p>25 that the rating agencies and the investors care about,</p>

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<p style="text-align: right;">Page 165</p> <p>1 it's in good financial health aside from the debt issue.</p> <p>2 The challenges it faces really are</p> <p>3 future-based. It's the plant Vogtle contract, which</p> <p>4 will come online in 2021 and 2022. That's going to be</p> <p>5 really expensive, like really expensive.</p> <p>6 Our total base revenue requirement today is</p> <p>7 about, I don't know, 750 to \$800 million, somewhere in</p> <p>8 that ballpark. Vogtle is going to cost about</p> <p>9 200 million alone. So, you know, that's at least</p> <p>10 25 percent of our current total revenue requirement that</p> <p>11 we collect from customers today.</p> <p>12 Q Is that per year?</p> <p>13 A That's per year, yeah. And that will be once</p> <p>14 both units are online.</p> <p>15 And then when you factor in some of the other</p> <p>16 concerns around additional energy efficiency, solar</p> <p>17 penetration, batteries, even with the electrification in</p> <p>18 terms of electric vehicles -- which will help offset</p> <p>19 some of that, I think, as electric vehicles kind of get</p> <p>20 more prominent, that will help.</p> <p>21 But between the combination of those cost</p> <p>22 increases and some of the challenges on the sales side,</p> <p>23 it mandates that we're going to have to do something.</p> <p>24 BY MR. POWELL:</p> <p>25 Q Without going into the weeds on plant Vogtle,</p>	<p style="text-align: right;">Page 167</p> <p>1 A -- Scenario 1 or 2.</p> <p>2 Q There wasn't any discussion going on about</p> <p>3 conjuring up some way to sell JEA and carve out plant</p> <p>4 Vogtle and allow a purchaser to acquire JEA free and</p> <p>5 clear of Vogtle, was there?</p> <p>6 A Yeah, there was some discussion around doing a</p> <p>7 joint service territory. So the Vogtle contract was</p> <p>8 extremely -- it's a terrible contract as far as JEA is</p> <p>9 concerned.</p> <p>10 Q But it is what it is.</p> <p>11 A It is what it is.</p> <p>12 It's very restrictive as it related to</p> <p>13 assignment.</p> <p>14 Q I understand that.</p> <p>15 A Yeah. And so there were some discussions</p> <p>16 around, well, is there a way that you could essentially</p> <p>17 split the service territory. There were some</p> <p>18 discussions of whether or not you -- so we had a number</p> <p>19 of discussions related to settlement of the Vogtle</p> <p>20 litigation that would have potentially unwound the</p> <p>21 contract.</p> <p>22 I'm getting a little nervous here in terms of</p> <p>23 the active litigation and confidentiality and --</p> <p>24 Q All right. I don't want to push you into</p> <p>25 nervousness.</p>
<p style="text-align: right;">Page 166</p> <p>1 how -- and I recognize that plant Vogtle looms.</p> <p>2 But how would shifting to a nongovernmental</p> <p>3 structure or a recap have solved that debt issue?</p> <p>4 A So that's a good question. I don't think we</p> <p>5 ever really got to an answer on that.</p> <p>6 Q So is it fair to say that plant Vogtle really</p> <p>7 isn't in the factoring that you-all went through to</p> <p>8 arrive at what you were presenting to the board in</p> <p>9 July of 2019?</p> <p>10 A Well, it was factored into the financial</p> <p>11 projections for sure, and it was an element of that. So</p> <p>12 when we talk about rate increases and all that kind of</p> <p>13 thing, a significant portion of that is related to plant</p> <p>14 Vogtle.</p> <p>15 Q But that would have been the case whether --</p> <p>16 regardless of which scenario you opted for or the board</p> <p>17 opted for, wouldn't it?</p> <p>18 A The plant Vogtle obligation? Yeah --</p> <p>19 Q It wasn't going away?</p> <p>20 A No, it was not going away. I think -- so</p> <p>21 unfortunately, you know, we never really got to a</p> <p>22 financial projection on the recapitalization structure,</p> <p>23 so I don't really know what the difference would have</p> <p>24 been around those financial projections relative to --</p> <p>25 Q I mean, there wasn't --</p>	<p style="text-align: right;">Page 168</p> <p>1 A -- so I don't know how far I can go there.</p> <p>2 We talked -- we disclosed that we were working</p> <p>3 with MEAG to try to come to some resolution around how</p> <p>4 to fix our claim under that lawsuit, restructuring a</p> <p>5 deal effectively.</p> <p>6 (Brief interruption.)</p> <p>7 BY MR. POWELL:</p> <p>8 Q All right. I think you've answered my</p> <p>9 questions about Vogtle's place in the scenarios in July.</p> <p>10 A Yeah, it was in the scenarios.</p> <p>11 Q It was in all the scenarios?</p> <p>12 A Correct.</p> <p>13 Q No scenario solved the plant Vogtle situation?</p> <p>14 A So there was some discussion around -- and</p> <p>15 again, we never got to --</p> <p>16 Q Let me ask it differently.</p> <p>17 It certainly wasn't presented to the board in</p> <p>18 July --</p> <p>19 A No.</p> <p>20 Q -- that any one scenario or the other is going</p> <p>21 take care of plant Vogtle?</p> <p>22 A No.</p> <p>23 MR. POWELL: All right. So that's really not</p> <p>24 an issue, then, for us any longer here.</p> <p>25 Did you have more that you wanted --</p>

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<p style="text-align: right;">Page 169</p> <p>1 MS. TEODORESCU: Yes.</p> <p>2 MR. POWELL: Why don't you carry on.</p> <p>3 BY MS. TEODORESCU:</p> <p>4 Q Is it fair to say that a long-term incentive</p> <p>5 plan was Mr. Zahn's idea? I don't mean this particular</p> <p>6 plan, but the concept of introducing a long-term</p> <p>7 incentive plan?</p> <p>8 A So the -- in December -- sometime in December,</p> <p>9 I guess, as far as -- as far as I know, December of</p> <p>10 2018, Aaron started looking at the -- as we got done</p> <p>11 with the four measures of value and the guiding</p> <p>12 principles, Aaron started looking at how do we motivate</p> <p>13 employees to align activities to those four measures of</p> <p>14 value.</p> <p>15 So the short-term incentive plan, we rolled</p> <p>16 out a new dashboard that had metrics tied to each of</p> <p>17 those four measures of value. He began looking at the</p> <p>18 board's compensation policy. He commissioned the Willis</p> <p>19 Towers Watson study.</p> <p>20 And, you know, I think that based on the -- or</p> <p>21 based on the feedback from the Willis Towers Watson</p> <p>22 study which said utilities typically have some kind of</p> <p>23 short-term -- you know, base salary, short-term</p> <p>24 incentive, long-term incentive --</p> <p>25</p>	<p style="text-align: right;">Page 171</p> <p>1 frame, somewhere in there.</p> <p>2 Q And --</p> <p>3 A Probably April or May.</p> <p>4 Q As you were looking at these options, were you</p> <p>5 informing Mr. Zahn of what you were considering?</p> <p>6 A Yeah, so he wanted me to look at -- again, he</p> <p>7 wanted me to look at whether or not we could do a bond</p> <p>8 and provide bonds to people instead of stock.</p> <p>9 Obviously, we don't have stock. And so we looked at</p> <p>10 that.</p> <p>11 We looked at the -- you know, we talked to</p> <p>12 bond counsel to see if we could do that and whether or</p> <p>13 not that would be an option. Ultimately bond counsel</p> <p>14 came back and said, hey, that doesn't really work, and</p> <p>15 so that kind of ended that conversation.</p> <p>16 Q So that was Mr. Zahn's idea initially? He</p> <p>17 came to you and he said --</p> <p>18 A Yeah, could we do a bond. Yeah, that's right.</p> <p>19 Q -- can we do a bond?</p> <p>20 It wasn't your idea?</p> <p>21 A Correct.</p> <p>22 Q And then you said that sometime in May,</p> <p>23 June 2019, Mr. Zahn asked you to look at a long-term</p> <p>24 incentive plan tied to financial performance of the</p> <p>25 business; is that correct?</p>
<p style="text-align: right;">Page 170</p> <p>1 BY MR. POWELL:</p> <p>2 Q In the private sector?</p> <p>3 A Generally -- yeah, all in the private sector</p> <p>4 have LTI plan -- long-term incentive plans. A handful</p> <p>5 of the public power had long-term incentive plans.</p> <p>6 And so Aaron looked at that data and I think,</p> <p>7 you know, decided that, well, if the board's policy is</p> <p>8 market 50th and this is market 50th to have</p> <p>9 short-term -- you know, base, short-term, long-term,</p> <p>10 then we should try to figure out how to -- how to do a</p> <p>11 long-term plan.</p> <p>12 BY MS. TEODORESCU:</p> <p>13 Q And who was going to figure out how to do the</p> <p>14 plan, Towers Watson, JEA? Who was going to do this?</p> <p>15 A Well, I don't recall any specific</p> <p>16 conversations related to who was going to do it. Yeah,</p> <p>17 I don't recall any specific conversations related to</p> <p>18 that.</p> <p>19 Q And you said earlier that you looked at</p> <p>20 various options before the performance unit came into</p> <p>21 play.</p> <p>22 Around what time of the year were you looking</p> <p>23 at these other options?</p> <p>24 A I think it was in the spring. I think it</p> <p>25 would have been in that March, April, May, kind of time</p>	<p style="text-align: right;">Page 172</p> <p>1 A I don't remember the time frame when he asked</p> <p>2 me that, but it was sometime in the spring, and it was</p> <p>3 always related to --</p> <p>4 So the whole conversation related to the</p> <p>5 long-term incentive plan was always to tie it to the</p> <p>6 long-term financial performance of the business.</p> <p>7 Q Was that the directive from Mr. Zahn?</p> <p>8 A Yes.</p> <p>9 Q Do you know where he got that idea, that it</p> <p>10 would be tied to the financial performance of the</p> <p>11 business?</p> <p>12 A I think it's common -- if you look at these</p> <p>13 long-term incentive plans that were provided, you know,</p> <p>14 for consideration by Willis Towers Watson as far as the</p> <p>15 industry is concerned, many of them are tied to</p> <p>16 financial performance over a multiyear period.</p> <p>17 Q Well, let me show you what Towers Watson was</p> <p>18 saying. I'm going to show you JEA 0327 from Council</p> <p>19 Member Diamond's notebook. If you look -- let me see</p> <p>20 where it is. Performance Metrics Weights, and can you</p> <p>21 interpret that for me for public power utilities?</p> <p>22 A Operational metrics weighted more heavily than</p> <p>23 financial metrics is what the -- under Performance</p> <p>24 Metric Weights, that's what's noted there.</p> <p>25 Q Right. So what does that mean to you?</p>

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<p style="text-align: right;">Page 173</p> <p>1 A I think it's pretty straightforward.</p> <p>2 Q Well, and I'm saying in terms of what Mr. Zahn</p> <p>3 directed you to look at, he directed you to look at</p> <p>4 financial metrics only?</p> <p>5 A So the way -- the way the plans were designed</p> <p>6 was that the short-term incentives -- the short-term</p> <p>7 incentive plan was primarily weighted toward operational</p> <p>8 metrics. It was day-to-day operation of the business.</p> <p>9 It was things like outage frequency, customer</p> <p>10 satisfaction as measured by J.D. Powers, environmental</p> <p>11 compliance.</p> <p>12 You know, all of those kind of operational</p> <p>13 things were encapsulated really in the short-term</p> <p>14 incentive plan on an annual basis. And his -- his</p> <p>15 vision was that you would have more of a financial focus</p> <p>16 on the long-term incentive program.</p> <p>17 And more akin to what you see as, you know,</p> <p>18 the -- under the second category there, Total</p> <p>19 Shareholder Return -- TSR stands for Total Shareholder</p> <p>20 Return -- and financial metrics weighted more heavily</p> <p>21 than operational metrics.</p> <p>22 Q Is that in the private sector one?</p> <p>23 A That's in the private sector one, yes.</p> <p>24 BY MR. POWELL:</p> <p>25 Q I just wanted to make sure you didn't misspeak</p>	<p style="text-align: right;">Page 175</p> <p>1 wouldn't be -- that wouldn't be unusual in any way.</p> <p>2 Q That's considered a long-term --</p> <p>3 A Yes.</p> <p>4 Q -- three years?</p> <p>5 A Yes.</p> <p>6 Yeah, every long-term incentive plan that I've</p> <p>7 participated in in other, you know, jobs, you know, in</p> <p>8 the corporate sector, was a three-year plan.</p> <p>9 Q So was the purpose of the long-term incentive</p> <p>10 plan to motivate workers?</p> <p>11 A Yes.</p> <p>12 Q So they would perform better?</p> <p>13 A Yes.</p> <p>14 Q But the incentive was tied to the financial</p> <p>15 value of the company. Now, the financial value of the</p> <p>16 company may go up for reasons completely unrelated to</p> <p>17 worker performance; is that true?</p> <p>18 Let me put it this way. Can real estate value</p> <p>19 go up?</p> <p>20 A Can real estate value go up?</p> <p>21 Q Yes.</p> <p>22 A Well, real estate value can go up, but it</p> <p>23 doesn't affect the value of JEA from an accounting</p> <p>24 standpoint.</p> <p>25 Q It doesn't?</p>
<p style="text-align: right;">Page 174</p> <p>1 a little bit ago, and I want to clear up the record in</p> <p>2 case there is some confusion.</p> <p>3 A bit ago you weren't suggesting that you were</p> <p>4 aware of any long-term incentive plans in any public</p> <p>5 utilities, were you, that extended to all employees?</p> <p>6 A Not to all employees, no. I'm sorry. Yeah.</p> <p>7 Q No, no. You didn't --</p> <p>8 A Yes.</p> <p>9 Q You didn't cause the confusion, but it could</p> <p>10 have been confusing. I just wanted to clarify.</p> <p>11 A Yes.</p> <p>12 Q Thank you.</p> <p>13 A Yeah.</p> <p>14 BY MS. TEODORESCU:</p> <p>15 Q And whose idea was to have a three-year</p> <p>16 performance time?</p> <p>17 A I don't recall whose idea that was.</p> <p>18 Q Was it yours?</p> <p>19 A Wouldn't have been mine.</p> <p>20 So, again, if you look at long-term incentive</p> <p>21 plans generally in the corporate sector and that's -- I</p> <p>22 mean, look, I mean, that's primarily where these are</p> <p>23 used, right, is in the corporate sector.</p> <p>24 Yeah, three years is a pretty common, you</p> <p>25 know, number as far as number of years. So that</p>	<p style="text-align: right;">Page 176</p> <p>1 A No. All of our real estate is held at the</p> <p>2 cost of acquisition. So the book value doesn't ever</p> <p>3 change. It's never marks to market.</p> <p>4 Q So what puts the value -- the book value up?</p> <p>5 A Earnings.</p> <p>6 Q That's all?</p> <p>7 A Yeah.</p> <p>8 Q And earnings come from what sources?</p> <p>9 A Revenues minus expenses.</p> <p>10 Q And the revenues come from?</p> <p>11 A Sales.</p> <p>12 Q And that's all?</p> <p>13 A Yeah. I mean, I -- so we have some revenues</p> <p>14 from -- I mean, it's all sales of some kind. The</p> <p>15 question is what kind of a product, right?</p> <p>16 I mean, we had revenues from timber sales, for</p> <p>17 example, that we did a few years ago. We had -- you</p> <p>18 know, we monetized cell towers. We have a big</p> <p>19 communications network that we use to -- you know, for</p> <p>20 our own purposes to communicate information between all</p> <p>21 of our different sites and locations and that. So we</p> <p>22 were able to, you know, lease space to T-Mobile or</p> <p>23 Verizon or that sort of thing.</p> <p>24 So -- but it's all sales, yeah. I mean, so</p> <p>25 it's a true statement.</p>

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<p style="text-align: right;">Page 177</p> <p>1 Q But at the same time, the value of a</p> <p>2 performance unit could very well depend on the sale --</p> <p>3 the value at which JEA sold it; is that correct?</p> <p>4 A Yeah, so the formula under the long-term</p> <p>5 incentive -- under the performance unit plan</p> <p>6 contemplated the change in net position, so the</p> <p>7 earnings, right, over the three-year period, the -- any</p> <p>8 change in the City contribution, and any distributions</p> <p>9 to customers.</p> <p>10 So in the event that you had some kind of a</p> <p>11 recapitalization, the City would get some contribution.</p> <p>12 The net position would essentially be zero, because</p> <p>13 there would be no more assets, right? No more assets,</p> <p>14 no more debt. So net position goes from \$3 billion to</p> <p>15 zero.</p> <p>16 And whatever goes to customers, you know, gets</p> <p>17 added into that number. And, you know, I would say</p> <p>18 that's value that was created and realized that was not</p> <p>19 available otherwise.</p> <p>20 Q And value that was created by?</p> <p>21 A By a recapitalization.</p> <p>22 Q But not necessarily by the employees and their</p> <p>23 performance?</p> <p>24 A Well, again, I mean, it doesn't happen by</p> <p>25 itself. There was a lot of people working really hard</p>	<p style="text-align: right;">Page 179</p> <p>1 Q But let's analyze it this way now. The</p> <p>2 long-term incentive plan was going to come in starting</p> <p>3 January 1st, let's say, for a three-year period. In</p> <p>4 December there was still talk of recapitalization. If</p> <p>5 it was going to happen, it was going to happen sometime</p> <p>6 in 2020; correct?</p> <p>7 It could have happened through the end of</p> <p>8 2021, we know that. That was the general time frame for</p> <p>9 it.</p> <p>10 But perhaps -- it's just public talk, but</p> <p>11 there was an impression that things were going fairly</p> <p>12 fast with the ITN.</p> <p>13 A Okay. So I'm sorry. What's the question?</p> <p>14 Q So the question is, there could have been a</p> <p>15 recap by November of 2020?</p> <p>16 A I think there could have been a referendum --</p> <p>17 Q Yes.</p> <p>18 A -- by November of 2020. I'm not really sure</p> <p>19 when you would expect to have a closing, of when it</p> <p>20 would actually occur.</p> <p>21 There's a number of regulatory approvals that</p> <p>22 would have to be done, and I'm not really sure -- I</p> <p>23 mean, we never really got to a stage where we were</p> <p>24 figuring out what the Public Service Commission's</p> <p>25 involvement would have to be.</p>
<p style="text-align: right;">Page 178</p> <p>1 on the entire strategic planning process.</p> <p>2 Q That is true. But we're not talking about</p> <p>3 everybody at -- all JEA employees and a couple of other</p> <p>4 individuals.</p> <p>5 A Yeah, I would say -- look, I would say that</p> <p>6 the value of JEA really is the quality of the system</p> <p>7 itself, and that's tied to all employees. I mean, it's</p> <p>8 a -- it is a well-run system. It is a system that's</p> <p>9 pretty good size.</p> <p>10 I think it does have some real challenges as</p> <p>11 it relates to scale in the context of some of the</p> <p>12 challenges facing the business.</p> <p>13 But, you know, again, ultimately, today it's a</p> <p>14 pretty well-run system. And that's in thanks -- you</p> <p>15 know, to all the employees working to make it that.</p> <p>16 So I understand your question about direct,</p> <p>17 you know, influence, like as far as, you know, directly</p> <p>18 interfacing with the ITN process, I understand that.</p> <p>19 But I would say that it's -- the characterization that</p> <p>20 it's not dependent -- that the value of JEA is not</p> <p>21 dependent on all the employees, I'm not -- I don't agree</p> <p>22 with that.</p> <p>23 The value of JEA is dependent upon all the</p> <p>24 work of the employees, I mean, that's -- that's a huge</p> <p>25 part of it.</p>	<p style="text-align: right;">Page 180</p> <p>1 And there was a lot of uncertainty around what</p> <p>2 the actual closing, went -- you know, when you could</p> <p>3 actually get to a recapitalization itself and money</p> <p>4 would flow.</p> <p>5 Q But a price, perhaps, could have been settled</p> <p>6 on this year, 2020?</p> <p>7 A Perhaps, yes.</p> <p>8 Q And then the question comes, how much did the</p> <p>9 employees who participated in the long-term incentive</p> <p>10 plan actually add to the value of JEA for purposes of</p> <p>11 this recap?</p> <p>12 A I have no way to quantify that.</p> <p>13 Q We're talking about a plan that's supposed to</p> <p>14 motivate employees. But the recap -- the recap can give</p> <p>15 them quite a lot of money if you -- I mean, you've seen</p> <p>16 the council auditor's memo and what it says about how</p> <p>17 you can end up with over \$3,000 for a \$10 unit that you</p> <p>18 buy. And that would happen by virtue of a recap in the</p> <p>19 next few months, and it's got nothing to do with your</p> <p>20 performance from this day on. Would you agree?</p> <p>21 A Again, I -- I would argue that -- that what</p> <p>22 JEA is worth is largely because of the work of the</p> <p>23 employees. I mean --</p> <p>24 Q It's the work in the past, isn't it? It's</p> <p>25 not -- it's not like this performance plan is designed</p>

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<p style="text-align: right;">Page 181</p> <p>1 to do it. It's supposed to motivate employees from this</p> <p>2 day onward.</p> <p>3 But a recap could very well be based on JEA's</p> <p>4 existing value. That's got nothing to do with how these</p> <p>5 employees perform from today onward.</p> <p>6 A I think -- I understand your point. I mean,</p> <p>7 this is kind of a speculative conversation, I guess. I</p> <p>8 don't know how to -- I can't quantify how a buyer might</p> <p>9 view, you know, ongoing operations and whether or not --</p> <p>10 I mean, you certainly can't just let the operations go</p> <p>11 to tank --</p> <p>12 Q Sure.</p> <p>13 A -- you know, once you sign some kind of a</p> <p>14 agreement, right? So I don't know how to -- I can't</p> <p>15 quantify a number or anything.</p> <p>16 Q But let me ask the question again. I think it</p> <p>17 may have been asked before and you may have answered it</p> <p>18 and maybe I just wasn't paying attention. I'm sorry.</p> <p>19 Whose idea was it to tie the performance unit</p> <p>20 value to a recap as well?</p> <p>21 A So it wasn't tied specifically to a recap. It</p> <p>22 was tied -- the formula didn't change based on regular</p> <p>23 operations or recap. There was a observation by someone</p> <p>24 along the lines -- I believe it was probably an</p> <p>25 attorney -- who said, hey, what happens if there's a</p>	<p style="text-align: right;">Page 183</p> <p>1 recap during the performance period would result in the</p> <p>2 sale and applying the formula, as you've talked about</p> <p>3 it, and we went through a scenario where we had this</p> <p>4 large price per unit.</p> <p>5 So that -- so prior to the July board meeting,</p> <p>6 there was not a decoupling, there was not a carving out</p> <p>7 of the recap impact on the PUP?</p> <p>8 A Correct, there was not a carving out prior to</p> <p>9 the July board meeting.</p> <p>10 Q And that potential was known to Mr. Zahn when</p> <p>11 that was presented to the board on July 23 of '19 -- of</p> <p>12 2019, was it not?</p> <p>13 A Yes, we all knew that any value above the</p> <p>14 challenge target that, you know, when the formula was</p> <p>15 calculated, would be, you know -- the pool would be</p> <p>16 10 percent of -- of any amount above that amount.</p> <p>17 Q All right. A minute ago you were emphasizing</p> <p>18 the people who worked on the strategic plan in answering</p> <p>19 Ms. Teodorescu's question about value and contribution</p> <p>20 of employees to the end result.</p> <p>21 I think you said that, well, a lot of people</p> <p>22 worked really hard on the strategic plan.</p> <p>23 Do you recall saying that?</p> <p>24 A Yeah, a lot of people did work really hard on</p> <p>25 the --</p>
<p style="text-align: right;">Page 182</p> <p>1 recap, because this plan -- you know, you got to have --</p> <p>2 you know, you can't really -- if you're part of a larger</p> <p>3 company, you can't really calculate the value, you know,</p> <p>4 three years from now if you -- if two years from now you</p> <p>5 changed hands, for example, right?</p> <p>6 So somewhere along the lines there was --</p> <p>7 there was an attorney who said, hey, we've got to figure</p> <p>8 out what to do on a recap. It has to contemplate it.</p> <p>9 And so, you know, that was contemplated in the</p> <p>10 documents.</p> <p>11 Q And who made the decision that in the event of</p> <p>12 a recap, the same formula applies?</p> <p>13 A I don't recall specifically.</p> <p>14 Q Would Mr. Zahn be the ultimate word?</p> <p>15 A Of course. He's the CEO.</p> <p>16 Q Do you recall if he was presented with this</p> <p>17 issue?</p> <p>18 A I don't recall.</p> <p>19 BY MR. POWELL:</p> <p>20 Q However, it is -- you would agree that prior</p> <p>21 to the July 23 board meeting, the impact of a recap on</p> <p>22 the PUP plan proceeds and distribution was not de-linked</p> <p>23 from the PUP?</p> <p>24 A The impact of the PUP plan? I'm sorry --</p> <p>25 Q The impact of a recap. So in other words, a</p>	<p style="text-align: right;">Page 184</p> <p>1 Q Did you mean to suggest by that that those who</p> <p>2 conceived and worked really hard on the strategic plan</p> <p>3 should receive an extra reward through the PUP in the</p> <p>4 event of a recapitalization event?</p> <p>5 A No.</p> <p>6 Q Was there ever any discussion with Mr. Zahn</p> <p>7 about the allocation of PUP -- of performance units</p> <p>8 somehow in relation to the effort of people on the</p> <p>9 strategic plan or those who conceived and brought it</p> <p>10 into fruition?</p> <p>11 A No.</p> <p>12 Q Before we get too far into our record, I just</p> <p>13 want to do a little housekeeping matter.</p> <p>14 In response to some questions earlier, you</p> <p>15 were shown a three-page document that was presented to</p> <p>16 the board in June of 2019. I'm just going to make the</p> <p>17 point that that's going to appear as Number 3. It's a</p> <p>18 three-page document.</p> <p>19 And then you were presented a page, a</p> <p>20 one-sheeter that was presented to the board in</p> <p>21 July 23 of 2019. I'm just going to mark that as 3A,</p> <p>22 just so our record is clear.</p> <p>23 Adina?</p> <p>24 (Exhibit Numbers 3 and 3A were marked for</p> <p>25 identification.)</p>

<p style="text-align: right;">Page 185</p> <p>1 BY MS. TEODORESCU:</p> <p>2 Q The PUP mentions the possibility of payout in</p> <p>3 a form other than cash. What would that -- what could</p> <p>4 that have been, and how would it have been accomplished?</p> <p>5 A I don't know. That would have been something</p> <p>6 that the lawyers would have drafted.</p> <p>7 Q And you weren't consulted in any way?</p> <p>8 A I don't recall any specific conversation about</p> <p>9 that -- you know, what that might entail, no.</p> <p>10 Q Who would have been the attorneys working on</p> <p>11 this; do you recall?</p> <p>12 A It was Pillsbury and Foley.</p> <p>13 Q Do you have any -- do you remember any names?</p> <p>14 A Oh, specific people?</p> <p>15 Q Yeah.</p> <p>16 A Jessica Lutrin at Pillsbury and Kevin Hyde at</p> <p>17 Foley. And there were some other folks from each of</p> <p>18 those firms that had some input into it, but I don't</p> <p>19 recall their names. But Jessica and Kevin were the two</p> <p>20 main from each of those firms.</p> <p>21 Q Are they also the two individuals you talked</p> <p>22 with after the October 31st meeting with the council</p> <p>23 auditor?</p> <p>24 A Yes.</p> <p>25 Q When Mr. Zahn approached you about looking at</p>	<p style="text-align: right;">Page 187</p> <p>1 works. If you could give me like a specific example of</p> <p>2 what the number is.</p> <p>3 A Yeah. So we had 2019 -- round numbers, we had</p> <p>4 roughly \$3 billion in terms of like under the formula.</p> <p>5 \$3 billion is kind of our net position at the end of</p> <p>6 2019.</p> <p>7 2022, we were expecting about 3.3 billion or</p> <p>8 so in net position. And so that's kind of where that</p> <p>9 10 percent challenge would have originated from.</p> <p>10 Q So everything that was above \$3.3 billion</p> <p>11 would go into the value of the performance units; is</p> <p>12 that correct?</p> <p>13 A Yeah, so to be clear, the example I gave was</p> <p>14 just an example.</p> <p>15 Q Yeah. Yes.</p> <p>16 A Broad strokes, yeah --</p> <p>17 Q As an example in this hypothetical.</p> <p>18 A Yeah.</p> <p>19 So under that hypothetical, anything above</p> <p>20 3.3 billion at the end of the three-year period,</p> <p>21 10 percent of that would have been eligible to go to the</p> <p>22 pool for the long-term incentive. 10 percent of</p> <p>23 anything above 3.3.</p> <p>24 Q And you've seen the memo issued by the council</p> <p>25 auditor in November --</p>
<p style="text-align: right;">Page 186</p> <p>1 a long-term incentive plan tied to financial</p> <p>2 performance, you mentioned that you then had to</p> <p>3 determine a threshold for the performance.</p> <p>4 Was that at his direction?</p> <p>5 A So there was -- I believe you're referring to</p> <p>6 the challenge target --</p> <p>7 Q Yes.</p> <p>8 A -- the target? Yeah.</p> <p>9 Q Correct.</p> <p>10 A So there was a discussion around, you know,</p> <p>11 you didn't want to provide incentive for things that,</p> <p>12 you know -- financial performance that was going to</p> <p>13 result from, you know, just kind of normal day-to-day</p> <p>14 stuff. You wanted to provide incentive for people to do</p> <p>15 things above and beyond what they would typically do in</p> <p>16 the course of their role.</p> <p>17 And so that was the purpose of setting that,</p> <p>18 you know, target.</p> <p>19 Q And who set the target?</p> <p>20 A So the intent of it was to look at what was</p> <p>21 our financial, you know, projections over that</p> <p>22 three-year performance period and set it, you know,</p> <p>23 essentially at that level so that it would have to be</p> <p>24 incremental, you know, activity, or that was the idea.</p> <p>25 Q Well, I'm not quite sure I understand how it</p>	<p style="text-align: right;">Page 188</p> <p>1 A Uh-huh.</p> <p>2 Q -- November '19?</p> <p>3 And you saw the assessment he made for the</p> <p>4 target where he said that the target would have been</p> <p>5 reached -- well, it had been reached in the past nine</p> <p>6 years.</p> <p>7 Do you agree with that?</p> <p>8 A So I haven't reviewed his calculations, but</p> <p>9 what I would say to that is that that challenge target</p> <p>10 was intended to be set each year, each time that you had</p> <p>11 a performance period start, right?</p> <p>12 So we wouldn't have -- presumably you would</p> <p>13 have done the same process over each of those preceding</p> <p>14 nine years and looked at it and said, all right, well,</p> <p>15 what do you expect you would have made over that</p> <p>16 three-year period, and you would have set a challenge</p> <p>17 target that would have been different than the</p> <p>18 10 percent number that's -- that's contemplated in the</p> <p>19 current -- or that would have been contemplated had the</p> <p>20 program sort of cleared the legal hurdles.</p> <p>21 BY MR. POWELL:</p> <p>22 Q You said every year, but you meant every three</p> <p>23 years that you --</p> <p>24 A I'm sorry. Yes. Every time you did -- you</p> <p>25 started a performance period, that's correct.</p>

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<p style="text-align: right;">Page 189</p> <p>1 Q So had this kicked off, the target would have 2 been set and it would have been a locked-in target for 3 three years? 4 A Yes. The challenge -- the 10 percent would 5 have been locked in for that issuance, so to speak, of 6 the performance units. 7 Q At the end of the three-year period? 8 A At the three-year period, yes, correct. 9 BY MS. TEODORESCU: 10 Q So I'll show you JEA 0452 again from Council 11 Member Diamond's notebook. 12 So this is from the council auditor's memo. 13 Now, I'm not sure that I understand fully what you 14 explained about how you would assess the target. But 15 assuming these numbers are correct, how would you 16 determine -- what target would you set for a performance 17 period starting in 2020? 18 A I don't really know how to read this chart. 19 So it's unclear to me from this chart whether or not 20 these value change percentages are the value change 21 percentage over the prior three-year period or -- 22 Q From one year to the next? 23 A -- from one year to the next or -- yeah. I 24 don't really know how to interpret this. 25 Q Can you try to interpret both ways and see how</p>	<p style="text-align: right;">Page 191</p> <p>1 You said that Vogtle would have crushed the 2 income? 3 A Net income, yeah. 4 Q Why? What would have happened -- 5 A Well, it's going to cost \$200 million a year. 6 Q Because JEA would have to pay it, so that 7 would be 200 million less guaranteed going forward? We 8 knew that was going to happen with Vogtle? 9 A Correct. 10 Q And so is it fair to say, then, that the 11 outcome of the success of the PUP -- meaning that 12 employees would make money on the PUP, the outcome of 13 the PUP was not very good absent a recapitalization? 14 A No, I don't agree with that statement. I 15 think that -- I mean, that was the point of setting the 16 challenge target appropriately to -- I mean, we're still 17 going to make \$300 million over that three-year period, 18 right? 19 So, you know, to be clear, it was less than 20 what we were making in prior years when we didn't have 21 Vogtle, but it was still set to be able to -- you know, 22 for -- for some value to be created. 23 Q If income was going to be crushed by 24 200 million a year, what were some of the ways that -- 25 through no recapitalization could JEA have made up that</p>
<p style="text-align: right;">Page 190</p> <p>1 you would set the target in either scenario? 2 A So the target would not have been set based on 3 historical financials at all. The target would have 4 been based on forward-looking financials. 5 Remember, forward-looking from '19 to '22, you 6 got Vogtle coming in in '21 and '22. That's going to 7 crush net income. So in terms of changing that 8 position, our net income absent changes, right, is going 9 to be less in the next three years than it was 10 presumably in some of these prior years. 11 If we were in a prior year, we would have done 12 the same exercises. I would have looked at the 13 three-year pro forma and said, all right, that's the 14 forecast, so that's going to be the challenge target. 15 And there would be, you know, if it's 15 percent, it's 16 15 percent or whatever. 17 Again, this is what I expected to happen under 18 the performance unit plan. Ultimately we never got 19 there, but that was my understanding of it was intended 20 for how it would operate. 21 BY MR. GRANAT: 22 Q I just have a quick follow-up. I'm 23 Sean Granat. I know we haven't met yet. 24 A Hi, Sean. Nice to met you. 25 Q You too.</p>	<p style="text-align: right;">Page 192</p> <p>1 200 million and more for the PUP to be successful? 2 A So the -- so, to be clear, the \$300 million 3 threshold includes the Vogtle impact. So that's already 4 with the Vogtle costs, you know, in there. 5 MR. GRANAT: Has this already been covered? 6 MR. POWELL: No, but I think you're making -- 7 your questions are good, and he's answering it in a 8 way that is clarifying. 9 BY MR. POWELL: 10 Q Because I hear what you're saying. The 11 10 percent target that -- challenge target -- 12 A Yeah. 13 Q -- that you built into the PUP as presented to 14 the board in July of 2019 already assumed the Vogtle 15 impact? 16 A Yeah. Yeah, I mean, it's based on our 17 financial forecast, which includes Vogtle. 18 Q Which, following up on what Mr. Granat is 19 asking about, the Vogtle impact was even made -- crush 20 net income at JEA -- wasn't going to, in and of itself, 21 negatively impact the prospects of the PUP, because you 22 had already factored it in? 23 A Yeah, it was factored in. I think the point 24 is that there would be an incentive to handle the -- I 25 mean, you know, the Vogtle impact and respond to it.</p>

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<p style="text-align: right;">Page 193</p> <p>1           You can't just make \$200 million come --</p> <p>2       Q   No, no, no --</p> <p>3       A   -- out of nowhere. I mean, that --</p> <p>4       Q   And you wouldn't need to, because --</p> <p>5       A   Yeah.</p> <p>6       Q   -- you had already factored in the Vogtle</p> <p>7   impact?</p> <p>8       A   Correct.</p> <p>9       MR. POWELL: All right.</p> <p>10   BY MR. GRANAT:</p> <p>11       Q   I missed this morning. I apologize. So if</p> <p>12   I -- you let me know if it's already been covered. I</p> <p>13   don't want to do that again.</p> <p>14       A   Okay.</p> <p>15       Q   Along the lines of what Adina was asking you</p> <p>16   earlier about the PUP being based on performance, did</p> <p>17   you ever see a memo from OGC that came out in June that</p> <p>18   discussed Florida law and bonuses, and it was written by</p> <p>19   me and Cort Partay (phonetic) and it talked about a</p> <p>20   Statute 215.425?</p> <p>21       A   I don't recall a specific -- no.</p> <p>22       Q   Okay. Were you ever in any conversations</p> <p>23   orally or through email with anyone at JEA or any</p> <p>24   attorneys or anyone regarding ways to fit the PUP</p> <p>25   outside of -- to make sure -- well, let me ask this.</p>	<p style="text-align: right;">Page 195</p> <p>1       making sure that it was a measurable, like, objective</p> <p>2   metric. But I don't remember if that was related to</p> <p>3   those rules or not. You know, you would know the rule</p> <p>4   better than I.</p> <p>5       Q   And do you remember the context of that</p> <p>6   conversation? Was that in a meeting? Can you</p> <p>7   remember --</p> <p>8       A   I don't, yeah.</p> <p>9       Q   Okay.</p> <p>10       A   Those are really the only two things I really</p> <p>11   recall about the specific -- you know, again, I wasn't</p> <p>12   really --</p> <p>13       Q   I understand.</p> <p>14       A   -- part of the legal conversations,</p> <p>15   necessarily.</p> <p>16       Q   Just let me ask you -- not to frustrate you.</p> <p>17       A   Yeah.</p> <p>18       Q   There's some specific questions I want to ask</p> <p>19   you, though.</p> <p>20       Do you recall ever hearing or being part of a</p> <p>21   discussion about designing or tweaking the terms of the</p> <p>22   PUP to fit in with certain laws, we have to change this</p> <p>23   so that we're okay with this law, anything like that?</p> <p>24       A   I guess not specifically. But I was aware</p> <p>25   that they were -- that the lawyers were working to try</p>
<p style="text-align: right;">Page 194</p> <p>1       Have you ever -- were you ever part of</p> <p>2   conversations regarding how to make the PUP fit within</p> <p>3   Florida law?</p> <p>4       A   I don't think I was ever really -- I don't</p> <p>5   recall being a part of those conversations. It really</p> <p>6   wasn't part of my purview. I know that there was -- I</p> <p>7   mean, essentially, that was what the attorneys were</p> <p>8   spending most of their time on.</p> <p>9       Frankly, the performance unit plan was mostly</p> <p>10   legal work around trying to figure out a way to do it as</p> <p>11   a public agency.</p> <p>12       Q   Did you ever hear through attorneys or</p> <p>13   Mr. Zahn or anyone at JEA that there were limitations on</p> <p>14   bonusing public employees?</p> <p>15       A   What, I guess?</p> <p>16       Q   Like the Statute 215, it sets strict</p> <p>17   parameters on how public employees can earn bonuses.</p> <p>18       A   So the only thing I really recall was at some</p> <p>19   point somebody mentioned the fact that, I guess, all</p> <p>20   employees have to be eligible for it.</p> <p>21       Q   Do you remember who told you that?</p> <p>22       A   I don't.</p> <p>23       Q   Okay. Is that all that you remember being</p> <p>24   discussed?</p> <p>25       A   I remember -- I remember something else about</p>	<p style="text-align: right;">Page 196</p> <p>1       to design something that worked as a public agency.</p> <p>2       Q   Okay.</p> <p>3       A   But I don't know what -- again, I didn't</p> <p>4   have -- I don't recall any like specific we got this</p> <p>5   problem or that problem or we got to deal with this law</p> <p>6   or that law or -- I don't -- I don't recall any kind of</p> <p>7   conversations like that.</p> <p>8       Q   Have you ever heard anyone describe the PUP as</p> <p>9   a unicorn? Have you ever heard anyone use that term to</p> <p>10   describe it?</p> <p>11       A   I don't recall anybody calling it a unicorn.</p> <p>12   I think I understand what you mean, as it's unique.</p> <p>13       Q   Right. But I mean specifically, have you</p> <p>14   heard anyone at JEA or any of the attorneys involved</p> <p>15   specifically use the term "unicorn"?</p> <p>16       A   I don't recall that.</p> <p>17       Q   What about have you had or heard any</p> <p>18   conversations between Mr. Zahn or other JEA employees or</p> <p>19   any of the lawyers involved that discuss how unique the</p> <p>20   PUP was?</p> <p>21       A   I think the lawyers understood that the design</p> <p>22   of the program was unique under Florida law. I think</p> <p>23   that -- from my perspective -- I mean, we have lawyers</p> <p>24   looking at this thing all over the place, from OGC to</p> <p>25   specialty counsel to, you know, everybody. And I know</p>

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<p style="text-align: right;">Page 197</p> <p>1 Herschel is not our attorney, but he is an attorney.</p> <p>2 And so, you know, I think there was an</p> <p>3 observation that we needed to do a lot of legal work</p> <p>4 here, and I think that's part -- at least from my</p> <p>5 perception, that was part of the reason why there was</p> <p>6 discussions around going to the State Attorney General</p> <p>7 for an opinion and going to the State ethics board.</p> <p>8 And from my perspective, attorneys were</p> <p>9 looking at this thing all -- I was relying, you know,</p> <p>10 heavily on their assessment of how to do this. And it</p> <p>11 was drafted, you know, trying to -- every activity that</p> <p>12 I saw or observed was related to making sure that we</p> <p>13 checked the boxes around, you know, doing it right.</p> <p>14 Q Okay. Was it ever -- did you ever hear any</p> <p>15 discussions -- were you part of any discussions about</p> <p>16 whether any other municipality or public agency had a</p> <p>17 similar PUP?</p> <p>18 A I don't recall if I was -- I don't recall any</p> <p>19 specific conversations. I'm generally aware that some</p> <p>20 research was done around whether or not there was</p> <p>21 something similar.</p> <p>22 I think there was some kind of a plan at one</p> <p>23 of the universities that was called a performance unit</p> <p>24 plan of some kind. I don't know -- I didn't really dig</p> <p>25 into the details on that plan and what it -- if it was</p>	<p style="text-align: right;">Page 199</p> <p>1 MR. GRANAT: Okay.</p> <p>2 THE WITNESS: Yeah.</p> <p>3 MR. GRANAT: All right. Let me move on, then.</p> <p>4 BY MR. GRANAT:</p> <p>5 Q So before that July 2019 board meeting where</p> <p>6 the PUP was presented and passed through the board, did</p> <p>7 Aaron Zahn ever ask you to run financial models and have</p> <p>8 hard data that showed what the PUP possibilities were?</p> <p>9 A No, I don't recall him asking for that.</p> <p>10 Q Before the PUP was presented to the board in</p> <p>11 July, did Mr. Zahn ever sit down and ask you what are</p> <p>12 the projections here; what might this PUP do?</p> <p>13 A So, I mean, again, we all knew that it would</p> <p>14 be 10 percent of anything above 3.3 or -- you know,</p> <p>15 again, back to my hypothetical prior example. It would</p> <p>16 have been -- that would have been the pool --</p> <p>17 Q I heard that.</p> <p>18 A Yeah.</p> <p>19 Q But I'm asking, did Mr. Zahn ever sit down</p> <p>20 with you as the CFO and say, Ryan, you're the CFO,</p> <p>21 what's this PUP going to do, what are you projecting</p> <p>22 this looks like?</p> <p>23 A No, he never asked me for those projections.</p> <p>24 Q So you said we all knew that it was 10 percent</p> <p>25 of anything above 3.3 billion.</p>
<p style="text-align: right;">Page 198</p> <p>1 similar or different, I don't really know.</p> <p>2 But to my knowledge, I don't think there was</p> <p>3 any -- I'm not aware that there was a list of similar</p> <p>4 plans, necessarily.</p> <p>5 Q Okay. Who did that research?</p> <p>6 A The lawyers, but I don't recall which lawyer</p> <p>7 or legal -- or --</p> <p>8 Q Okay.</p> <p>9 A -- law firm.</p> <p>10 Q So as we sit here today, are you aware of any</p> <p>11 municipality or government entity that has a PUP similar</p> <p>12 to the one that the JEA board approved in July?</p> <p>13 A So not the same. I am aware that there were</p> <p>14 some other municipal utilities that had long-term</p> <p>15 incentives. They were structured differently, but --</p> <p>16 Q Do you know --</p> <p>17 A -- not the same.</p> <p>18 Q Do you know how they were structured</p> <p>19 differently?</p> <p>20 A So generally they were -- they were structured</p> <p>21 more as, you know, retention programs, cash-type awards.</p> <p>22 BY MR. POWELL:</p> <p>23 Q For management?</p> <p>24 A For management, yes.</p> <p>25 MR. POWELL: We have covered this, actually.</p>	<p style="text-align: right;">Page 200</p> <p>1 Did Mr. Zahn know that?</p> <p>2 A Yeah.</p> <p>3 Q How do you know that he knew that?</p> <p>4 MR. MURPHY: Just so we're clear, that</p> <p>5 3.3 billion was a hypothetical that she came up</p> <p>6 with. It's 10 percent above 110 percent, whatever</p> <p>7 the figure --</p> <p>8 THE WITNESS: Right.</p> <p>9 MR. MURPHY: Just so we're clear, that 3.3 was</p> <p>10 a made-up number today.</p> <p>11 MR. POWELL: No, it wasn't. It wasn't made up</p> <p>12 today. It was actually presented by</p> <p>13 Mr. Wannemacher quite some time ago.</p> <p>14 MR. MURPHY: But it was a hypothetical --</p> <p>15 MR. POWELL: That's true.</p> <p>16 (Simultaneous crosstalk.)</p> <p>17 MR. GRANAT: Let me reask the question. Thank</p> <p>18 you. Okay. Let me reask the question.</p> <p>19 BY MR. GRANAT:</p> <p>20 Q You said that you were all aware of a simple</p> <p>21 calculation that could be done to project the likely</p> <p>22 ballpark figure of what this PUP was going to produce.</p> <p>23 A Uh-huh.</p> <p>24 Q And I'm asking you, did Mr. Zahn know that</p> <p>25 simple calculation?</p>

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1 A Yes.

2 Q And how do you know that he knew that simple

3 calculation?

4 A Because we talked about the formula, that it

5 was going to be 10 percent of anything above, you know,

6 a certain -- whatever the challenge target is.

7 Q You had that conversation with Mr. Zahn?

8 A Yes.

9 Q And during that conversation, were any figures

10 ever discussed about what that might result in?

11 A No. I mean, out of 10 percent of -- you can

12 plug in whatever number you want, I guess. Like, I

13 mean, any -- I mean, what's the number? I guess I

14 don't --

15 Q Well --

16 A I don't really know how to respond to the

17 question.

18 Q So we knew that -- if I'm correct, the

19 recapitalization -- if a recapitalization event

20 occurred, it would a minimum 3.3 billion; is that right?

21 A Yeah, based on the formula that was -- the

22 minimum requirements that were outlined by the board --

23 Q Right.

24 A -- it would have been, yeah, somewhere in that

25 ballpark, 3.3, 3.4 million.

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1 Q Okay. So going into the July meeting, it's

2 safe to say that the simple calculation would have been

3 known, right, that if the recapitalization occurred,

4 anything above 3.3 billion that was the sale price,

5 about 10 percent of that would fund the PUP; is that

6 right?

7 A Yeah, to be clear, the 3.3 billion was not the

8 sale price. That was the amount that would have been

9 net to the City, right?

10 Q Correct.

11 A So -- but yeah, I mean, you would have put it

12 into the formula and --

13 Q And so I guess my question is, if this

14 recapitalization occurs -- because the recapitalization

15 contemplated a specific amount net to the City. And so

16 you could easily figure out if the sale price was more

17 than that amount net to the City, then 10 percent of

18 that is going to fund the PUP; right?

19 A Correct.

20 Q And did you have that conversation with

21 Mr. Zahn before this PUP was presented to the board in

22 July of 2019?

23 A Yeah.

24 Q Okay. And while you had that conversation,

25 did you ever discuss or say, so, for example, if the

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1 sale price is \$5.3 billion, than it would be 10 percent

2 of \$2 billion that would fund the PUP?

3 A I don't recall specific examples around, you

4 know, 10 percent of a billion is \$100 million. I didn't

5 have that --

6 Q Because it was pretty easy math?

7 A Yeah, I -- I don't recall ever having specific

8 conversations around -- again, I think we all knew the

9 math to be 10 percent of anything above 3.3.

10 Q And when you said "we all," who else was in

11 this group of discussing the 10 percent of anything

12 above that target value?

13 A So when I say "we all," it would have been

14 primarily Aaron's direct reports. It would have been

15 Herschel, Melissa, myself. Lynne Rhode would have been

16 aware of it. OGC would have been aware of it as -- you

17 know, reviewing the documents. The attorneys would have

18 been aware of it.

19 Q Did you ever have discussions with any of --

20 specifically about this 10 percent over the target value

21 being what would fund the PUP with any of the Pillsbury

22 or Foley attorneys?

23 A Uh-huh.

24 Q Which ones?

25 A The ones -- Jessica Lutrin at Pillsbury and

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1 Kevin Hyde at Foley would have been involved in those

2 conversations around the 10 percent and how that was

3 calculated.

4 MR. MURPHY: Mr. Granat, can I just ask you,

5 so you on behalf of JEA are waiving the privilege,

6 then, between attorneys and the CFO to that plan?

7 You're asking about attorney -- conversations he

8 had as a CFO with attorneys that were retained by

9 JEA.

10 I just want to know, because this is about --

11 this could hit the public record, and you are here

12 acting on behalf of JEA as their attorney. And I

13 just want to make sure you are well aware that

14 you're waiving the privilege.

15 MR. GRANAT: Let me -- thank you for bringing

16 that up. Let me think about that and move to a

17 different question in the meantime. Okay. Let me

18 just digest that. I don't know that I agree with

19 you, but --

20 MR. MURPHY: I'm just raising -- I'm concerned

21 that you guys are asking questions about the CFO's

22 conversations with attorneys for the JEA, and once

23 that gets out, if this is public record, then

24 you've waived it.

25 He's not waiving it. You are the attorneys

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<p style="text-align: right;">Page 205</p> <p>1 for JEA, and you're asking him those questions. He</p> <p>2 no longer works for JEA.</p> <p>3 MR. GRANAT: All right. And in the public</p> <p>4 world, the attorney-client privilege is much</p> <p>5 different, but --</p> <p>6 MR. MURPHY: I understand that. But you're</p> <p>7 putting it on the transcript that could be</p> <p>8 transmitted to the City Council.</p> <p>9 MR. GRANAT: Now we're eating up time, because</p> <p>10 we don't have much time left.</p> <p>11 MR. MURPHY: Okay.</p> <p>12 BY MR. GRANAT:</p> <p>13 Q Okay. There was some material in the packet</p> <p>14 that was presented to the board in July of 2019, and</p> <p>15 there was a slide show that -- a slide presentation that</p> <p>16 included information that the cost of the PUP would be</p> <p>17 \$3.4 million per year.</p> <p>18 Are you familiar with that?</p> <p>19 A I've seen a slide today --</p> <p>20 MR. GRANAT: Did you cover this?</p> <p>21 MR. POWELL: We covered it.</p> <p>22 MR. GRANAT: Okay. And the 150 percent cap?</p> <p>23 MR. POWELL: Yes.</p> <p>24 MR. GRANAT: Okay.</p> <p>25 MS. HARRELL: Did we --</p>	<p style="text-align: right;">Page 207</p> <p>1 discussion breaking it down, then, to what the per-unit</p> <p>2 value would be of the PUP in the event of a</p> <p>3 recapitalization event?</p> <p>4 A No, there was no discussion around the</p> <p>5 per-unit value. It was really not focused on.</p> <p>6 Q But as we've discussed, you were aware and</p> <p>7 Mr. Zahn was aware that there was no cap -- as presented</p> <p>8 to the board, there was no cap on the pool of PUP money</p> <p>9 in the event of a recapitalization event?</p> <p>10 A Correct. Anyone who read the documents</p> <p>11 realized there was no cap, according to the documents.</p> <p>12 Q All right. Now, also, by the time you got to</p> <p>13 the July board meeting, it was understood that these</p> <p>14 units were going to cost \$10 per; correct?</p> <p>15 A Correct.</p> <p>16 Q And so when you've been talking about this</p> <p>17 performance unit plan being an incentive plan, it really</p> <p>18 would only be an incentive plan for those who actually</p> <p>19 purchased units; is that not correct?</p> <p>20 A That is correct. It was a -- it was</p> <p>21 structured as deferred compensation.</p> <p>22 Q And doesn't that really turn this into an</p> <p>23 investment plan?</p> <p>24 By the time it was presented to the board,</p> <p>25 wasn't it really now an investment plan and no longer a</p>
<p style="text-align: right;">Page 206</p> <p>1 MR. POWELL: We covered that.</p> <p>2 MS. HARRELL: Did we cover 150? Okay.</p> <p>3 MR. GRANAT: Okay. That's what I have for</p> <p>4 now. If somebody else has -- I would just, to my</p> <p>5 team, like to take a break at some point before we</p> <p>6 end with enough time for us to have more questions.</p> <p>7 BY MR. POWELL:</p> <p>8 Q Right. I just want to do kind of a recap</p> <p>9 on -- I'm going to pick up a little bit on what Sean was</p> <p>10 asking you about, and then I want to try to put this</p> <p>11 into some sort of final context as it pertains to the</p> <p>12 use of the word "performance" in this plan. All right?</p> <p>13 A Okay.</p> <p>14 Q So based upon your answers to Sean about</p> <p>15 discussions with Mr. Zahn or Mr. Vinyard, Ms. Dykes,</p> <p>16 Mr. Eads about the -- calculating what the PUP -- how</p> <p>17 the PUP would perform or what the PUP would do into</p> <p>18 the -- into the -- in the event of a recapitalization</p> <p>19 event, you said that it's just simple, it's 10 percent</p> <p>20 and away you go.</p> <p>21 But that discussion was in terms of getting to</p> <p>22 what the pool of money would be in the -- for</p> <p>23 distribution; correct?</p> <p>24 A Uh-huh.</p> <p>25 Q Likewise, I would gather that there was no</p>	<p style="text-align: right;">Page 208</p> <p>1 performance incentive plan?</p> <p>2 MR. MURPHY: I think he's been asked this</p> <p>3 question multiple times. You guys --</p> <p>4 MR. POWELL: No, I don't think I've asked it</p> <p>5 quite this way.</p> <p>6 THE WITNESS: Again, it was --</p> <p>7 MR. POWELL: And really, that is completely</p> <p>8 unnecessary at this stage of the game. We're an</p> <p>9 hour out from being done and --</p> <p>10 MR. MURPHY: Yet you've spent six hours on</p> <p>11 this at least, and you're asking the same</p> <p>12 questions --</p> <p>13 MR. POWELL: Okay.</p> <p>14 MR. MURPHY: -- over and over again. You guys</p> <p>15 have to people --</p> <p>16 MR. POWELL: Are you done --</p> <p>17 MR. MURPHY: -- going in and out --</p> <p>18 (Simultaneous crosstalk.)</p> <p>19 MR. POWELL: We need to be done on this topic.</p> <p>20 BY MR. POWELL:</p> <p>21 Q Question, can you answer it?</p> <p>22 Do you agree with me that when you're now</p> <p>23 requiring employees to purchase into the plan that it is</p> <p>24 no longer an incentive plan; it has now become an</p> <p>25 investment plan?</p>

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<p style="text-align: right;">Page 209</p> <p>1 A It was structured as deferred compensation as  2 it was -- as the plan was identified.  3 Q And isn't that an investment plan?  4 A It's not -- so I want to be careful about it  5 being an investment, because there are very specific  6 things related to securities. It's not a security.  7 Q You would agree that it's no longer an  8 incentive plan?  9 A So --  10 Q Unless you purchased?  11 A Unless you purchased, yes. Although I  12 think -- look, the point of the purchase price in  13 setting the units at \$10 a unit -- we had a very  14 specific conversation at the Continental Club about that  15 price specifically to try to make sure that everyone  16 would participate.  17 Q All right. Let's talk about that. 2,000  18 employees, more or less; yes?  19 A Yes.  20 Q Was there ever any conversation that, you  21 know, since we want this to be for the benefit of  22 everybody that what we're going to do is make every  23 employee -- and using the 30,000 first tranche of units;  24 correct?  25 A Uh-huh.</p>	<p style="text-align: right;">Page 211</p> <p>1 MR. MURPHY: Object to the form.  2 THE WITNESS: I don't --  3 MR. POWELL: We are not in a court of law.  4 MR. MURPHY: No, but you've been treating this  5 as a transcript. I absolutely have the right --  6 MR. POWELL: Okay. State your objection --  7 MR. MURPHY: I did. I --  8 MR. POWELL: -- be done with it.  9 (Simultaneous crosstalk.)  10 MR. MURPHY: -- objected to the form. You --  11 MR. POWELL: Okay. I don't care about the  12 form.  13 BY MR. POWELL:  14 Q Do you understand the question?  15 A I don't.  16 Q All right.  17 A I'm sorry. I just don't.  18 Q If you -- and maybe -- it's obviously a little  19 bit of a theoretical point, because you said that you  20 were never part of any discussion where it was put out  21 there that we are going to take these 30,000 units and  22 spread them out, as a matter of opportunity, equally to  23 each employee of JEA?  24 A No.  25 Q Is that --</p>
<p style="text-align: right;">Page 210</p> <p>1 Q Was there ever any discussion that we would  2 enable every employee to buy 15 units?  3 A I don't recall -- I don't recall any  4 discussion around -- again, I never saw allocations.  5 Aaron never provided me with allocations.  6 Q I understand that. But you see where I'm  7 going with the math, don't you?  8 A I do.  9 Q And would you agree that that would be the  10 most -- I'm not sure it would be a Republican way or a  11 Democratic way. But wouldn't that be the most even way  12 to enable every single employee of JEA to participate  13 equally in this plan, to allocate 15 to each of the  14 2,000 employees and enable -- not allocate it to them,  15 offer it to them and make it possible that each of them  16 could purchase 15 units?  17 A In the sense that each would be getting the  18 same amount, then yes. That is a fair -- what you would  19 consider a fair way to do it.  20 Q Couldn't be any fairer, could it?  21 A Correct.  22 Q Because this really now recognizes that this  23 is not a return on investment -- on incentive; it is now  24 a return on investment, because everybody would be  25 buying in; correct?</p>	<p style="text-align: right;">Page 212</p> <p>1 A I never -- I do not recall any discussion  2 along those lines.  3 Q Nobody ever talked about that, did they?  4 A Not that I can recall, no.  5 MR. POWELL: Okay. Let's take a few minutes,  6 and we'll regroup. And we may not have any more,  7 or we might.  8 (Recess taken from 4:10 p.m. to 4:18 p.m.)  9 BY MS. HARRELL:  10 Q Mr. Wannemacher, did you have a cell phone, a  11 mobile phone issued to you by JEA?  12 A Issued by JEA? No.  13 Q Yeah. Did you just use your personal phone?  14 A Correct.  15 Q And did you have any other kind of phone that  16 you used for work purposes?  17 A No.  18 Q Do you know if Aaron Zahn had a JEA-issued  19 cell phone?  20 A I don't know.  21 Q Did you -- did you ever use text messaging to  22 communicate with Mr. Zahn?  23 A Yes.  24 Q Did you use the same number each time?  25 A Yes.</p>

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<p style="text-align: right;">Page 213</p> <p>1 Q Did you ever text him to a different number?</p> <p>2 A Early on when he was the interim CEO, he had a</p> <p>3 different phone. But in the last, you know, year or so</p> <p>4 since he's been the permanent, it was the same number.</p> <p>5 Q Did you ever text him using that different</p> <p>6 phone?</p> <p>7 A In the last year or --</p> <p>8 Q Or at any time.</p> <p>9 A I don't recall, yeah.</p> <p>10 Q Did you ever email Mr. Zahn using an email</p> <p>11 address to him other than his JEA.com email address?</p> <p>12 A I don't think so. I mean, I can't</p> <p>13 definitively say never, but it would have been extremely</p> <p>14 rare.</p> <p>15 Q Did you ever email him from your own account</p> <p>16 other than your JEA.com email address?</p> <p>17 A No.</p> <p>18 Q Do you remember ever receiving an email from</p> <p>19 Mr. Zahn from his Gmail account?</p> <p>20 A I don't -- he would sometimes send like</p> <p>21 articles and, you know, industry information, you know,</p> <p>22 that kind of thing, that would come through from a</p> <p>23 Gmail, you know, address to my JEA account, but that's</p> <p>24 the only real thing I can really recall.</p> <p>25 Q And he never emailed you to your personal</p>	<p style="text-align: right;">Page 215</p> <p>1 and I'm just going to ask you if there's anything in</p> <p>2 here that you disagree with, that you think they got</p> <p>3 wrong. And -- is this another copy?</p> <p>4 MS. TEODORESCU: Yes.</p> <p>5 MR. GRANAT: Okay.</p> <p>6 And before I do that, would you like a copy</p> <p>7 for yourself?</p> <p>8 MR. MURPHY: Yes. And how long is it? I</p> <p>9 mean, I would want him to read the whole thing --</p> <p>10 MR. GRANAT: Sure.</p> <p>11 MR. MURPHY: -- because you're asking him to</p> <p>12 render an opinion. It looks like a long document.</p> <p>13 MR. GRANAT: It's a four pages.</p> <p>14 MR. MURPHY: Single-space typed.</p> <p>15 MR. GRANAT: Well, I'm going to ask him to</p> <p>16 read it.</p> <p>17 MR. MURPHY: Okay.</p> <p>18 MR. GRANAT: If he's already read it --</p> <p>19 MR. MURPHY: Make sure you read every word.</p> <p>20 THE WITNESS: Yeah.</p> <p>21 MR. GRANAT: And then -- okay.</p> <p>22 MR. MURPHY: And you're going to have specific</p> <p>23 questions in there about the document?</p> <p>24 BY MR. GRANAT:</p> <p>25 Q Well, I'm going to ask you to read it, and</p>
<p style="text-align: right;">Page 214</p> <p>1 email?</p> <p>2 A Not that I can recall, no. Again, that would</p> <p>3 have been extremely -- I can't think of a reason why he</p> <p>4 would have done that.</p> <p>5 MS. HARRELL: Okay. I don't have anything</p> <p>6 else.</p> <p>7 MR. GRANAT: Okay.</p> <p>8 BY MR. GRANAT:</p> <p>9 Q You had some email communication with the</p> <p>10 council auditor's office, and they had some questions</p> <p>11 for you, and there were some that you answered and some</p> <p>12 that I don't think you ever responded to; is that right?</p> <p>13 A I don't -- some of them I did not respond to.</p> <p>14 I think they were all ultimately responded to --</p> <p>15 Q Okay.</p> <p>16 A -- is my understanding, but I didn't</p> <p>17 necessarily respond to all of them.</p> <p>18 Q Okay. And the council auditor came out with a</p> <p>19 report that's dated November 18, 2019.</p> <p>20 Have you read that report?</p> <p>21 A Yes. I mean, I read it when it came out.</p> <p>22 Q Okay.</p> <p>23 A I know the report you're referring to.</p> <p>24 Q Okay. So what I'm going to do is, I'm going</p> <p>25 to give you a copy of the report and ask you to read it,</p>	<p style="text-align: right;">Page 216</p> <p>1 then I'm going to ask you if there's anything in here</p> <p>2 that you disagree with or that you think the council</p> <p>3 auditor got wrong.</p> <p>4 A Yeah. I will tell you I think --</p> <p>5 MR. MURPHY: Wait until you read it.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. MURPHY: He's going to bring you a copy.</p> <p>8 THE WITNESS: Yeah.</p> <p>9 MR. GRANAT: And if you're in agreement, I</p> <p>10 think -- while he's reading, we can go off the</p> <p>11 record so the court reporter can stand down and --</p> <p>12 MR. MURPHY: Sure. Of course.</p> <p>13 MR. GRANAT: Just to note, this report is --</p> <p>14 MR. MURPHY: Are we back on the record now?</p> <p>15 MR. GRANAT: Yeah. I'm sorry. I didn't mean</p> <p>16 to go off.</p> <p>17 MR. MURPHY: I thought that's what you were</p> <p>18 saying.</p> <p>19 MR. GRANAT: No, I thought we were going -- so</p> <p>20 while he's reading it. I didn't mean --</p> <p>21 MR. MURPHY: Okay.</p> <p>22 MR. GRANAT: -- yet, but so this is JEA Bates</p> <p>23 stamp 444 --</p> <p>24 (Discussion off the record.)</p> <p>25 MR. GRANAT: Okay. So let's just say it's the</p>

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<p style="text-align: right;">Page 217</p> <p>1 council auditor's report dated November 18, 2019,  2 from Kyle Billy, Council Auditor.  3 So we'll have Mr. Wannemacher read it, give  4 him some quiet. And we'll go off the record for  5 now.  6 (Recess taken from 4:24 p.m. to 4:36 p.m.)  7 BY MR. GRANAT:  8 Q Mr. Wannemacher, we took some time. Did you  9 have enough time to read it?  10 A I did read it, yes.  11 Q Okay. I want to make sure you had time to  12 thoroughly read it. So if you feel like you'd like to  13 read it again, that's fine, or if you think you're ready  14 to answer questions, then we can proceed.  15 A I think we can proceed.  16 Q Okay. So in reading the council auditor's  17 report, is there anything in it that you read that you  18 disagree with?  19 MR. MURPHY: Object to form. Overbroad,  20 vague, calls for speculation, legal conclusion,  21 lack of foundation and predicate.  22 MR. POWELL: Wow. There you are.  23 MR. MURPHY: Well, you just showed him a  24 nine-page document and you asked him to basically  25 comment on the accuracy of a nine-page document</p>	<p style="text-align: right;">Page 219</p> <p>1 anything that registered in your mind, that's not right?  2 MR. MURPHY: Same objection.  3 BY MR. GRANAT:  4 Q I mean, Mr. Wannemacher, you agreed that you  5 would come in and cooperate with us. You're not on  6 trial. This isn't a deposition. So I'm just asking  7 you. You just read the document. Was there anything  8 that you read in there that you think he got wrong?  9 MR. MURPHY: Same objection.  10 If you're going to release the transcript to  11 the public, it could be used in litigation against  12 the City. It could be used in litigation against  13 Mr. Wannemacher. I totally disagree with your --  14 MR. GRANAT: So let --  15 MR. MURPHY: -- representation that he's not  16 on trial here.  17 MR. GRANAT: Let's not have speaking  18 objections. If we're going -- if we're going to be  19 formal about it, please object.  20 MR. MURPHY: As I did.  21 MR. GRANAT: As you did, but let's cut the  22 speaking objections, because I'm limited --  23 MR. MURPHY: I didn't make a speaking  24 objection.  25 MR. GRANAT: You actually did.</p>
<p style="text-align: right;">Page 218</p> <p>1 that includes legal conclusions, lots of different  2 things. And I stand by my objections.  3 MR. GRANAT: I heard you. Noted.  4 MR. MURPHY: Okay. Well, you were making a  5 comment, I think, sarcastically, and I was  6 justifying my response.  7 MR. POWELL: There you go.  8 MR. GRANAT: So your objection's noted.  9 BY MR. GRANAT:  10 Q You've read the document. Can you tell me  11 what in the document you disagree with?  12 A Do you have specific questions about the  13 document you'd like me to answer?  14 Q Yes. Now that you've read it, did you read  15 anything that when you read it, you said, that's wrong,  16 he got that wrong, that's not right?  17 A So --  18 MR. MURPHY: Same objection.  19 THE WITNESS: I think that's a pretty broad  20 question.  21 BY MR. GRANAT:  22 Q It is.  23 A So I don't -- if you have something specific  24 you'd like me to look at, I can answer it.  25 Q Well, when you read the document, was there</p>	<p style="text-align: right;">Page 220</p> <p>1 MS. HARRELL: Yeah.  2 MR. MURPHY: You just made a misrepresentation  3 on the record that he's not on trial, this is not  4 some kind of cross examination, which it is.  5 MR. POWELL: All right. And to be clear, it's  6 a four-page document, not nine.  7 MR. MURPHY: No. Let's count the pages, then.  8 One, two --  9 MS. HARRELL: Let's not waste --  10 MR. MURPHY: Wait. One, two, three, four,  11 five, six, seven, eight, nine pages I have here,  12 sir.  13 MR. GRANAT: All right. Let's --  14 MR. MURPHY: Is it five or is it nine?  15 MR. POWELL: It's a four-page memo.  16 MR. MURPHY: There are five --  17 (Simultaneous crosstalk.)  18 BY MR. POWELL:  19 Q Mr. Wannemacher, have you read this before?  20 A I read it just now.  21 Q You've never read this before today? Is that  22 really you're -- what you're telling us?  23 MR. MURPHY: That's not what he said. When  24 you were sitting outside, these questions were  25 already asked, Steve.</p>

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<p style="text-align: right;">Page 221</p> <p>1 BY MS. HARRELL:</p> <p>2 Q Is there anything in the first paragraph of</p> <p>3 the report that you disagree with?</p> <p>4 MR. MURPHY: Same objections.</p> <p>5 MR. POWELL: Mr. Wannemacher, you understand</p> <p>6 that when he makes a form objection, it doesn't</p> <p>7 mean you're not required to answer the question if</p> <p>8 you can? And he would give you that advice.</p> <p>9 MS. HARRELL: And so we can make it less</p> <p>10 broad. We can go paragraph by paragraph, if that</p> <p>11 will help you answer.</p> <p>12 MR. MURPHY: Same objection.</p> <p>13 You can answer. I'm just asserting an</p> <p>14 objection to the form for the record.</p> <p>15 THE WITNESS: I think I'd like to understand</p> <p>16 better the concerns about -- your comment about</p> <p>17 litigation outside of this forum.</p> <p>18 MR. GRANAT: You want to take a minute with</p> <p>19 your client?</p> <p>20 MR. MURPHY: Well, I think he's asking you the</p> <p>21 question. You said that this can't be used for any</p> <p>22 other purpose, basically, he's not on trial. Why</p> <p>23 don't you explain to him what the process is and</p> <p>24 what it can be used for.</p> <p>25 MR. GRANAT: Well, that's not what I said.</p>	<p style="text-align: right;">Page 223</p> <p>1 Q Okay. And I'm just asking if there was</p> <p>2 anything specific that jumped out at you that you could</p> <p>3 share with us. And I understand that you're not</p> <p>4 comfortable in answering that, so we can leave it at</p> <p>5 that.</p> <p>6 So let me ask you, then, to turn to Page 2,</p> <p>7 please. And there's some bold headings, and towards the</p> <p>8 middle there's a paragraph that says "cost based on</p> <p>9 recent financial performance."</p> <p>10 Do you see that?</p> <p>11 A I do.</p> <p>12 Q Are the calculations and figures in that</p> <p>13 paragraph correct?</p> <p>14 A So the calculations -- so I don't have my -- I</p> <p>15 don't have the financial statements in front of me.</p> <p>16 Q Right.</p> <p>17 A So without having those financial statements</p> <p>18 in front of me, I don't know that I can verify those</p> <p>19 specific costs or figures.</p> <p>20 I will say that that element there is -- it's</p> <p>21 speculative at best. It's apples and oranges, because</p> <p>22 you're applying the -- they applied the formula to prior</p> <p>23 periods where this wasn't contemplated. It wasn't --</p> <p>24 Q Okay.</p> <p>25 A -- in place.</p>
<p style="text-align: right;">Page 222</p> <p>1 MR. MURPHY: Okay. Well, I'm asking you to</p> <p>2 explain --</p> <p>3 MR. GRANAT: I'm not going to give advice to</p> <p>4 your client.</p> <p>5 MR. MURPHY: Okay.</p> <p>6 You want to take a break and talk about it?</p> <p>7 THE WITNESS: Okay, I think so, yeah.</p> <p>8 (Recess taken from 4:41 p.m. to 4:43 p.m.)</p> <p>9 THE WITNESS: All right. So I hesitate to</p> <p>10 comment on the entire document. If you want to ask</p> <p>11 me specific questions around specific sentences or</p> <p>12 specific elements of this, I'm happy to answer</p> <p>13 those.</p> <p>14 BY MR. GRANAT:</p> <p>15 Q So I'm just going to ask this question and you</p> <p>16 can answer it, and then we'll move on.</p> <p>17 You've just read this document. Is there</p> <p>18 anything that you can point to or that you're willing to</p> <p>19 point to, to us, that's incorrect that you've read in</p> <p>20 this document?</p> <p>21 MR. MURPHY: Same objection to form.</p> <p>22 A So, again, I think if you would like me to</p> <p>23 opine on my view on specific items in this, I'd be happy</p> <p>24 to do it that way. I think -- I am uncomfortable making</p> <p>25 a blanket statement about the entire document.</p>	<p style="text-align: right;">Page 224</p> <p>1 Q But if -- assume that the \$101,350,000 was</p> <p>2 correct and that you were going to apply the PUP</p> <p>3 calculation to that figure, is the arithmetic correct?</p> <p>4 A So this -- so, again, I can't verify the</p> <p>5 arithmetic because I don't have the financial statements</p> <p>6 in front of me to verify the formula.</p> <p>7 The other thing I would point out is that this</p> <p>8 number was based on 100,000 -- the entire 100,000 units</p> <p>9 being allocated for that performance period, which,</p> <p>10 again, that -- for that performance period, they didn't</p> <p>11 exist.</p> <p>12 But there was never any discussion that I'm</p> <p>13 aware of that there was any concept of allocating</p> <p>14 100,000 performance units.</p> <p>15 Q Okay. Sir, are you saying that because you</p> <p>16 don't have the financials in front of you, you can't</p> <p>17 tell me if the arithmetic is correct in the paragraph</p> <p>18 that we're discussing?</p> <p>19 A So I can tell you that the arithmetic --</p> <p>20 assuming that the financial statements that they pulled</p> <p>21 the information -- you know, that they correctly pulled</p> <p>22 the information from the financial statements, that</p> <p>23 number should be 30 percent of that number as</p> <p>24 contemplated by the conversations that I was aware of.</p> <p>25 Q Okay. I understand.</p>

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<p style="text-align: right;">Page 225</p> <p>1 And is it also correct that if 100,000 --</p> <p>2 hypothetically, if 100,000 performance units were issued</p> <p>3 and the financials were correct, their arithmetic is</p> <p>4 correct in that paragraph, hypothetically?</p> <p>5 A Hypothetically --</p> <p>6 Q Okay.</p> <p>7 A -- yes.</p> <p>8 Q And then I want to ask you the same question</p> <p>9 for the next paragraph, "cost based on JEA projections".</p> <p>10 Hypothetically, if the financials -- if the projections</p> <p>11 turned out to be correct, is the arithmetic correct,</p> <p>12 assuming again that 100,000 performance units were</p> <p>13 issued?</p> <p>14 A Yes, assuming there were 100,000 performance</p> <p>15 units issued and the redemption price was 167 million,</p> <p>16 then yes, that number is correct.</p> <p>17 Q And then so --</p> <p>18 A \$167. Excuse me.</p> <p>19 Q As it was contemplated by you that 30,000</p> <p>20 shares would be allocated, then this -- the total</p> <p>21 number, \$15,778,000, should be divided by 30 percent?</p> <p>22 A It would be 30 percent of that.</p> <p>23 Q 30 percent of that?</p> <p>24 A Yeah. Correct.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 227</p> <p>1 issued?</p> <p>2 A I don't recall, yeah.</p> <p>3 Q Did you ever hear anything about additional</p> <p>4 shares over the initial 30,000 ever being issued?</p> <p>5 A In future periods. So it was contemplated</p> <p>6 that the 100,000 units would be, you know, a multiyear</p> <p>7 plan that would be, you know, allocated over multiple</p> <p>8 years.</p> <p>9 BY MR. POWELL:</p> <p>10 Q A multiyear plan or a multi-performance unit</p> <p>11 plan?</p> <p>12 A Multi-performance period plan. Sorry.</p> <p>13 So it was intended to exist after the first</p> <p>14 performance period for future allocations. There wasn't</p> <p>15 really any discussion around what the allocations would</p> <p>16 look like in future performance periods that I can</p> <p>17 recall. It was really focused on the first performance</p> <p>18 period.</p> <p>19 BY MR. GRANAT:</p> <p>20 Q Are you aware of anything that would have</p> <p>21 prevented the issuance of more than 30,000 shares on</p> <p>22 this first go-round?</p> <p>23 A I don't have the documents in front of me. I</p> <p>24 don't know what the authorization, you know, mechanism</p> <p>25 was under the documents. To be honest, I don't know.</p>
<p style="text-align: right;">Page 226</p> <p>1 A So roughly \$5 million.</p> <p>2 Q Okay. Now, my next question is, the next</p> <p>3 section is a chart. And am I correct this chart assumes</p> <p>4 100,000 performance units issued?</p> <p>5 A It appears to, yes.</p> <p>6 Q Okay.</p> <p>7 A In Column B.</p> <p>8 Q And then it has various net proceeds to the</p> <p>9 City in different scenarios of a recapitalization;</p> <p>10 right?</p> <p>11 I understand that you said as you contemplated</p> <p>12 it, 30,000 shares would be issued, not 100,000.</p> <p>13 A So to be clear, I didn't contemplate it. As I</p> <p>14 was aware of the conversations that were taking place,</p> <p>15 30,000 was what was contemplated, yes.</p> <p>16 Q So as -- so my point is -- and I'm prefacing</p> <p>17 this question with I understand that as you understood,</p> <p>18 30,000 shares were contemplated. But I'm asking you in</p> <p>19 this chart, recognizing that it allocates 100,000</p> <p>20 shares, is the arithmetic in this chart correct?</p> <p>21 A Yeah, as I sit here, it appears to be correct,</p> <p>22 assuming 100,000 units.</p> <p>23 Q Okay. Let me ask you, were you ever part of a</p> <p>24 discussion or did you overhear any talk that 100,000</p> <p>25 performance shares -- or performance units would not be</p>	<p style="text-align: right;">Page 228</p> <p>1 Q Okay. If someone bought a share, a unit, and</p> <p>2 then redeemed it later on, is that redeemed unit then</p> <p>3 available to be repurchased and issued to someone else?</p> <p>4 A My understanding of how the program worked was</p> <p>5 that no. Once that -- once that unit is issued and --</p> <p>6 it's issued, it's no longer available to be issued later</p> <p>7 on.</p> <p>8 MR. GRANAT: Okay. I'm done. We just need a</p> <p>9 copy of this for the record, but --</p> <p>10 (Discussion off the record.)</p> <p>11 MR. LINSNER: Do you want me to read him out?</p> <p>12 MR. POWELL: Yes, read him out. Thank you --</p> <p>13 I have one other question. Excuse me.</p> <p>14 BY MR. POWELL:</p> <p>15 Q Mr. Wannemacher, thank you very much for your</p> <p>16 time today. Might not seem like it to you, but it was</p> <p>17 very valuable to us.</p> <p>18 A I'm glad.</p> <p>19 Q But we have now reached, you know, the end of</p> <p>20 our questions to you, and I told you at the outset that</p> <p>21 our only reason for having this conversation was to</p> <p>22 further our assignment to determine whether or not there</p> <p>23 existed grounds for the termination of Mr. Zahn's</p> <p>24 employment contract for cause.</p> <p>25 So having said that, when you get read out,</p>

1 you'll be offered an opportunity to add anything that  
2 you might want to add to anything. But my last question  
3 to you is, are you aware -- strike that.

4 Is there any information you would like to  
5 share with the board of directors with respect to  
6 Mr. Zahn's performance as CEO at JEA that you believe  
7 would amount to grounds for the termination of his  
8 contract for cause?

9 A No.

10 MR. POWELL: Okay. You can read him out.

11 MR. LINSNER: Okay. Mr. Wannemacher, do you  
12 have anything additional to offer or add?

13 THE WITNESS: No.

14 MR. LINSNER: Okay.

15 As this is an ongoing Office of General  
16 Counsel investigation, you are being advised not to  
17 discuss the case with others.

18 And the interview has now concluded. It's  
19 4:55 p.m.

20 (Sworn statement concluded at 4:55 p.m.)  
21  
22  
23  
24  
25

1 CERTIFICATE OF REPORTER

2

3

4 STATE OF FLORIDA  
5 COUNTY OF DUVAL  
6  
7

8 I, HEATHER M. THOMAS, Court Reporter and  
9 Notary Public, State of Florida, was authorized to  
10 and did stenographically report the foregoing  
11 proceedings; and that the transcript, pages 4  
12 through 230, is a true and accurate record of my  
13 stenographic notes.

14 I further certify that I am not a  
15 relative, or employee, or attorney, or counsel of  
16 any of the parties' attorney or counsel connected  
17 with the action, nor am I financially interested in  
18 this action.  
19

20 DATED this 5th day of January, 2020.

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HEATHER M. THOMAS  
COURT REPORTER



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**From:** [Wathen, David \(Atlanta\)](#)  
**To:** [Maillis, Patricia L. - Director, Employee Services](#)  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics  
**Date:** Wednesday, March 27, 2019 3:25:34 PM

---

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Pat:

Thanks for the update. I think model Ryan provided today is good for now. We will review that and let you know if we have any questions.

Best regards,

David

---

**From:** Maillis, Patricia L. - Director, Employee Services [mailto:mailpl@jea.com]  
**Sent:** Wednesday, March 27, 2019 8:59 AM  
**To:** Wathen, David (Atlanta) <david.wathen@willistowerswatson.com>  
**Subject:** Re: Follow-up from Meeting - FY19 Metrics

This is not the first time he has put it out there. No comments at this meeting. Believe he uses each opportunity to be transparent and so the topic won't be a surprise. He got board approval to change the philosophy several weeks ago.

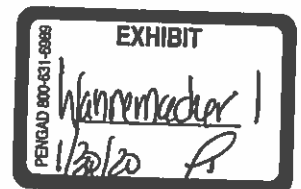
Ryan and Aaron's goal is to reach provide market on all levels and include components that make the company on par with IOUs of similar revenues, output and customers.

I did some research on past practices and this is not the first time that JEA would have a market based compensation plan. Back in the 90's and early 2000's, the company had a plan that paid out as high as 35% of Pay for appointed (all apptd). While I do not agree with this methodology and not sure they actually did the market analysis to show this is appropriate, they definitely were seeking to be the more competitively compensated companies in the national public sector space.

Now, the kicker is, the optics. Several years later, constituents pushed back and the plan suspended. Aaron is willing and wants to take the risk on this. He knows to go for the ideal state and if we get push back, we'll deal with it.

Can you give me the specifics on what you need for the financial data for the PU plan and I will get Ryan on it right away?

Pat  
Sent from my iPhone



JEA0620

On Mar 26, 2019, at 9:39 PM, Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)> wrote:

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Thanks Pat for sharing. How was the proposed compensation framework Aaron presented received by the Board? Anything we should be sensitive to when putting forth our recommendations on the pay adjustments and LTI plan design?

Also, do you think you will be able to provide the financial data we requested to help in determining the best approach for valuing a performance share unit?

Thanks.

David

**From:** Maillis, Patricia L. - Director, Employee Services [<mailto:mailpl@jea.com>]  
**Sent:** Tuesday, March 26, 2019 3:21 PM  
**To:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Kelly, Tom (Charlotte) <[thomas.kelly@willistowerswatson.com](mailto:thomas.kelly@willistowerswatson.com)>; Meng, Patrick (Atlanta) <[Patrick.Meng@willistowerswatson.com](mailto:Patrick.Meng@willistowerswatson.com)>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics

David,

Attached are the slides from today's JEA Board of Director meeting. Suggest taking a look at slides 22 – 24. Aaron is laying the groundwork on LTI.

**From:** Maillis, Patricia L. - Director, Employee Services  
**Sent:** Tuesday, March 26, 2019 11:27 AM  
**To:** 'Wathen, David (Atlanta)' <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>; Hiers, Angelia R. - VP & Chief Human Resources Officer <[hierar@jea.com](mailto:hierar@jea.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Kelly, Tom (Charlotte) <[thomas.kelly@willistowerswatson.com](mailto:thomas.kelly@willistowerswatson.com)>; Meng, Patrick (Atlanta) <[Patrick.Meng@willistowerswatson.com](mailto:Patrick.Meng@willistowerswatson.com)>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics

Will send you today's pieces from the Board meeting re Compensation. Aaron referenced the methodology today.

**JEA0621**

Below looks good.

LTI – agree with the below. Strong emphasis on LTI and proposed plan design

Some of my notes from our meeting on LTI:

3 Financial Factors (can be measured over 5 years):

Rates

Net Book Value

Contribution to the City of Jacksonville

Dashboard is centered around the corporate measures of value:

Customer Value

Financial Value

Environmental Value

Community Impact Value

**From:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>

**Sent:** Monday, March 25, 2019 2:40 PM

**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>; Hiers, Angelia R. - VP & Chief Human Resources Officer <[hierar@jea.com](mailto:hierar@jea.com)>

**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Kelly, Tom (Charlotte) <[thomas.kelly@willistowerswatson.com](mailto:thomas.kelly@willistowerswatson.com)>; Meng, Patrick (Atlanta) <[Patrick.Meng@willistowerswatson.com](mailto:Patrick.Meng@willistowerswatson.com)>

**Subject:** RE: Follow-up from Meeting - FY19 Metrics

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Pat:

Yes, based on the input from last week's meeting, we are pulling together materials for the April committee meeting that will address the following:

- Review current compensation philosophy
- Evolution as to how compensation programs got to their current state
- Current gaps to market in compensation levels – specifically calling out gaps in base salary, short and long-term incentives by organizational level and actions to take to close those gaps to market. These proposed pay adjustments will detail by

**JEA0622**

grade what base salary, short-term and long-term incentive opportunities should be

- Short-term incentive plan design – based on the meeting last week, our takeaway is the short-term incentive plan design you proposed was not changing materially other than the introduction of a Net Income measure. Is there anything you need from us as it relates to short-term incentive plan design?
- Long-term incentive plan design – we will provide a more detailed LTI design given Aaron's feedback around the draft strawman design we shared. It will include target incentive opportunities by level, where applicable, as well as performance measure weightings and a proposed formula for determining a Performance Share Unit (PSU) value. As it relates to the LTI plan performance measures (rates customers pay, change in net book value and contribution to the city), we would look to Ryan to provide guidance on what performance hurdles should be at Threshold, Target and Maximum, as he has insights into historical performance, future projections, business strategy, etc., but we can certainly provide guidance as to what probability payout distributions look a well-designed incentive plan
- Overview of best practices to consider for modernizing total rewards

As it relates to determining an applicable formula for valuing a PSU in the long-term incentive plan, we need some additional information. Would you please check with Ryan to see if he could provide us information on key drivers of long-term performance, such as:

- 1) Historical financials, most importantly on book value as of year-end and anything impacting that other than income/surplus generated in a year less any cash contributions/outlays made
- 2) Better understanding (and history) of cash contributions made to City and the basis by which the contribution level in a given year is determined and/or could be evaluated. Percentage of income/surplus or something else. Also understanding of timing on those contributions and how they impact book value – for example, contribution made in 2018 based on surplus generated in 2017 and so are reflected in year-end book value for 2018 but not 2017.
- 3) How "customer rates" are determined and evaluated, along with historical JEA information as well as historical/current information on relevant comparators or index
- 4) Any information on forward looking projections/estimates on these same items.

We are working to deliver the next draft of materials by the end of next week, assuming we get the financial data requested above. Please let us know if we need to schedule a call to talk through these additional data needs or if we are missing anything in the materials we are pulling together for the committee meeting.

Best regards,

David

**From:** Maillis, Patricia L. - Director, Employee Services [<mailto:mailpl@jea.com>]

**Sent:** Monday, March 25, 2019 10:08 AM

**JEA0623**

**To:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics  
**Importance:** High

David,

Angie received some feedback from Aaron today regarding our meeting last week.

Aaron indicated he had expected to receive an example of a plan (not just a few options). Based on the feedback and input that you received in the meeting last week, will you be providing a draft plan that will detail more of the values by grade or level, the metrics, thresholds, timing of payouts, etc.? If so, what is the timing on receipt of this information?

Pat

**From:** Maillis, Patricia L. - Director, Employee Services  
**Sent:** Thursday, March 21, 2019 8:58 AM  
**To:** 'Wathen, David (Atlanta)' <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics

As LTI structure takes form, I think we will need to state at some point where gaps in STI may be made up in LTI or reference Total Comp so that we also have flexibility to shift the mix, if the company chooses. It seems the message will or should focus on Total Comp (not just the cash components).

Again, thanks. Talk soon.

Pat

**From:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>  
**Sent:** Wednesday, March 20, 2019 6:41 PM  
**To:** Maillis, Patricia L. - Director, Employee Services <[mailpl@jea.com](mailto:mailpl@jea.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>; Hwang, Paul (Atlanta) <[paul.hwang@willistowerswatson.com](mailto:paul.hwang@willistowerswatson.com)>; Patrick, Michael (Atlanta) <[michael.patrick@willistowerswatson.com](mailto:michael.patrick@willistowerswatson.com)>  
**Subject:** RE: Follow-up from Meeting - FY19 Metrics

JEA0624

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Pat:

Nice to meet you yesterday. We enjoyed getting to meet the JEA team. Also, thanks for the update on the STI plan. We are working through assessing the gaps to market based on current STI levels, not proposed, but will likely be in touch with you and Scott if we have any follow up questions or data needs.

Best regards,

David

**From:** Maillis, Patricia L. - Director, Employee Services [<mailto:mailpl@jea.com>]  
**Sent:** Wednesday, March 20, 2019 9:24 AM  
**To:** Wathen, David (Atlanta) <[david.wathen@willistowerswatson.com](mailto:david.wathen@willistowerswatson.com)>; Deeb, Andrea (Atlanta) <[andrea.deeb@willistowerswatson.com](mailto:andrea.deeb@willistowerswatson.com)>  
**Cc:** Strackbine, Scott I. <[strasi@jea.com](mailto:strasi@jea.com)>  
**Subject:** Follow-up from Meeting - FY19 Metrics

David and Andrea,

Thank you for a great meeting yesterday.

As follow-up to our conversation yesterday, wanted to provide some clarification on the current state of the STI plan. There have been no changes to date in total opportunity for employees. There were originally discussions regarding not having a payout for 2019, but this was not communicated to employees and so employees are thinking it is status quo. At the beginning of the performance period, October 1, 2018, there was clear communication regarding the 2019 goals. These were new in many respects so it was not clear (from my perspective as to which of the goals would translate to the STI). Last week, I was asked to incorporate the new goals into the plan. No change in payout values, (except maybe the executives – this discussion has not been finalized).

Providing you the new dashboard so you can see the goals (the first 21, in four categories that align with our Corporate Measures of Value; Customer Value, Financial Value, Environmental Value and Community Impact Value. To the far right of the attached spreadsheet, is Compensation's calculations re the payout values for each metric based on the achievement of a meets or exceeds. The leadership team has confirmed that we will have these 21 measures. This is Comp's draft for cost modelling.

The one item that is up in the air is a comment made by the team last week re "make the spreads between the meets and exceeds wider".

The plan has progressed over the last 5 years from a set payout based on achievement of 5 operational measures, then \$500 - \$3000 for all employees, much like a Profit Sharing Plan with little to no differentiation and below the market for all managers and above. In 2014, , we incorporated individual performance factor for the appointed further differentiating the payout between line and management employees. In 2016, we increased the payouts further for the management to director level (and have done minor fine tuning since). We were not able to do this for the SLT due to optics, so we focused on making sure their base pay was at or moving towards 50<sup>th</sup> percentile. Today, the difference between a meets and exceeds for non-SLT is 160%. I am going to pitch that this is wide enough for now and that we don't want to make changes based on this project. However, I do not think that we will win this battle with the SLT pieces.

As we have discussed, with the addition of a broad based LTI plan, the LTI component can make up that difference in market value for the non-management and lower level managers that don't normally receive LTI in the market place. We probably still need to increase some levels of management STI with the addition of the LTI as well.

**Pat Maillis**

Director, Employee Services

Direct: (904-665-4132)

Cell : (904-703-3453)

<image002.jpg> <image004.jpg> <image006.jpg> <image010.jpg> <image013.jpg>

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**JEA0626**

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### Proposed Design Details: Performance Unit

Plan Design Element	Plan Design Details																					
<b>Award Vehicle</b>	<ul style="list-style-type: none"> <li>Performance Unit: value of unit tied to JEA Net Book Value; unit valuation formula to be determined</li> </ul>																					
<b>Eligibility</b>	<ul style="list-style-type: none"> <li>All employees will be eligible in order to drive collective focus on JEA long-term performance</li> </ul>																					
<b>Target Award Opportunity (as % of base salary)</b>	<ul style="list-style-type: none"> <li>Award opportunities vary based on level in the organization (see page 31 for proposed targets); Management and Board's intent is to close competitive gap to market for LTI in first year of grant and ensure JEA compensation is competitive with market 50<sup>th</sup> percentile</li> </ul>																					
<b>Award Frequency</b>	<ul style="list-style-type: none"> <li>Annual</li> </ul>																					
<b>Circuit Breaker</b>	<ul style="list-style-type: none"> <li>Defined level of contribution to the City will be established for each award cycle; intent is for contribution level to ensure LTI plan is self funded</li> </ul>																					
<b>Performance Measures</b>	<ul style="list-style-type: none"> <li>Net Book Value: used to determine Performance Unit value</li> <li>Customer Rates: performance measure used to modify the number of Performance Units earned; performance goal to be determined</li> </ul>																					
<b>Performance Period</b>	<ul style="list-style-type: none"> <li>3-year performance cycle with overlapping cycles due to annual grant frequency</li> </ul>																					
	<table border="1"> <thead> <tr> <th>Target Established</th> <th>2013</th> <th>2020</th> <th>2021</th> <th>2022</th> <th>2023</th> <th>2024</th> </tr> </thead> <tbody> <tr> <td>Award Payoff</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Award Payoff</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Target Established	2013	2020	2021	2022	2023	2024	Award Payoff							Award Payoff						
Target Established	2013	2020	2021	2022	2023	2024																
Award Payoff																						
Award Payoff																						
<b>Payout Range</b>	<ul style="list-style-type: none"> <li>Threshold: 50% of Target</li> <li>Maximum: 150% of Target</li> </ul>																					
<b>Estimated Cost</b>	<ul style="list-style-type: none"> <li>Estimated cost of annual Performance Unit awards to all employees based on current incumbent base salaries* is \$3.4M</li> </ul>																					

27

**JEA0305**

## Proposed Compensation Adjustments

### Market Positioning Based on Proposed Pay Adjustments

- The following exhibit summarizes the competitive position of JEA pay based on the target bonus % and LTI % adjustments needed to align pay with market median
  - All levels approximate or exceed the market median for target TDC, thereby aligning with the Board's articulated competitive compensation positioning
    - Proposed target bonus % and LTI % for executives bring target TDC to market competitive levels; therefore, material base salary adjustments are not required
    - Bargaining Unit variance exceeds market median target TDC due primarily to variances that are calculated based off of step structure base salaries

#### Job Weighted:

Level	Average Base Salary/Midpoint Variance (Median)		Average Target Bonus %		Proposed Target TDC Variance (Median)		Average Long term Incentive %		Proposed Target TDC Variance (Median)	
	JEA	Market	JEA	Market	JEA	Market	Proposed	Market	JEA	Market
Executive	-12%		45%	43%	-6%		40%	40%	-2%	
Director	-1%		20%	18%	2%		5%	8%	1%	
Manager	-2%		10%	13%	-3%		3%	--	-1%	
Individual Contributor	-1%		7%	10%	-1%		3%	--	2%	
Bargaining Units	11%		2%	7%	8%		1%	--	9%	
Total	3%		8%	12%	2%		3%	19%	3%	

Note: Market data provided by JEA.



# STRATEGIC PLANNING OVERVIEW

Baseline/Scenario 1:  
Status Quo

Scenario #2:  
Traditional Response

**JEA**





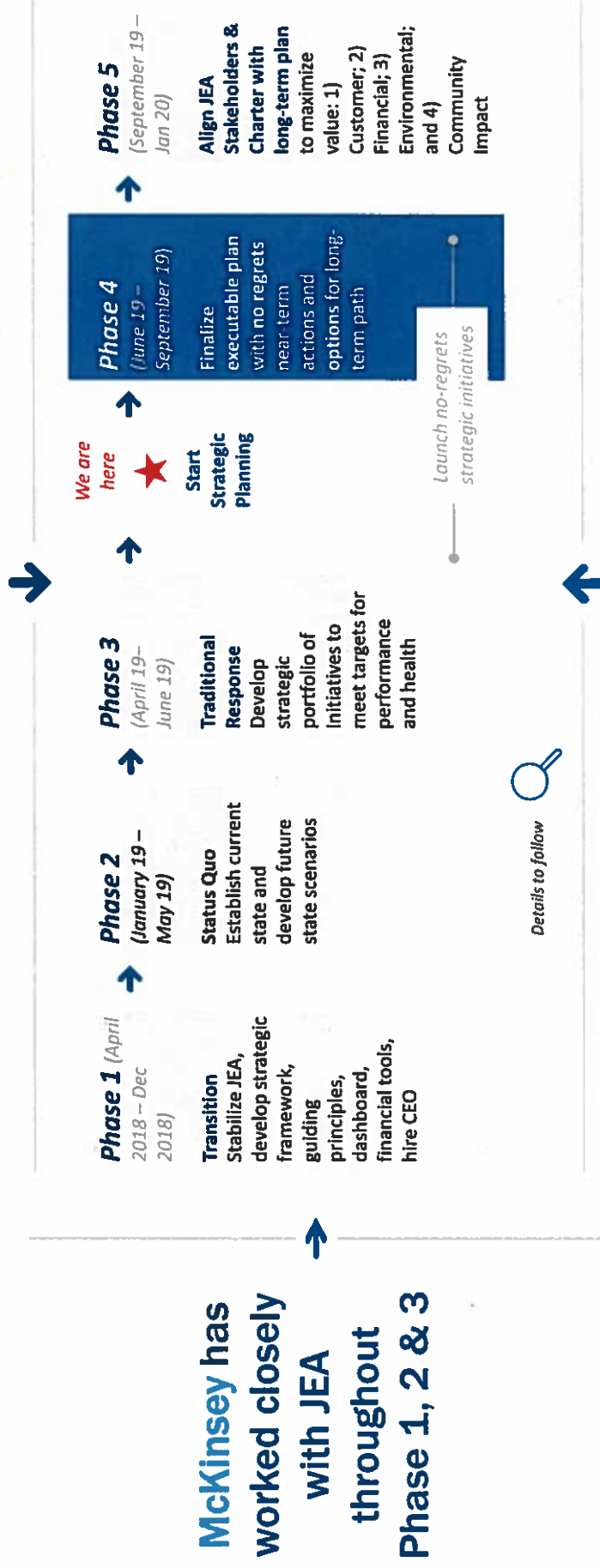
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# STRATEGIC PLANNING PROCESS AND STEPS

Phased approach chosen to increase transparency with community

Internal stakeholder alignment (Board, SLT, appointed employees, Union)

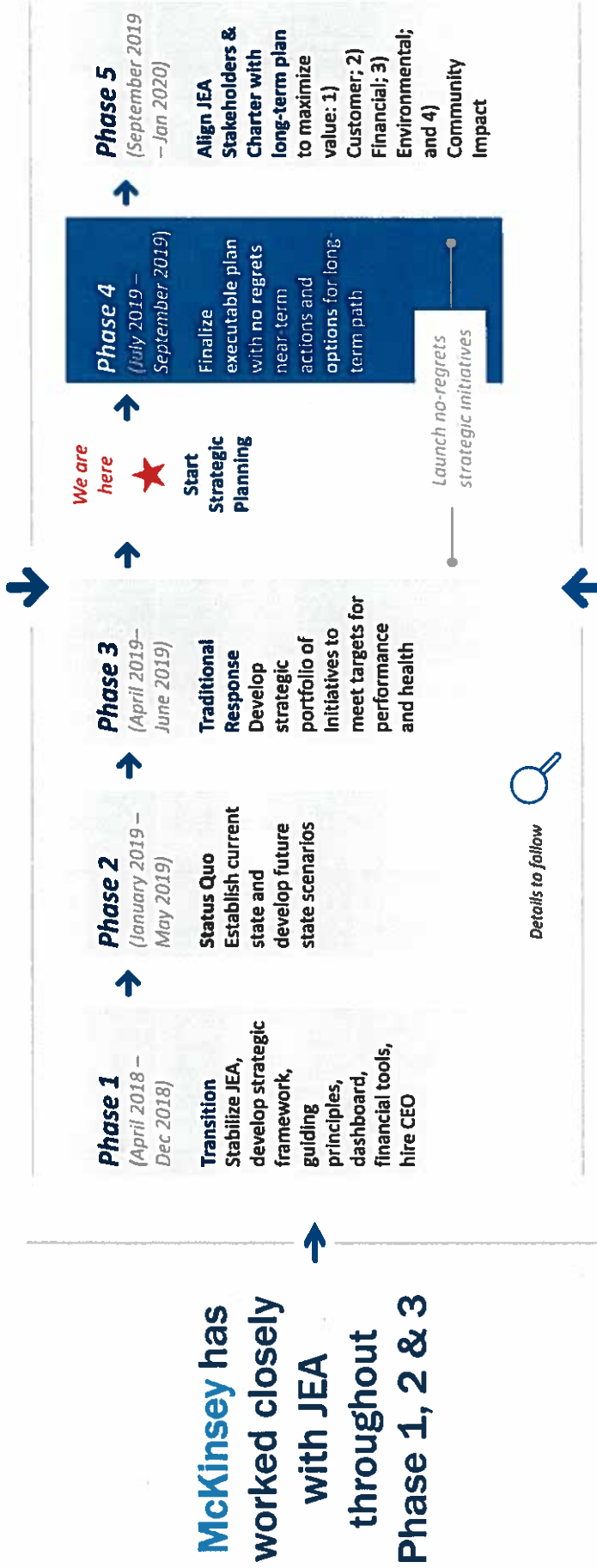


The following "Baseline Conversation" financial projections are presented solely for JEA Board of Directors planning and action. They are not a projection of future financial performance and, as such, should not be relied upon by present or prospective JEA bond investors to purchase or sell any security or to make an investment decision. The projections are merely a mathematical representation of a hypothetical case for change. Actual results are likely to differ materially from this business case. Use of this presentation not in its entirety could result in material financial harm to the company.

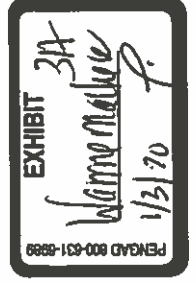
# STRATEGIC PLANNING PROCESS AND STEPS

## Phased approach chosen to increase transparency with community

Internal stakeholder alignment (Board, SLT, appointed employees, Union)



External stakeholder consultation and feedback (e.g. City of Jacksonville)



**OFFICE OF THE COUNCIL AUDITOR**  
Suite 200, St. James Building



**MEMORANDUM**

<b>Date:</b>	November 18, 2019
<b>To:</b>	All Council Members
<b>From:</b>	Kyle S. Billy, Council Auditor
<b>Subject:</b>	JEA Performance Unit Plan

This memorandum is about the JEA "Long-term Performance Unit Plan" (Plan) approved by the JEA Board on July 23, 2019. The Plan concerns me due to its significant potential cost to JEA and the potential reduction of proceeds to the City from a Recapitalization Event.

Members of my staff and I met with JEA officials on October 31, 2019, to discuss the proposed Plan. This discussion was based on the resolution approved by the JEA Board on July 23, 2019, and other documents (drafts of the JEA Long-Term Performance Unit Plan and the Long-Term Performance Unit Agreement) received on August 14, 2019, and on questions submitted by my office on August 9, 2019. During the meeting on October 31, 2019, JEA officials indicated that there had been some changes to the documents based on our initial set of questions. They also indicated that there could be additional changes made in the future based on our discussions at that meeting. Later that day, we sent JEA a summary of outstanding and additional questions. Included in the list were questions asking for a legal opinion on whether the Plan requires City Council approval and whether it is required to be collectively bargained. While waiting for responses to our questions, I prepared to issue a memo notifying City Council of my concerns due to the timing of the rollout of the Plan (JEA planned to distribute the Plan agreements to employees in December and sell the first Performance Units in January of 2020.) However, on November 13, 2019, I received a copy of a letter from JEA's Managing Director and CEO to the City's General Counsel (see Attachment A) stating that implementation of the Plan has been postponed indefinitely. While the postponement alleviates my immediate concerns, the Plan has not been formally rescinded by the JEA Board. That is why I am still issuing this memo. Below is information about the Plan and support for why the Plan should be formally rescinded or amended by the JEA Board.

**PURPOSE OF THE PLAN**

The stated purpose of the Performance Unit Plan is to "provide a means by which employees of JEA may be given incentives to (i) remain with JEA, (ii) drive value for customers, (iii) drive value for the community of North East Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville." The purpose further states "JEA hereby seeks to retain the services of Employees and to provide incentives for such Employees to exert maximum efforts for the success of JEA and for the benefit of JEA's customers and the community it serves and the City of Jacksonville."

### **HOW DOES THE PLAN WORK?**

Employees may purchase Performance Units for \$10 each through payroll deduction and then, after the three-year Performance Period, JEA will pay each Participant of the plan the Redemption Price per Performance Unit. The JEA Board has authorized a pool of 100,000 Performance Units.

As seen on Schedule A to JEA's Long-Term Performance Unit Plan (See Attachment B), the Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target (10% increase over the Base Year Value for the performance period) and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Base Year Value for the performance period. The scenarios below show JEA's minimum cost, maximum cost, cost based on recent financial performance, cost based on JEA projections, and cost based on various Recapitalization Event scenarios.

**Minimum Cost: Zero.** The minimum cost is zero because the Redemption Price may be equal to or less than the Purchase Price.

**Maximum Cost: Unlimited.** The maximum cost is unlimited because there is no cap on the value of a Performance Unit.

**Cost Based on Recent Financial Performance: \$101,350,000.** Based on the Fiscal Year 2018 audited financial statements (Current Year Value) compared to the Fiscal Year 2015 audited financial statements (Base Year Value), the Redemption Price of a Performance Unit would be \$1,023.50. If 100,000 Performance Units had been issued for this period, the net cost to JEA would be \$101,350,000 (\$102,350,000 payout by JEA less \$1,000,000 paid in by employees).

**Cost Based on JEA Projections: \$15,778,000.** Based on Fiscal Year 2019 unaudited financial statements and Fiscal Year 2022 forecasted amounts provided by JEA's Chief Financial Officer, the Redemption Price of a Performance Unit would be \$167.78. If 100,000 Performance Units are issued for this period, the net cost to JEA would be \$15,778,000 (\$16,778,000 payout by JEA less \$1,000,000 paid in by employees).

**Cost Based on Various Recapitalization Event Scenarios:** We ran additional calculations to demonstrate the possible costs of the Plan if a Recapitalization Event occurs.

(A)	(B)	(C)	(D)	(E)	(F)
Net Proceeds to City Before Payment of Performance Units	Purchase Price Per Performance Unit	Increase in Value Per Performance Unit	Redemption Price (B + C)	Total Payout on 100,000 Performance Units (D * 100,000 Units)	Net Proceeds to City After Payment of Performance Units (A - E)
\$3 billion	\$10	\$0	\$10	\$1.0 million	\$3.0 billion
\$4 billion	\$10	\$3,140	\$3,150	\$315.0 million	\$3.7 billion
\$5 billion	\$10	\$6,356	\$6,366	\$636.6 million	\$4.4 billion



### **OVERALL WEAKNESSES AND CONCERNS**

In addition to estimating the potential cost of the Plan, we also reviewed the Plan for weaknesses and concerns and have compiled the following list:

1. The Performance Unit Plan has not been vetted and approved by City Council.
2. There is no cap to the value of a Performance Unit.
3. The Challenge Value Target is too easy to achieve. (Looking at JEA's audited financial statements for the past ten years (2019 is based on unaudited financial statements), we determined that JEA has hit this target in 9 out of the past 10 three-year periods. See Attachment C).
4. The value of a Performance Unit is affected by changes in rates.
5. The value of a Performance Unit is affected by newly adopted Governmental Accounting Standards and changes in accounting policies which are not tied to the actual performance of JEA. Changes like these can cause significant fluctuations. Examples include:
  - a. Accounting Standards Change: The Fiscal Year 2014 financial statements were restated for comparison purposes for Fiscal Year 2015 to show the unfunded pension liability. The change resulted in a decrease in the Net Position of \$352,105,000 for Fiscal Year 2014.
  - b. Accounting Policy Change: The Fiscal Year 2015 financial statements included a change in accounting policy which had a net positive change of \$151,490,000 in Net Position for Fiscal Year 2015.
6. The value of a Performance Unit would be affected by the sale of JEA assets such as real estate or JEA's fiber network. (Real estate is recorded in the financial statements at historical cost. Therefore, the sale of the SJRPP site or any other JEA real estate not held for investment purposes would increase the value of the Performance Units.)
7. The value of a Performance Unit would increase due to developer contributions or even contributions from the City. (For example, when developers complete a subdivision, they may deed over the utility infrastructure to JEA. This would increase the value of the Performance Units. If the City donated assets to JEA, it would increase the value of the Performance Units.)
8. The value of a Performance Unit would be affected by in-kind contributions from JEA to the City (e.g. nitrogen credits).
9. The Plan is not limited strictly to JEA employees. The Plan specifically includes "each actively employed eligible attorney from the Office of General Counsel of the City of Jacksonville who is dedicated exclusively to JEA." In addition, the CEO can recommend and the Plan Administrator (Chair of JEA Compensation Committee) can approve participants that are not JEA employees.
10. The Plan Administrator has the ability to delegate any or all responsibilities to any member of JEA's senior executive management. (This could create a conflict of interest and should be reviewed by the City Ethics Officer.)
11. JEA's CFO, who is eligible to participate in the Plan, is responsible for calculating the Redemption Price.
12. If any payments under the plan are subject to any excise tax, interest or penalties under the IRS Code, JEA will have to pay to such employee an amount equal to the full amount of the penalties. (This could further increase the cost of the plan.)

### **WEAKNESSES AND CONCERNS THAT APPLY TO A RECAPITALIZATION EVENT**

1. The value of a Performance Unit can increase significantly due to a Recapitalization Event. (If 100,000 Performance Units were sold as authorized, over \$300 million would be distributed to the holders of Performance Units for every billion dollars in proceeds over \$3 billion that the City receives.)
2. There is no prohibition in the Plan to offering Performance Units to employees after an ITN award has been made and the value of a Performance Unit is known, should a Recapitalization Event occur.

### **OVERALL CONCLUSION**

The Plan is potentially a very costly use of JEA resources that would be magnified by a Recapitalization Event. Regarding a Recapitalization Event, the City Council should keep in mind that plans have already been approved by the JEA Board to help retain and protect employees, including guaranteeing to the employees three years of substantially comparable compensation and benefits in effect at the Closing Date, providing an additional year's pay spread over two years, and providing a pension for years of service not worked by employees who are not eligible for retirement at the time of a Recapitalization Event. Although JEA leadership has decided to postpone indefinitely the implementation of the Plan, the JEA Board has not taken action to formally rescind the Plan or modify it to correct its weaknesses.

### **RECOMMENDATION**

I recommend that you request that the JEA Board take action to formally rescind the Performance Unit Plan or make the following changes to the Plan.

1. If the Plan is not rescinded, the City Council should request a legal opinion as to whether the Plan requires City Council approval.
2. Put a cap on the maximum redemption value of a Performance Unit and a cap on the overall payout of the Plan.
3. Increase the Challenge Value Target.
4. Exclude the following from impacting the value of a Performance Unit.
  - a. Recapitalization Event
  - b. Change in rates charged by JEA
  - c. Newly adopted accounting standards and changes in accounting policy
  - d. Sales of JEA assets
  - e. City contributions to JEA
  - f. Developer contributions to JEA
  - g. In-kind contributions from JEA to the City (e.g. nitrogen credits)
5. Prohibit the delegation of Plan responsibilities to those eligible to participate in the Plan.
6. Limit Plan participation to JEA employees.
7. Require JEA's external auditor to calculate or certify the Redemption Price for Performance Units.
8. Eliminate the provisions whereby if any payments under the Plan are subject to any excise tax, interest or penalties under the IRS Code, JEA will have to pay to such employee an amount equal to the excise tax, interest, or penalties.

**Attachments:**

**Attachment A - Letter from Aaron Zahn to Jason Gabriel**

**Attachment B - Schedule A to JEA Long-Term Performance Unit Plan**

**Attachment C - Graph Depicting the Value Change Percentage Compared to the Challenge Value Target Percentage**

**CC: JEA Board of Directors**

**Aaron Zahn, Managing Director and Chief Executive Officer, JEA**

**Ryan Wannemacher, Chief Financial Officer, JEA**

**Herschel Vinyard, Chief Administrative Officer, JEA**

**Sherry Hall, Chief Government Affairs Officer, JEA**

## Attachment A

21 West Church Street  
Jacksonville, Florida 32202-3139

November 12, 2019

Mr. Jason Gabriel  
City of Jacksonville General Counsel  
117 W Duval St, Suite 400  
Jacksonville, FL 32202



Re: JEA Long Term Performance Unit Plan (the "Plan")

Mr. Gabriel:

This letter pertains to the Plan approved by the JEA Board of Directors ("Board") by Resolution 2019-10 on July 23, 2019. The stated purpose of the Plan is to provide a means by which employees of JEA may be incentivized to: (i) remain at JEA, (ii) drive value for customers, (iii) drive value for the community of Northeast Florida, (iv) drive environmental value, and (v) drive financial value for JEA and the City of Jacksonville. The Board developed the Plan out of a desire to develop a long-term incentive program, in line with market standards, that furthered the Board's total compensation policy approved in January 2019. The Board reviewed the Plan framework as recommended by a third party compensation consultant, Willis Towers Watson, in June 2019. Finally, the Board adopted the Plan in July 2019 and instructed JEA executive leadership to work with the Chair of the Compensation Committees ("Plan Administrator") to implement the Plan.

This letter is to inform you that JEA leadership, in consultation with the Chair of the Board ("Chair"), the Plan Administrator and OGC, has decided to postpone indefinitely the implementation of the Plan.

As you are aware, JEA executive leadership has been diligently working to implement the Plan with the Office of General Counsel ("OGC"), Pillsbury Winthrop Shaw Pittman, LLP, Foley Lardner LLP, and relevant state and local bodies. Given the long-term nature of the Plan and the Plan obligations, JEA leadership wanted to ensure all employment, corporate, ethics, tax, and other related matters associated with the Plan were in accordance with applicable statutes and regulations. To that end, JEA greatly appreciates the deliberate, methodical and meticulous work of OGC and all of its advisors.

The decision to not implement the Plan is based in the incongruity of the Plan's long-term nature and the very real potential short-term implications of the JEA's strategic planning process. As such, the Chair, Plan Administrator and JEA leadership believe the Plan would be best implemented, if ever, post decision on the strategic direction of JEA as determined by the Board.

Accordingly, the Board is expected to recommend one of the following five options as a strategic direction for JEA:

- 1) Scenario #1: Status Quo Plan;
- 2) Scenario #2: Traditional Utility Response Plan;
- 3) Scenario #3: Community Ownership Plan;
- 4) Scenario #4: Initial Public Offering (IPO) Plan; or,
- 5) Scenario #5: Strategic Alternative from ITN 127-19.

Should the Board choose Scenarios 3, 4, or 5 the Plan would be moot from a long-term incentive basis. Should the Board choose Scenario 1 or 2, the Plan has a more appropriate role in driving employee behavior to increase customer, community, environmental and ultimately financial value of JEA.

Please accept this letter as a final decision on this matter until further notice. As always, JEA, and specifically the Plan Administrator, welcomes OGC input and advice on how to appropriately administer the Plan absent a full implementation with its employees.

Sincerely:

A handwritten signature in dark ink, appearing to read 'Aaron F. Zahn', is written over a faint, circular, light-colored stamp or watermark.

Aaron F. Zahn  
Managing Director & Chief Executive Officer

Cc:  
JEA Board of Directors

## Attachment B

### SCHEDULE A [YEAR] REDEMPTION PRICE SCHEDULE

The Redemption Price shall increase by \$100.00 per Performance Unit for each Value Change Percentage increase of 1.00% in excess of the Challenge Value Target and shall decrease by \$0.50 per Performance Unit for each Value Change Percentage decrease of 1.00% below the Threshold Value Target, but in no event shall the Redemption Price per Performance Unit be less than \$0.00.

For purposes of this Schedule A, the following defined terms shall mean:

(a) "Base Year Value" means \$[AMOUNT].<sup>1</sup>

(b) "Challenge Value Target" means [PERCENT].<sup>2</sup>

(c) "Current Year Value" means, with respect to each Performance Period, the sum of (i) JEA's Net Position, as shown on JEA's audited financial statements for such Performance Period, (ii) the aggregate consideration paid, distributed, credited or otherwise provided to the City of Jacksonville whether in cash or in-kind (excluding any public service taxes or franchise fees) during the twelve (12)-month period prior to the end of the Performance Period, and (iii) the aggregate consideration (including refunds, rebates and distributions) paid, distributed, credited or otherwise provided to the customers of the JEA Group during the twelve (12)-month period prior to the end of the Performance Period. For the avoidance of doubt, for purposes of calculating the amounts in clauses (i), (ii) and (iii), any consideration and change in Net Position, as applicable, in connection with the Recapitalization Event shall be taken into account.

(d) "Value Change Percentage" means a percentage equal to the Current Year Value divided by the Base Year Value.

(e) "Threshold Value Target" means [PERCENT].<sup>3</sup>

Any amounts paid, distributed, credited or otherwise provided in a form other than cash shall be valued at the value ascribed to them in the documents governing, or if none, then at their fair market value as determined by the Administrator in its sole discretion.

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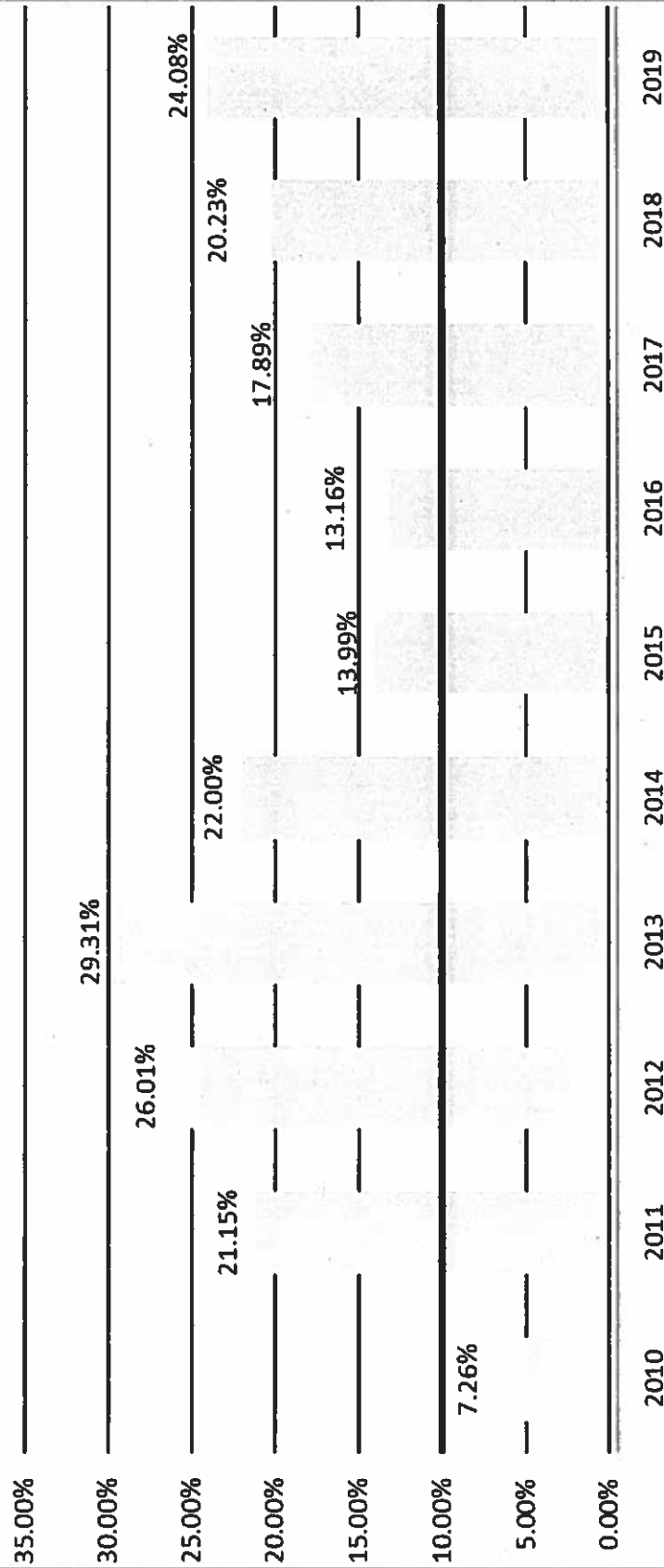
<sup>1</sup> For the first performance period, this amount will be equal to the Current Year Value for fiscal year 2019 as reflected on the audited financial statements when available.

<sup>2</sup> For the first performance period, insert 110%.

<sup>3</sup> For the first performance period, insert 100%.

## Attachment C

### Value Change Percentage Compared to the Challenge Value Target Percentage



Value Change % — Challenge Value Target %

All value change percentages are based on originally issued audited financial statements except for FY 2019, which is based on preliminary financial statements. The formula is Current Year Value ÷ Base Year Value = Value Change Percentage.