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

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SWORN STATEMENT  
OF  
HERSCHEL VINYARD, JR.

DATE TAKEN: Monday, January 6, 2020  
 TIME: 9:40 a.m. - 5:02 p.m.  
 PLACE: Office of General Counsel  
 117 West Duval Street  
 Suite 480  
 Jacksonville, Florida

REPORTED BY: Marianne Branson, RPR, FPR  
 Court Reporter  
 - - -

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1 APPEARANCES FOR THE CITY OF JACKSONVILLE:  
 2 STEPHEN J. POWELL, ESQUIRE  
 3 SONYA HARRELL, ESQUIRE (only present before lunch)  
 4 LAWSIKIA HODGES, ESQUIRE  
 5 JON PHILLIPS, ESQUIRE  
 6 ADINA TEODORESCU, ESQUIRE  
 7 SEAN GRANAT, ESQUIRE  
 8 Office of General Counsel  
 9 117 West Duval Street  
 10 Suite 480  
 11 Jacksonville, Florida 32202

12 APPEARANCE FOR THE OFFICE OF INSPECTOR GENERAL:  
 13 ROBERT LINSNER, INVESTIGATOR  
 14 Office of Inspector General - City of Jacksonville  
 15 231 East Forsyth Street  
 16 Suite 470  
 17 Jacksonville, Florida 32202

18 ALSO PRESENT:  
 19 MICHAEL LOCKAMY, ESQUIRE  
 20  
 21  
 22  
 23  
 24  
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I N D E X

1  
 2  
 3 WITNESS: HERSCHEL VINYARD, JR.  
 4  
 5 EXAMINATION  
 6 By Mr. Powell . . . . . 5  
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1 MR. LINSNER: This recorded interview is  
 2 being conducted at the Office of General Counsel,  
 3 City of Jacksonville. Today is January 6th, 2020.  
 4 The time now is 9:40 a.m.  
 5 I am Investigator Robert Linsner. I am  
 6 employed by the Office of Inspector General, City  
 7 of Jacksonville. The Office of Inspector General  
 8 is assisting Office of General Counsel with this  
 9 investigation regarding Aaron Zahn, former CEO of  
 10 JEA.  
 11 Mr. Vinyard, you are being interviewed as a  
 12 witness in this investigation. If at any time  
 13 your status as a witness changes, you will be  
 14 notified.  
 15 The attorneys who will be interviewing you  
 16 are Stephen Powell, Adina Teodorescu, Sonya  
 17 Harrell, Sean Granat, and Lawsikia Hodges.  
 18 As a commissioned notary public in the State  
 19 of Florida, I am authorized to administer oaths.  
 20 Please be advised that any false statements during  
 21 your interview or attempts to obstruct the Office  
 22 of General Counsel's investigation may be used in  
 23 a subsequent prosecution against you.  
 24 Please raise your right hand.  
 25 Do you, Herschel Vinyard, swear to tell the

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1 truth, the whole truth, and nothing but the truth?  
 2 THE WITNESS: I do.  
 3 MR. LINSNER: Okay. Have any promises,  
 4 threats, or inducements of any nature whatsoever  
 5 been made by me in order to obtain your consent to  
 6 this statement?  
 7 THE WITNESS: No.  
 8 MR. LINSNER: Okay. And do you understand  
 9 that this recorded interview will be subject to  
 10 public disclosure pursuant to the public records  
 11 law and other laws of the State of Florida?  
 12 THE WITNESS: (Nods head)  
 13 MR. LINSNER: Yes?  
 14 THE WITNESS: Yes.  
 15 MR. LINSNER: Okay.  
 16 HERSHEL VINYARD, JR.,  
 17 having been produced and first duly sworn as a witness,  
 18 testified as follows:  
 19 EXAMINATION  
 20 BY MR. POWELL:  
 21 Q Good morning, Mr. Vinyard.  
 22 A Good morning.  
 23 Q My name is Steve Powell. I'm with the Office  
 24 of General Counsel. I'm currently the chief of the  
 25 tort and employment department in our litigation group.

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1 Thank you for coming in this morning.  
 2 I just want to lay a little background and  
 3 make sure that we're all clear on our mission here this  
 4 morning, and then we'll get started.  
 5 MR. LOCKAMY: Mr. Powell, before you begin,  
 6 as with last time, would you mind if I recorded  
 7 this session?  
 8 MR. POWELL: No, that's fine. As long as you  
 9 stick to our understanding that this is all a  
 10 confidential investigation until such time as  
 11 anything is released by this office or the Office  
 12 of Inspector General.  
 13 BY MR. POWELL:  
 14 Q So before we do get started, before we went  
 15 on the record, you provided me with a copy of the  
 16 Garrity statement of rights?  
 17 A Yes, sir.  
 18 Q That was sent to you by Ms. Dykes; correct?  
 19 A Yeah -- I don't know who sent it to me, but  
 20 yes. Yeah.  
 21 Q Okay. And you signed it -- you've read it  
 22 and you've signed it. I've signed it off, and you're  
 23 clear on this record?  
 24 A Yes, sir.  
 25 Q Okay, thank you. So we are here this morning

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1 as a continuation of the work this office has been  
 2 involved in for a couple of weeks now at the direction  
 3 of the JEA board of directors to investigate the tenure  
 4 of Aaron Zahn as CEO of JEA to determine whether  
 5 grounds exist to support a termination of Mr. Zahn's  
 6 employment contract for cause.  
 7 A Uh-huh.  
 8 Q Do you understand that to be the reason you  
 9 were asked to come in and talk to us this morning?  
 10 A Yes, sir.  
 11 Q All right. Over the course of our work, we  
 12 have identified a number of areas of interest, and I  
 13 just want to assure you that our only purpose here  
 14 today is to ask you questions about some of these  
 15 subject areas to determine what you know, when you knew  
 16 it, what you observed, any participation that you might  
 17 have had directly in some of these matters. And,  
 18 frankly, there may be some indirect information you  
 19 have that you would want to share.  
 20 And on that point, I would offer to you that  
 21 we would appreciate your providing, of course, complete  
 22 answers, but if we are in an area that has other  
 23 elements to it that we don't ask you about and you  
 24 think are pertinent to the issues that we are looking  
 25 into, we would encourage you to share that information

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1 with us and enlighten us, if that's the case.  
 2 We are attempting to get a complete  
 3 understanding of essentially the affairs of JEA since  
 4 Mr. Zahn became the interim CEO through December 17th.  
 5 And given your close involvement, as I understand it,  
 6 with Mr. Zahn at least since April of last year, we  
 7 would appreciate your complete cooperation in our  
 8 efforts here.  
 9 The only thing in addition that I would ask  
 10 and remind you is that we do have a court reporter, and  
 11 it's important that we not make her job any more  
 12 difficult than it is, so if you could let me complete  
 13 my questions before answering them, I'd appreciate it.  
 14 I'll try to do the same thing. Conversation is what it  
 15 is, and we won't be perfect in that regard, but  
 16 hopefully we won't be too bad at it either.  
 17 We have a number of folks from our office  
 18 here who are involved in this effort, and unlike a  
 19 typical deposition, so to speak, this won't just be me  
 20 asking you questions. Along the course of our  
 21 discussion, any one of these folks might chime in with  
 22 a question and pursue a line of inquiry that is of  
 23 interest to them, but we will -- we're not here to  
 24 conduct a five-lawyer ambush of you. But if you don't  
 25 mind, that's how we're going to proceed, and I think

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1 everybody will conduct themselves in a manner that is  
 2 appropriate and helpful to the overall mission here.  
 3 Before I start, do you have any questions for  
 4 me or any of us here at OGC in connection with all of  
 5 this?  
 6 A No, sir, not yet.  
 7 Q If you do, feel free, and we'll do our best  
 8 to answer your questions as well.  
 9 To get us started, if you would just lay on  
 10 the record -- oh, let me also say one thing. I know  
 11 that you've had a working relationship with at least  
 12 one lawyer in our group, Lawsikia Hodges, and there's  
 13 no question that Lawsikia has an understanding of  
 14 things that I'm going to be asking questions about that  
 15 are probably deeper than my understanding.  
 16 Nonetheless, I do want to establish a  
 17 complete record, and so even though there may be things  
 18 that I'm asking you that you're like, jeez, you know,  
 19 come on, everybody knows that, or somebody over here  
 20 knows that, I'm not asking because I don't know it. I  
 21 may ask because I know it and I just want to get it on  
 22 the record, so bear with us in that regard, please.  
 23 A Sure.  
 24 Q If you'd get us started by giving us your  
 25 name and your current employment.

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1 A Herschel Vinyard, Jr., and I am employed by  
 2 JEA.  
 3 Q What is your current position at JEA?  
 4 A I'm the chief administrative officer.  
 5 Q How long have you been in that job?  
 6 A I started there in April.  
 7 Q Of 2019?  
 8 A I'm sorry. Yes, sir, 2019.  
 9 Q I know we've jumped into 2020 and we've had  
 10 to be careful about that the last week or so.  
 11 Everybody is still stuck in last year in some respects.  
 12 Can you just quickly summarize your duties  
 13 and responsibilities as chief administrative officer of  
 14 JEA?  
 15 A Sure. The areas of responsibility are  
 16 environmental, government affairs, corporate  
 17 compliance, and that entails physical security.  
 18 There's a number of federal agencies that regulate the  
 19 electric power grid. And then I work with the Office  
 20 of General Counsel through JEA's chief legal officer  
 21 and also working with Jason Gabriel.  
 22 And I think there's one more. Legal,  
 23 government affairs, environmental, corporate  
 24 compliance. There you go.  
 25 Q Thank you. In addition to that, on a little

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1 summary of your experience and portfolio from a  
 2 document that was produced by McKinsey, it indicates  
 3 that you are -- you also serve as a strategic adviser  
 4 to JEA's senior leadership team. Is that correct?  
 5 A That may be a -- I'm one of the older members  
 6 of the team.  
 7 Q Well, I'm one of the older members of our  
 8 team as well, but I'm not a -- I'm not held out as a  
 9 strategic adviser.  
 10 Are you a strategic adviser -- well, when  
 11 Mr. Zahn was there, were you a strategic adviser to  
 12 Mr. Zahn's senior leadership team?  
 13 A I advised. I don't know if I was a strategic  
 14 adviser.  
 15 Q Well, I didn't write it. I'm just asking why  
 16 it's here if you're not.  
 17 A I don't know.  
 18 Q Okay. Fair enough. Prior to coming over to  
 19 JEA, you were of counsel at Foley & Lardner; correct?  
 20 A Yes, sir.  
 21 Q And you were working in both their government  
 22 solutions -- that's an interesting euphemism --  
 23 government solutions and environmental regulatory  
 24 practice; correct?  
 25 A Correct.

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1 Q How long had you been at Foley?  
 2 A I started in early 2015.  
 3 Q Was your of counsel relationship with them  
 4 exclusive to Foley & Lardner?  
 5 A It was.  
 6 Q Did you engage in any other income-generating  
 7 activities while you worked for Foley?  
 8 A You mean like a secondary employment?  
 9 Q Some other job. Did you consult for some  
 10 other group, whether it was legal or political or  
 11 strategic?  
 12 A It would have been exclusively through Foley  
 13 & Lardner.  
 14 Q So everything you did was under the Foley &  
 15 Lardner banner?  
 16 A Yes.  
 17 Q And prior to that you had the privilege to  
 18 act as the Secretary of the Florida Department of  
 19 Environmental Protection from 2011 to 2014; correct?  
 20 A Correct.  
 21 Q Prior to 2014, were you in a law practice?  
 22 A I was employed by BAE Systems, which was --  
 23 acquired a company I was with; it was Atlantic Marine  
 24 Holding Company, the shipyard facility out on Heckscher  
 25 Drive.

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1 Q And what was BAE Fac -- BAE --  
2 A BAE Systems is an international defense  
3 contractor.  
4 Q Prior to -- well, I guess as -- well, in the  
5 position before you became the DEP Secretary, what was  
6 your experience in the utility industry?  
7 A We -- the only thing, we ran a wastewater  
8 treatment plant, and so I worked closely with the  
9 environmental team at Atlantic Marine, but not --  
10 nothing with respect to power. It was -- it was more  
11 focused on environmental.  
12 Q During your tenure as DEP Secretary, did you  
13 develop any particular expertise in the utility  
14 industry?  
15 A The Department of Environmental Protection  
16 certainly regulates all the utility -- you know,  
17 anything environmental with respect to utilities. And  
18 there's a state statute that allows for the Florida  
19 cabinet serving -- Florida cabinet to approve power  
20 lines and -- it's the power line siting act, and that's  
21 within the Department of Environmental Protection.  
22 It's kind of a clearinghouse for all  
23 environmental permits and -- for power companies.  
24 Q Well, coming out of your DEP service, how  
25 would you describe your degree of expertise when it

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1 comes to all matters of the operation of a utility  
2 company?  
3 A I'm not an expert on the -- on the power  
4 side. I was heavily involved in water and wastewater.  
5 Q During your of counsel period for Foley, did  
6 you work on public utility -- I'm sorry, on utility  
7 industry matters?  
8 A Certainly not on the electric side. I will  
9 have to think -- and I did --  
10 Q And, understand, I'm not asking for client-  
11 specific information of work you did for Foley. I'm  
12 not trying to get --  
13 A I'm certain --  
14 Q -- into Foley's business, but just trying to  
15 understand whether you gained any particular expertise  
16 in the utility industry while you were working for  
17 Foley.  
18 A I'm certain in the four years I worked on  
19 water and wastewater issues, in the four years.  
20 Q Again, only on the water and wastewater side?  
21 A That is correct.  
22 Q And we're -- you and I can generally agree  
23 that, for the most part, there are two principal lines  
24 of business at JEA, water and wastewater on the one  
25 hand and energy on the other?

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1 A Correct.  
2 Q I know there's a third area and there's other  
3 revenue-generating aspects of what JEA does, but, for  
4 the most part, it's an agency that provides  
5 electricity, water, and takes care of dirty water;  
6 right?  
7 A Correct. I want to add that on the electric  
8 side they are a large water user as well, and so there  
9 is a water -- there's a significant water component in  
10 the generation of electricity.  
11 Q Thank you. I appreciate that.  
12 While you were at Foley, did you provide any  
13 legal assistance to JEA?  
14 A No.  
15 Q Either directly or indirectly through other  
16 partners at Foley? Did you work with other partners at  
17 Foley who were working on JEA matters?  
18 A I don't remember Foley ever doing any work  
19 for JEA while I was there.  
20 Q When did you first meet Aaron Zahn?  
21 A I met him on maybe a single occasion in my  
22 role as DEP Secretary, and I was introduced to him via  
23 DEP because that -- the local office here because they  
24 were interested in Aaron's waste product business.  
25 Q Can you tell us what you came to understand

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1 about Mr. Zahn's waste product business?  
2 A So we visited a wastewater treatment plant,  
3 and he -- his business was to turn the biosolids into  
4 useful material, odorless, no smell; I think it could  
5 be used as a fertilizer.  
6 And so we -- we toured a sewage treatment  
7 plant.  
8 Q And you were DEP Secretary at the time?  
9 A Yes.  
10 Q How long before you came to Foley was that  
11 introduction?  
12 A I don't remember. I mean it was probably in  
13 the 2012-2013 time frame, but I'm not certain.  
14 Q You didn't have the occasion to meet him  
15 while you were at Foley?  
16 A Not until he inquired whether I'd be  
17 interested in, you know, working for JEA.  
18 Q I'd like to explore that. How did -- how did  
19 he reach out to you? And I'd like to understand the  
20 process by which you ended up as the chief  
21 administrative officer at JEA.  
22 A He called me on the phone and said, Hey,  
23 would you be interested in meeting? And so we had  
24 breakfast. And this would have been in 2019.  
25 And he explained that he wants to get more

1 aggressive on the water side -- and that's kind of my  
2 passion -- and, you know, continue to work with the  
3 government affairs piece, work with OGC, and so I was  
4 interested in that.

5 And not that I was unhappy at all at Foley,  
6 but I have a passion for water.

7 Q Was Mr. Zahn -- literally, did he just call  
8 you on the phone and say, Hey, this is Aaron Zahn. I'd  
9 like to talk to you about coming over to JEA?

10 A Well, no. I don't think he told me that on  
11 the phone. I think he said, Hey, would you meet with  
12 me for breakfast? And that's when we started talking  
13 about that role, that position.

14 Q Did this -- seems to me like this -- in your  
15 mind, would it be coming out of the blue?

16 A It was out of the blue.

17 Q Did you ask him how he came up with your name  
18 to contact?

19 A I did not.

20 Q Did that ever come out in your relationship  
21 with him as to how it was that, of all the people in  
22 all the world, he put a call on you?

23 A Not that I recall.

24 Q Was this an off-site breakfast meeting?

25 A Yes.

1 with respect to additional contacts with Mr. Zahn after  
2 your first breakfast meeting before you were called  
3 over to Angie Hiers.

4 A I think we had a subsequent breakfast and  
5 several phone calls.

6 Q Can you give us a summary of the subject  
7 areas you covered in those additional meetings and  
8 phone calls before things started moving in the  
9 direction to get you over there?

10 You said that he wanted to get more  
11 aggressive on water, for example.

12 A Uh-huh. Yes.

13 Q Thank you. Did he explore any other thoughts  
14 in terms of his plans and vision, if you will, for JEA  
15 in those other contacts?

16 A He was concerned about the electric side and  
17 the challenges that JEA has with respect to increasing  
18 customers and therefore increasing costs, but the  
19 revenue per customer declining, and that was --

20 Q Did he ever -- go ahead, I'm sorry.

21 A And that was -- as he explained it, it made  
22 perfect sense, as we have all switched over to more  
23 conservation modes in our home ownership and with, you  
24 know, LED light bulbs and things like that, so ...

25 Q In those contacts did he ever suggest to you

1 Q Was it just the two of you?

2 A Yes.

3 Q Did he make an offer to you at that time?

4 A No.

5 Q Would you carry us forward in the process  
6 until you did receive the offer?

7 A As I mentioned, I was not unhappy at Foley  
8 and so was not looking to leave. And he called several  
9 times, and then I -- like I say, I was -- I am  
10 passionate about the water side.

11 And then he put me in touch with Angie Hiers,  
12 who is the VP for human resources or something like  
13 that at JEA.

14 Q Okay. And did Ms. Hiers call you in for an  
15 interview?

16 A We talked on the phone. I don't know if we  
17 did an interview. I did also have coffee with Melissa  
18 Dykes and Ryan Wannemacher.

19 Q Again, were these off-site meetings?

20 A They were.

21 Q I'm sorry, I admit that I did get distracted  
22 as you were answering a question. I've got some  
23 activities going, and my assistant is doing her best to  
24 keep me apprised. I do apologize.

25 I did lose a train of thought there, though,

1 that the challenges JEA was facing in the electric side  
2 were unique to JEA, as opposed to being a common  
3 challenge to every public utility and every private  
4 utility in the United States?

5 A I don't recall that being discussed.

6 Q Did he discuss with you his -- any of his  
7 contemplated solutions to these challenges?

8 A I don't think so.

9 Q In any event, at some point you received a  
10 formal offer to come over to JEA?

11 A I did.

12 Q Who extended that to you?

13 A Angie Hiers.

14 Q And from first contact to deciding to move  
15 over, how long -- how many weeks are we talking about?

16 A I will say several weeks. February, March --  
17 February, March time frame of 2019 is my recollection.

18 Q When you and Mr. Zahn first started talking  
19 about your coming over to be the chief administrative  
20 officer of JEA, did you give any thought to whether you  
21 had the necessary skill set for that position?

22 A Well --

23 Q The required skill set?

24 A Sure. So clearly on the environmental -- and  
25 I was a partner in environmental law at Smith, Hulsey &

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1 Busey, and served as DEP Secretary, and then continued  
2 to do environmental work at Foley. I had been involved  
3 in government affairs during some of my career, both as  
4 DEP Secretary, at Foley, and at Atlantic Marine.  
5 Q But prior to this, you had never had a  
6 position in corporate governance, had you, apart from  
7 DEP Secretary?  
8 Do you consider that to be corporate  
9 governance?  
10 A What do you mean by corporate governance?  
11 Q Had you ever served as an officer in a public  
12 or private corporation?  
13 A I was an officer at Atlantic Marine Holding  
14 Company.  
15 Q What was your position there?  
16 A Vice president.  
17 Q Vice president of what? Legal affairs?  
18 A It was a small management team, so I don't  
19 know that it was defined as legal affairs, because we  
20 did have a general counsel also in Mobile, Alabama.  
21 Q What were the revenues of that company,  
22 annual revenues?  
23 A It was a privately held company, and I don't  
24 know that --  
25 Q If you could compare it to JEA in terms of

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1 size.  
2 A It would be smaller.  
3 Q By a factor of what?  
4 A It was -- look, I think we were in the --  
5 over a hundred million dollars.  
6 Q Okay. So is that, what, one percent the size  
7 of JEA?  
8 A JEA is, I think, 2 billion.  
9 Q Yeah.  
10 A DEP is around 1 billion, 3000 employees.  
11 Q At DEP, though, you --  
12 MR. GRANAT: Did you say 30 or 3?  
13 THE WITNESS: Sorry?  
14 MR. GRANAT: Did you say 30 or 3?  
15 THE WITNESS: DEP I think has around 3000  
16 employees, and then there -- I don't remember the  
17 exact numbers, but maybe around the same number --  
18 the water management districts fall within DEP as  
19 well, underneath.  
20 BY MR. POWELL:  
21 Q But, in fairness, at DEP you had somebody  
22 below you that performed the chief administrative  
23 officer duties more or less; correct?  
24 A I had a terrific leadership team.  
25 Q Do you remember the exact day you came over

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1 to JEA? And I only ask that because there is a day in  
2 April that is of interest to us.  
3 I'm just trying to figure -- did you come  
4 over before or after April 4th?  
5 A I think it was the first week of April.  
6 Q Did you attend a senior leadership team  
7 off-site meeting on April 4th at Ponte Vedra?  
8 A I know I attended an off-site leadership team  
9 meeting. I don't know the date.  
10 Q Did you attend a meeting there very close in  
11 time to your starting at JEA?  
12 A Yes, sir.  
13 Q All right. I'll just represent to you that  
14 it's our understanding that meeting was on April 4th,  
15 and so I'm going to talk and ask you questions about  
16 the April 4th meeting, if I can.  
17 Tell me about, if you could, that meeting.  
18 What do you remember it being all about, and who was  
19 there?  
20 A So what I remember it being about was  
21 proposed cuts to JEA staff to deal with the financial  
22 concerns of JEA.  
23 The attendees would have been the leadership  
24 team of JEA.  
25 Q Were there any outside consultants

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1 participating or in attendance?  
2 A I don't recall any being there.  
3 Q As you worked at JEA, you became familiar  
4 with a company called McKinsey, yes?  
5 A Yes. I was not familiar with them at all  
6 before I joined, but I am familiar with McKinsey now.  
7 Q Do you recall if anybody from McKinsey was at  
8 the April 4th Ponte Vedra meeting?  
9 A I don't recall.  
10 Q Was this meeting chaired, run, conducted,  
11 however you want to refer to it, by Mr. Zahn?  
12 A I think so.  
13 Q Do you recall anything else he offered to the  
14 group other than this discussion about proposed cuts to  
15 JEA staff?  
16 A The part I remember was the proposed cuts to  
17 JEA staff.  
18 Q Do you recall Mr. Zahn talking to the group  
19 at that time about a recapitalization or change of  
20 control of JEA?  
21 A No.  
22 Q Do you recall a discussion at that time by  
23 Mr. Zahn about a facility that we will be calling a  
24 long-term incentive plan that would generate money for  
25 employees upon the event of a recapitalization or

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1 change of control of JEA?  
2 A No.  
3 Q To be clear, you're not saying that that  
4 discussion didn't happen, you're just saying, if I  
5 understand you correctly, that you don't recall that  
6 discussion, any discussion along those lines?  
7 A You are correct.  
8 BY MS. HARRELL:  
9 Q You said earlier at that meeting they were  
10 discussing proposed cuts to JEA staff to deal with the  
11 financial concerns of JEA. What were those financial  
12 concerns?  
13 A That being my first week, my knowledge was  
14 limited. But as I expressed earlier, my understanding  
15 then and now is that we were facing increasing expenses  
16 and revenue per household going down.  
17 Q And you didn't understand that at the time of  
18 this April meeting?  
19 A No. I -- I was still getting orientation.  
20 BY MR. POWELL:  
21 Q The only discussion or exposure you'd had to  
22 that had been in your chats with Mr. Zahn before you  
23 came on board; correct?  
24 A Discussion regarding what?  
25 Q About the challenges, the drop in

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1 consumption, revenue issue that you've just described,  
2 that were, as I understand it, the foundation for any  
3 plan to cut JEA staff?  
4 A That would be -- to my recollection, that was  
5 discussed when I was being interviewed, and I don't  
6 remember it being discussed my first week on the job  
7 other than at that -- at this --  
8 Q Okay, I think we're clear. You're coming on  
9 new without a whole lot of understanding of at least  
10 one side of the agency and its business, and you're  
11 getting up to speed.  
12 And your first exposure, I gather, to the  
13 senior leadership team was at this Ponte Vedra meeting?  
14 A That sounds correct.  
15 Q Before this April 4 Ponte Vedra meeting, did  
16 you and Mr. Zahn have an opportunity to sit down and  
17 talk about his plans and expectations for you in a  
18 private setting?  
19 A I'm confident that we discussed when I --  
20 when I started with the company that I sat down to talk  
21 with him about the expectations of my group.  
22 Q When you came on board, did you understand  
23 from Mr. Zahn that you would be a direct report to him?  
24 A That sounds correct.  
25 Q At that time had he already made the change

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1 in the leadership team structure so that there would be  
2 a relatively few number of direct reports to him, that  
3 would include Mr. Wannemacher, Ms. Dykes, and I believe  
4 at the time it would have been Mr. Romero?  
5 A The only structure that I was familiar with  
6 was the one -- there was no change in structure from  
7 the time I got there.  
8 Q All right. Just so we can confirm, then, my  
9 understanding is that from that point forward -- and  
10 I'm not sure how far back, but at least from the time  
11 you came on board, the structure in the leadership team  
12 was such that there was an upper level group of the  
13 four or five I just mentioned and then a second-tier  
14 level of members of the leadership team; is that  
15 correct?  
16 A I certainly reported to Aaron Zahn. As I  
17 said, I'm not aware of any changes, because that was  
18 how it existed when I arrived on day one.  
19 Q All right. And just to finish this topic,  
20 other than the four or five I just mentioned, the rest  
21 of the members of the senior leadership team, with one  
22 exception, Mr. Hobson, reported to Ms. Dykes; correct?  
23 A Say that again.  
24 Q Kerri Stewart, Paul Steinbrecher, Steve  
25 McInall, Jon Kendrick, Caren Anders, Deryle Calhoun,

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1 John McCarthy all reported to Melissa Dykes; correct?  
2 A That is incorrect.  
3 Q Okay. Who did they report to?  
4 A So Ted Hobson reports to me.  
5 Q I'm sorry, I didn't include him, and I was  
6 going to clarify that.  
7 Mr. Hobson was a direct report to you, was he  
8 not?  
9 A And Paul Steinbrecher.  
10 Q To you?  
11 A To me. See, I had environmental. Government  
12 affairs.  
13 Q Would that have been Sherry Hall?  
14 A Sherry Hall. And then I worked -- we -- I  
15 don't know exactly how it appears on the structure, but  
16 the chief legal officer reports to OGC and then works  
17 with me.  
18 MS. HODGES: Yeah, I think the chief legal  
19 officer -- and I'm trying to pull up the structure  
20 as it was presented in the annual disclosure  
21 report in April of 2019.  
22 I think, just for purposes of the JEA chart,  
23 the chief legal officer was reporting under you.  
24 I don't think there was a notation. And we all  
25 know that the chief legal officer is an attorney

1 with Office of General Counsel. But for purposes  
 2 of your JEA chart -- and I'm confirming this in  
 3 the annual disclosure report that was filed in May  
 4 of this year -- that I'm fairly certain Lynne was  
 5 reporting under you for purposes of your chart,  
 6 the JEA chart.  
 7 BY MR. POWELL:  
 8 Q Well, let me just ask as a day-to-day matter,  
 9 did you consider yourself to be the supervisor of  
 10 Ms. Rhodes?  
 11 MR. GRANAT: Rhode.  
 12 BY MR. POWELL:  
 13 Q Rhode?  
 14 A Ms. Rhode. Well, we clearly worked together,  
 15 but I was respectful of the Charter and the dictates of  
 16 her requirements to report to Office of General  
 17 Counsel, but certainly we worked together on certain  
 18 things. And so she reported to me and to Lawsikia or  
 19 Jason.  
 20 Q So we're through the Ponte Vedra meeting on  
 21 April 4th. You come back in.  
 22 What is your -- what is your plan of attack  
 23 there in the job? How did you get into it and what did  
 24 you start working on?  
 25 A My recollection was that we spent a fair

1 amount of time looking for ways that we can save money  
 2 through head count reduction, and so I met with my  
 3 folks to talk about that.  
 4 Q And when you say "we," who is "we" working on  
 5 reduction?  
 6 A Well, each one of the SLT members were tasked  
 7 with finding, okay, JEA is facing some problems and  
 8 we've got to reduce costs, or at least that's something  
 9 we need to be consider -- consider. And so I think all  
 10 the members of the senior leadership team were looking  
 11 at head count reduction.  
 12 Q Who charged them with that assignment?  
 13 A I'm sure Aaron did. I don't recall him  
 14 saying it directly, but I'm confident that would have  
 15 been Aaron's directive.  
 16 Q Had this work been going on before you got  
 17 there?  
 18 A I don't know.  
 19 Q Do you remember whether there was a  
 20 percentage reduction given to each member in terms to  
 21 take -- figure out a way to cut your expenditures or  
 22 your expenses by any particular percentage?  
 23 A My recollection is there was a target, but I  
 24 don't remember what that target was.  
 25 Q Would you have any records that would help

1 you from that period of time to refresh your  
 2 recollection as to what these targets were back in  
 3 April of 2019? Probably emails, things like that?  
 4 A Maybe so. I don't -- I don't know.  
 5 Q Does 20 percent sound about right?  
 6 A I don't know. I don't remember if 20 percent  
 7 was the number.  
 8 (Jon Phillips enters the room.)  
 9 MR. POWELL: We're joined by Jon Phillips.  
 10 THE WITNESS: Good morning, Jon.  
 11 MR. POWELL: I gather you know Jon from past  
 12 interactions.  
 13 THE WITNESS: Yes.  
 14 BY MR. POWELL:  
 15 Q Did your team -- sorry, your -- did you --  
 16 did you refer to them as your team or your group, folks  
 17 below you?  
 18 A So I met with Paul Steinbrecher, Ted Hobson,  
 19 and at the time Mike Hightower was there, before he  
 20 retired, and looking for potential ways to save money.  
 21 Q Did everybody end up generating a plan and  
 22 submitting them to you?  
 23 A I don't know if -- I don't recall if it was a  
 24 plan or a discussion on -- for all of them. I do have  
 25 a recollection that Ted had some documentation. I

1 don't remember about the others.  
 2 Q Well, the reason I ask is it seems to be of  
 3 urgent concern to Mr. Zahn to figure out ways to save  
 4 money, to and including firing hundreds of employees,  
 5 and it just strikes me as odd that even by the time we  
 6 got to December that there had been no work product,  
 7 from your reports, about how to save all this money.  
 8 A There was a work product, and it was referred  
 9 to as Status Quo 2. And there were lists of positions  
 10 generated that -- not by name but by position, that --  
 11 as part of Status Quo 2.  
 12 Q What was your role in producing Status Quo 2?  
 13 A It was to -- my group proposed positions that  
 14 would be eliminated within the three divisions that I  
 15 mentioned.  
 16 Q I take it you did not assemble Status Quo 2?  
 17 A No.  
 18 Q Did you assemble any of the scenarios that  
 19 were presented to the board in June of 2019?  
 20 A No.  
 21 Q Do you know who actually put together -- what  
 22 I mean by assemble, organized for presentation -- those  
 23 scenarios, any of them?  
 24 A I believe in the June board meeting that  
 25 was -- I think Status Quo 2 was the only one presented.

1 Q And who present -- do you know who organized  
 2 that presentation?  
 3 A I don't remember if it was Ryan, Aaron, or  
 4 Melissa.  
 5 Q And as far as you recall, your only  
 6 contribution to that scenario was the cost savings  
 7 ideas offered up by your reports?  
 8 A Correct.  
 9 Q Between the -- your start, so we're in early  
 10 April, and that June meeting, did you have any  
 11 involvement with the McKinsey group and the work that,  
 12 as I understand it, they were doing on the strategic  
 13 plan?  
 14 A McKin -- I was not involved with McKinsey.  
 15 They were around, and I attended a couple of sessions  
 16 with them with the rest of the senior leadership team,  
 17 but my role with McKinsey was limited. There was  
 18 nothing that I did that was just directly with  
 19 McKinsey.  
 20 Q We're going to -- I'm going to ask one more  
 21 question that's timed to that June board meeting and  
 22 then I'm going to step back just a little bit, but --  
 23 and this is a follow-up on an earlier question.  
 24 So by the time we get to the June board  
 25 meeting, had you and Mr. Zahn had any further

1 discussion about these challenges facing JEA that you  
 2 first talked with him about before you were hired?  
 3 And I'm asking did you have any discussions  
 4 with him about those challenges that demonstrated that  
 5 these challenges were unique to JEA, as opposed to  
 6 similar to the challenges facing the utility industry  
 7 as a whole, whether public or private?  
 8 A So during the months after I started --  
 9 Q Okay. I just want to stay in the April to  
 10 June --  
 11 A Okay.  
 12 Q April to June, please. All right?  
 13 A Yes, sir. I believe during that period is  
 14 when I understood that this was a challenge facing  
 15 public and private utilities, that there was --  
 16 Q So, in other words, there was nothing  
 17 particularly unique about these challenges that  
 18 Mr. Zahn was concerned about, unique to JEA?  
 19 A To my understanding, this is a challenge that  
 20 faces all -- that all utilities face, correct.  
 21 Q The industry as a whole; correct?  
 22 A Yes, sir.  
 23 Q There is a presentation that's been referred  
 24 to as the "frog pond" presentation. Have you seen  
 25 that?

1 A The "frog" presentation, yes.  
 2 Q Do you remember when you first saw the "frog"  
 3 presentation?  
 4 A I don't remember when I first saw the "frog"  
 5 presentation. I do remember that I -- I saw him  
 6 present it to City Council in this building, maybe in  
 7 the June or -- May, June time frame.  
 8 Q Did you see that presentation on any other  
 9 occasions?  
 10 A I think I did, but I can't recall  
 11 specifically what other occasion. But we've -- I have  
 12 seen the "frog" presentation.  
 13 Q Did you have any role in preparing the "frog"  
 14 presentation?  
 15 A I did not.  
 16 Q It's my understanding that the next meeting  
 17 off site of the senior leadership team at Ponte Vedra  
 18 was on June 11th. Do you recall that meeting?  
 19 A I recall more than one meeting at Ponte  
 20 Vedra. I don't remember the date.  
 21 Q Do you remember whether -- well, let me ask  
 22 you this: You do remember a meeting at Ponte Vedra  
 23 right at the time you started; correct?  
 24 A Yes, sir.  
 25 Q Do you remember another meeting at Ponte

1 Vedra before the June board meetings, whether it was  
 2 the June compensation committee meeting or the June  
 3 board meeting on -- in late June?  
 4 A I don't remember where it fell in relation to  
 5 the June board meeting.  
 6 Q Do you remember -- regardless of when it  
 7 occurred, do you -- are you able to put yourself there,  
 8 going to Ponte Vedra for the second time, as opposed to  
 9 the first time?  
 10 A Yes, sir.  
 11 Q Can you tell me what you remember about that  
 12 second meeting, whenever it was that it occurred?  
 13 A I don't remember the subject matter of the  
 14 second meeting.  
 15 Q Do you remember whether any outside  
 16 consultants participated or presented at the meeting?  
 17 A I think McKinsey made a presentation off  
 18 site, so there was a fellow by the name of Anton that  
 19 may have made a presentation.  
 20 Q Anton, would that be his first name or last?  
 21 A His first name. And I don't know his last  
 22 name.  
 23 Q Was Anton down from Washington for purposes  
 24 of the presentation?  
 25 A I don't know where he -- where his home base

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1 is.

2 Q When is the first time you remember talking

3 to Mr. Zahn about a change in the structure of JEA that

4 could be referred to as either a sale, or

5 recapitalization, or change in control?

6 A Probably around the June board meeting.

7 Q In preparation for that meeting?

8 A I don't know if it was before that meeting.

9 I think it was after the board meeting, but I don't

10 know that for certain.

11 Q Same question with respect to his interest in

12 developing what was initially called a long-term

13 incentive plan for the employees at JEA, when do you

14 first remember talking to him about that?

15 A So when I started at JEA, I do know that

16 there was a long-term incentive plan discussion

17 occurring, but that was not in my wheelhouse.

18 Q Would you agree that the strategic planning

19 would be in your wheelhouse?

20 A A piece of it is, certainly.

21 Q Did the responsibility for pursuing the

22 strategic planning for JEA run from multiple sources to

23 Aaron Zahn, or did it run from multiple sources to

24 someone short of Aaron Zahn?

25 A Aaron Zahn was in control of strategic

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1 planning as the CEO.

2 Q Would you agree with me that for the most

3 part that was his overriding, principal focus during

4 his -- the time you worked with him at JEA?

5 A I know a lot of time was spent by him on

6 strategic planning, in conjunction with our board.

7 Q So you said the -- and I'm jumping around a

8 little bit, sorry.

9 You said that the incentive plan was not in

10 your wheelhouse. Nonetheless, when you first -- when

11 you first heard about it, was it in a discussion with

12 Mr. Zahn?

13 A I think I heard about it from Angie Hiers,

14 who was then VP for human resources.

15 Q Angie left on April -- left in April; right?

16 A I don't know when she left.

17 Q I'll just represent to you she left in April

18 of '19.

19 So Angie left and she was replaced. Did you

20 have a discussion with her replacement about the

21 incentive plan?

22 A No.

23 Q What was your understanding in the April time

24 frame of the construct of this incentive plan?

25 A That one was being considered, but I had no

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1 details.

2 Q Did you understand that it would be a plan

3 that -- for all employees, as opposed to a plan for

4 management?

5 A I don't remember any discussion taking place

6 where all employees were not going to be included in

7 the incentive plan.

8 Stated a different way, from my position, all

9 I heard was that all employees would be included.

10 Q Did you have an understanding at the outset

11 that employees would simply be covered and eligible

12 under the plan, as opposed to being required to buy in?

13 In other words, everyone is automatically in

14 the plan; is that your understanding of how this --

15 where this plan stood when you first learned about it

16 in April?

17 A There was no -- there were no details that I

18 was familiar with regarding the specifics of the plan.

19 Q Did there come a time when you learned that

20 employees would be required to purchase units in order

21 to participate in the plan?

22 A That -- I first remember that being discussed

23 in the July time frame.

24 Q In the July time frame before the board

25 meeting?

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1 Well, let me just ask this: Does the July 23

2 JEA board of directors meeting stand out to you as a

3 clear date in your memory?

4 A Yes, sir.

5 Q So if I ask you whether something was before

6 or after the July board meeting, you know what I'm

7 talking about, when I'm talking about it, and that's

8 something that's clear in your mind as to an event?

9 A Yes, sir.

10 Q Do you remember whether you heard about the

11 purchase requirement for the plan before or after the

12 July board meeting?

13 A Before.

14 Q Do you remember a meeting in July shortly

15 before the board meeting at the Club Continental

16 property in Orange Park?

17 A I do.

18 Q Did you learn of the requirement to buy into

19 the plan before or after the Club Continental meeting?

20 A I think it was considered at the Club

21 Continental meeting.

22 Q Do you remember who put it on the table for

23 discussion?

24 A I don't. I know it was discussed.

25 Q My understanding of the Club Continental

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1 meeting was a meeting of Mr. Zahn, you,  
2 Mr. Wannemacher, Ms. Dykes, and either Mr. McCarthy or  
3 Mr. Kendrick. Do you remember which one?  
4 A I think -- I think Mr. Kendrick was there.  
5 Q The human resources officer?  
6 A Yes, sir.  
7 Q That would make sense, because there was a  
8 lot of discussion about employment agreements at that  
9 meeting. Do you remember that?  
10 A I don't remember that.  
11 Q And I generally understand that there were a  
12 lot of bankers and lawyers at that meeting from out of  
13 state; is that fair to say?  
14 A I remember folks from J.P. Morgan and Morgan  
15 Stanley there, and I remember people from Pillsbury and  
16 from Foley & Lardner.  
17 Q So at least by that time Foley & Lardner was  
18 now providing legal services of some form to JEA;  
19 correct?  
20 A Correct.  
21 Q Do you know when Foley's work began?  
22 A It probably was around July.  
23 Q Did you have anything to do with bringing  
24 Foley & Lardner on board?  
25 A My recollection is is that I was not familiar

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1 with the Pillsbury firm at the time, but I knew that as  
2 we explored these alternatives there would be a  
3 significant Florida law component and that we didn't  
4 need to be paying New York rates for Florida law  
5 services.  
6 And so I remember calling Jason Gabriel and  
7 saying it would be a better financial decision to  
8 engage a Florida law firm, and I knew that we were  
9 going to -- there would be discussions on real estate,  
10 government procurement, labor and employment, and I  
11 knew firsthand -- and Florida corporate stuff, and I  
12 knew firsthand that Foley & Lardner had that -- had  
13 significant strengths in each one of those categories.  
14 And so I made a recommendation to Jason  
15 Gabriel, and they -- and then OGC retained Foley.  
16 Q Did you talk to Mr. Zahn about that before  
17 you made that recommendation?  
18 A I don't recall if I discussed it. I think I  
19 would have, but I don't recall that.  
20 Q Were you ever -- were you aware at that time  
21 or did you later learn that Mr. Zahn was the reason  
22 that Pillsbury was doing the work to begin with?  
23 A When I joined JEA, Pillsbury was already  
24 doing work for JEA.  
25 Q Did you ever gain an understanding that it

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1 was Mr. Zahn's direction that Pillsbury be engaged?  
2 A I -- I don't know how they were engaged.  
3 Q What was your role in overseeing the work by  
4 Pillsbury and Foley?  
5 A My role was primarily with the Florida law  
6 issues.  
7 Q Thank you. Because a minute ago you -- I  
8 think what you said was: Because we were going to have  
9 to be working on all these components, subject areas,  
10 subject -- subject components, I guess, you saw the  
11 need for Florida law expertise?  
12 A Uh-huh.  
13 Q Correct?  
14 A Uh-huh.  
15 Q Components of what?  
16 A So the board -- the board's direction in the  
17 June board meeting was to explore nongovernmental  
18 options, and that was kind of the genesis of then the  
19 July Club Continental meeting.  
20 Q Was Pillsbury not exploring those options  
21 prior to the June board meeting?  
22 A I don't think so.  
23 Q And you don't think Foley was engaged until  
24 after the June board meeting, yes?  
25 A My recollection it was -- was that it was

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1 after the June board meeting that I called Jason  
2 Gabriel.  
3 Q And by the time we got to the July 23 board  
4 meeting, everything was ready to be presented to the  
5 board of directors; is that correct?  
6 A Explain "everything."  
7 Q Well, I would ask you what you remember the  
8 board of directors considering and approving at the  
9 July 23 board meeting.  
10 A So there were I guess the five scenarios.  
11 One was Scenario 1, and that was raise rates; and then  
12 the second one was a blend, if you will, and I think  
13 that's referred to as the Status Quo 2, which was raise  
14 rates and cut costs. And then the other three options  
15 were the nongovernmental structures.  
16 So we had prepared, you know, as I mentioned,  
17 the -- there was -- somebody did a projection on raise  
18 rates for Status Quo 1; somebody did a blend for Status  
19 Quo 2. And I remember the July 23rd board meeting  
20 because I had -- that was my first time to make a  
21 presentation to the board, and that was on some of the  
22 constraints that we faced from a legal standpoint.  
23 And then the IPO -- my recollection is it was  
24 the IPO, the co-op, and the sale.  
25 Q And is it your recollection that all of the

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1 work done on the sale, IPO, nongovernmental structure  
2 work was done in between the June board meeting and the  
3 July board meeting?  
4 A No.  
5 Q Okay. It just wasn't being done by  
6 Pillsbury?  
7 A It wasn't -- I mean as Lawsikia knows, there  
8 was a significant amount of work done following the  
9 July board meeting.  
10 Q No, I'm talking about in -- well, okay.  
11 After the July board meeting is a whole other  
12 topic that's probably this afternoon. So I'd like to  
13 stay between the June board meeting and the July board  
14 meeting if we could, all right.  
15 So with -- would you agree that -- well, I  
16 think I understand you to be saying that from your  
17 understanding or activity, there was this June  
18 directive by the board to explore nongovernmental  
19 options, and all that work was done between the June  
20 board meeting and the July meeting where it was  
21 presented, and the board endorsed the scenario that  
22 you've been describing?  
23 A There was a lot of work done between the June  
24 board meeting and the July board meeting.  
25 Q Must have been, right, a lot.

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1 A (Nods head)  
2 Q So what was your role in that to get -- you  
3 said you presented the legal challenges or some  
4 constraints at the board meeting. What was your  
5 presentation all about?  
6 A So it was what are the constraints that we  
7 face as government, and so it would not be necessarily  
8 unique to JEA.  
9 But we looked at the lending credit, and I  
10 don't -- Lawsikia, I don't know if you played a role in  
11 looking at any of this, but certainly Lynne Rhode did  
12 some research on it. But it would be --  
13 Q Well, I'm sorry, I want to stay with your  
14 work. You said that you presented to the board on this  
15 subject area.  
16 A Yes.  
17 Q What do you recall the sum and substance of  
18 your presentation to have been?  
19 A So there were -- my recollection is we  
20 covered two Florida Constitutional constraints. We  
21 covered public records constraints. I may have touched  
22 on Charter.  
23 Q What did you tell the board about those  
24 things?  
25 A Well, that there were -- we explained the

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1 challenges that, for example, the no lending of credit  
2 creates a challenge in, you know, forming partnerships.  
3 And I'm just going by some of the research that Lynne  
4 did.  
5 We talked about that JEA's role was limited  
6 to municipal functions. And I remember specifically  
7 discussing a Florida Supreme Court case relating to a  
8 golf course.  
9 BY MS. HARRELL:  
10 Q Do you remember the name of that case?  
11 A It was an old Florida Supreme Court case.  
12 Q Old as in the '20s, or '60s, or --  
13 A Maybe earlier than that.  
14 Q Okay.  
15 A And the reason why we used it is I think it  
16 said -- there was some discussion about us providing --  
17 getting into the electric vehicle business to  
18 improve -- you know, hopefully get more people driving  
19 electric cars and increase demand.  
20 And there was a tag line in the Supreme Court  
21 decision that said that a municipal purpose, you don't  
22 want to have government or municipalities owning -- and  
23 they use the phrase "juke joint," and they used  
24 "automobile dealership" in that phrase.  
25 Q Do you know if you had a research file, a

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1 paper research file?  
2 A Oh, I wouldn't have. Lynne would have had  
3 it.  
4 Q Did she email you the cases or --  
5 A I can find the case. If you search "juke  
6 joint" -- so that's what stands out.  
7 MS. HARRELL: Okay.  
8 BY MR. POWELL:  
9 Q Did you prepare a written presentation to the  
10 board for the July 23 meeting?  
11 A There was a couple of slides, but, actually,  
12 I think one of them was prepared -- had been used  
13 previously by somebody else.  
14 Q But other than that, you just had a written  
15 outline and you offered your thoughts along the lines  
16 of what we've just been talking about?  
17 A Yes. Constitution, public records. There  
18 were a couple other components, but I don't -- I don't  
19 remember.  
20 Q Did you in that presentation distinguish --  
21 or make any comparison of the challenges that JEA was  
22 facing as compared to what the Orlando Utilities  
23 Commission is facing, so as to present it that JEA had  
24 a tougher road ahead than the OUC, for example?  
25 A I did not discuss -- I don't recall ever

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1 discussing other -- any other utilities.

2 Q Whether they're in Nebraska, or California,  
3 Hawaii, or Texas, or anywhere?

4 A I don't recall ever -- well, no. I know I  
5 didn't talk about Nebraska or Hawaii. I don't think I  
6 ever mentioned any other utility anywhere. But you  
7 can -- but that will be on the videotape.

8 Q No, I understand that. But the -- it was  
9 only six months ago; right?

10 I mean do you have a pretty good recall of  
11 your presentation to the board six months ago?

12 A Well, I remember some parts of it, but I  
13 don't remember all of it, obviously.

14 Q Have we touched on all the topics that you  
15 addressed to the board?

16 A That was the only -- it was the constraints  
17 discussion. That was the -- my only part of the  
18 presentation that I recall ever from being in the July  
19 board meeting.

20 Q Prior to going into that meeting, had you  
21 seen your employment agreement that was ultimately  
22 signed by you and the rest of the senior leadership  
23 team meeting (sic) after the July 23 meeting?

24 A I saw a draft, but I don't know if that -- I  
25 don't know what changes have been made since then.

1 Q When that employment agreement was presented  
2 to you, did you -- did it come as news to you --

3 A No.

4 Q -- so to speak?

5 A No.

6 Q And why is -- where did you -- how did you  
7 know it was coming your way?

8 A Because Aaron mentioned, Hey, we probably  
9 ought to have employment agreements for the leadership  
10 team. And he mentioned that can we get Kevin to draft  
11 it, Kevin Hyde at Foley & Lardner.

12 And I suggested that Foley represents JEA,  
13 and that we should -- if we want to get an employment  
14 agreement that we should hire our own lawyers.

15 Q Hire them personally?

16 A Yes.

17 Q And did you hire a lawyer personally?

18 A I found a law firm in Tampa -- and I don't  
19 remember the name of the firm -- that did a draft. I  
20 think Aaron had most of the comments to it. And then  
21 presumably that version got used for all of the  
22 leadership team.

23 I don't know what change -- I was not  
24 touching on that document as it was finished, but I did  
25 arrange for a separate law firm to -- because I knew --

1 I thought that Foley would not be able to do it.

2 Q Is it your recollection that once you made  
3 that connection to the Tampa firm that whoever worked  
4 on it there worked directly with Mr. Zahn to develop  
5 the template and components of this employment  
6 agreement?

7 A I remember getting a version and providing it  
8 to Aaron, and I am -- I know Aaron specifically had  
9 comments back to that lawyer.

10 Q Were you the -- did you continue to be the  
11 go-between between -- I don't mean that in a derogatory  
12 way -- from the Tampa firm to Mr. Zahn as that  
13 employment agreement and its components evolved?

14 A I emailed the person, but I was not -- I  
15 don't think I was involved in -- I know I wasn't  
16 involved in all the conversations that Aaron had with  
17 him.

18 Q Did you see additional drafts of the  
19 documents?

20 A Yes.

21 Q Did Mr. Zahn send additional edits back  
22 through you?

23 A I don't recall. I know he had a conversation  
24 with him.

25 Q That you were not a part of? Or were you a

1 part of it?

2 A I think I was a part of some, but not all.

3 Q When did you see -- first see the final  
4 product?

5 A Probably when I signed the agreement.

6 Q Up until that point, had you been involved in  
7 any discussions about the consulting agreement  
8 component of the contract?

9 A No.

10 Q Do you know what I'm talking about when I say  
11 the consulting agreement component?

12 A Is that the --

13 MS. HODGES: The separation and transition  
14 agreement.

15 THE WITNESS: No, I wasn't involved in that.

16 BY MR. POWELL:

17 Q What is your agreement along those lines?

18 What did your agreement provide for in the way of  
19 separation, transition, and a consulting component?

20 So, for example, Mr. Zahn's was 12 months.  
21 Do you remember how long yours was for?

22 A I don't remember.

23 Q Do you remember that you had a component?

24 A I do, because I read about it.

25 Q Where did you read about it?

1 A I think in the newspaper.  
 2 Q You didn't see it in the package of  
 3 documents?  
 4 A Oh, I signed it, but I don't recall what --  
 5 the number of months.  
 6 Q You had no discussions with anybody about  
 7 where that benefit -- what the genesis of that benefit  
 8 was?  
 9 A No.  
 10 BY MS. HODGES:  
 11 Q So, Herschel, I have a few questions. Recall  
 12 the week leading up to the July 23rd meeting, because,  
 13 remember, I was out of the office.  
 14 A Of course.  
 15 Q I was on vacation. And a barrage of  
 16 documents came to Jason Gabriel. And while I was up in  
 17 D.C. he wanted me to assist him. He said, Hey, we've  
 18 engaged these law firms, they've drafted all these  
 19 documents, Herschel and Lynne working on them, we just  
 20 do thousand level review.  
 21 And I remember looking at the employment  
 22 agreements and being very concerned about them, that  
 23 they seemed to be very heavy in favor of the senior  
 24 management team. So I shared this with Jason, and he  
 25 suggested that I have a call with Lynne Rhode. And the

1 whole purpose of that call was for me and Lynne to get  
 2 on the phone with Kevin Hyde so that we can talk about  
 3 the content of these agreements and to remind Kevin  
 4 Hyde's firm -- you know, Foley and Pillsbury that these  
 5 contracts were for the board, that they were  
 6 representing the board, exactly what you had shared  
 7 with Aaron, that these firms are representing the board  
 8 in these contracts.  
 9 And we set up a call at 4:30. It was  
 10 supposed to be Lynne Rhode and Kevin Hyde. But on this  
 11 call, maybe an hour or two before it, Lynne said,  
 12 Herschel is going to be on the call. And I kind of  
 13 questioned that, because it was like, well, why does  
 14 Herschel need to be on the call, because this is really  
 15 our OGC moment with our outside contractors to say:  
 16 You're representing the board.  
 17 Do you remember being on a call -- I have in  
 18 my notes here July 17 -- specifically to talk about the  
 19 employment agreement with Kevin Hyde? And I think  
 20 Jessica Lutrin was on the call. I can't recall if  
 21 Stephen Amdur was on the call, but I know there  
 22 definitely was a Pillsbury representative.  
 23 Do you remember that call where we  
 24 specifically talked about provisions of the employment  
 25 agreement?

1 A I don't. I don't remember --  
 2 Q Yeah.  
 3 A -- the call at all. I can look at my  
 4 calendar and see if it -- if it was on my calendar, but  
 5 I don't remember that call.  
 6 Do you remember me saying anything?  
 7 Q Oh, yes, I do definitely remember you saying  
 8 something on the call.  
 9 A Okay.  
 10 Q So on the call -- again, the whole purpose of  
 11 the call was to talk about just the content of these  
 12 agreements. So I had some natural questions, you know:  
 13 Why do we have this mutual release; why do we have this  
 14 mandatory separation/transition agreement.  
 15 And that was a question that I posed to Kevin  
 16 Hyde and Pillsbury, and I reminded them on the call  
 17 exactly what you reminded Aaron of, you guys work for  
 18 JEA, so, you know, is the board protected; why do we  
 19 have this?  
 20 And Kevin's response was, Well, you know,  
 21 this is normal, and this merger privatization, it was  
 22 something to that effect, that this was standard. It  
 23 didn't give him any pause at all.  
 24 And specifically on this call we talked about  
 25 the ability of Aaron to exit the contract under good

1 reason, because it gave me some pause. And I can go  
 2 back to the July draft.  
 3 But initially that draft was set up so that  
 4 Aaron could kind of say -- or all of you, all the  
 5 senior management team could say, Hey, here are my good  
 6 reasons, I'm going to notify you that I have good  
 7 reason to exit, and if I -- you know, just by giving  
 8 JEA notice, it was deemed to be a good reason. I  
 9 remember taking like issue with that, like this doesn't  
 10 seem like this is a good provision for the board. So  
 11 we talked about that.  
 12 We also talked about the change in the  
 13 contract where there was a change from the standard  
 14 language where the board -- the senior leadership team  
 15 would basically be absolved of any sort of wrongdoing  
 16 or violation if it was a directive that was coming from  
 17 the board. And we had quite some debate about that,  
 18 because I wanted to have that language changed. I  
 19 think there was some tweaking to the language.  
 20 You kind of chimed in, and you were like,  
 21 Well, you know, OG -- you know, we -- all of the  
 22 decisions that go before the board, you know, we talk  
 23 to OGC about them.  
 24 And I was kind of adamant like, Well, wait a  
 25 second. You know, we give you guys legal advice, but

1 for the most part you guys make business decisions all  
 2 the time, and you kind of bring those before the board.  
 3 But it was a very robust discussion that we  
 4 had for at least 45 minutes talking about getting into  
 5 the provisions of the contract. We talked about the  
 6 arbitration provisions, how that seemed to be a bit  
 7 one-sided. And I think out of that there were  
 8 revisions to that document.  
 9 But nowhere in the call do I think you  
 10 informed at least not me -- maybe Lynne was already  
 11 aware that Aaron had an attorney, because it probably  
 12 would have been appropriate for that call, you know, to  
 13 have his attorney on the call so that was a true, even-  
 14 sided negotiation, if you will, over a contract that he  
 15 was going to benefit from.  
 16 But, anyway, I just wanted to just see if I  
 17 could jog your memory as to that call that occurred for  
 18 about 45 minutes --  
 19 A Lawsikia --  
 20 Q -- in July. But a lot's happened.  
 21 A I trust you, but I don't remember that call.  
 22 MS. HODGES: Okay.  
 23 BY MR. POWELL:  
 24 Q What do you remember of the Club Continental  
 25 meeting?

1 And I'll represent to you that I don't know  
 2 the date of it, but I know that it -- I generally  
 3 understand it was after the 4th of July and before July  
 4 23 of '19.  
 5 A I thought it was the week of July 4th.  
 6 Q Works for me.  
 7 A I remember Robert Hosay was in attendance.  
 8 Q Who is Robert Hosay?  
 9 A Robert Hosay is one of the state's best  
 10 procurement -- government procurement lawyers, and so  
 11 he -- he's out of Foley & Lardner Tallahassee.  
 12 And I remember him giving a primer on public  
 13 records to -- you know, we had people that were  
 14 unfamiliar with Florida public records laws, and so he  
 15 talked about the Florida public records.  
 16 And then we had little break-out groups to  
 17 work on various components. Like I think there was  
 18 maybe a co-op group -- and I say group, it may have  
 19 been three people -- IPO. There were -- I just  
 20 remember little break-out groups where we discussed  
 21 components that were ultimately presented at the July  
 22 23rd board meeting.  
 23 Q Do you remember a break-out group that was  
 24 working on the long-term incentive plan?  
 25 A I don't specifically remember a group. I do

1 remember that Jessica Lutrin from Pillsbury was there,  
 2 and I know she worked on it. And -- so I don't know if  
 3 there was a specific group for that.  
 4 Q Going into that meeting, what was your  
 5 understanding of the state of evolution of the long-  
 6 term incentive plan? That's a bad question.  
 7 Going into that meeting, what was your  
 8 understanding of the status of the performance -- of  
 9 the long-term incentive plan?  
 10 A So I remember attending a comp committee  
 11 meeting, because I had not yet met the comp committee  
 12 chair, and so I attended that. And I don't remember  
 13 much of the presentation, but I do remember attending  
 14 that meeting.  
 15 Q Well, what do you remember of the -- and was  
 16 the plan discussed at that meeting?  
 17 A I think the Willis Towers Watson report was  
 18 provided, but I don't remember any of the details.  
 19 Q And Willis Towers Watson has a long history  
 20 with JEA. They prepare a compensation study every  
 21 year, do they not?  
 22 A I don't know.  
 23 Q What was your understanding of Willis Towers  
 24 Watson's involvement in the development of the long-  
 25 term incentive plan?

1 A Well, as I learned from the City Council  
 2 meeting, they had been involved for several months.  
 3 Q Are you referring now to the December 17 --  
 4 16th --  
 5 A This sounds right.  
 6 Q -- City Council meeting?  
 7 A Yes.  
 8 Q And let's make sure we've got the right  
 9 meeting. There was an open meeting, public meeting,  
 10 chaired by council members Diamond and Salem at  
 11 December 16th here at City Hall.  
 12 Is that the one you're talking about?  
 13 A Yes, sir.  
 14 Q That's the first time you became aware of --  
 15 well, what is it -- what did you learn at that time?  
 16 What did you first learn on December 16th about the  
 17 plan?  
 18 A Well, I think what you asked was did you know  
 19 how long they had been working on it, and I didn't know  
 20 how long that Willis Towers Watson had been engaged.  
 21 Q Oh, I see.  
 22 A But my recollection from the December 17th  
 23 publicly noticed meeting was that there -- they had  
 24 been engaged for -- I think back to January.  
 25 Q Sounds like you didn't have much involvement

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1 or contact with Willis Towers Watson between April and  
2 July.  
3 A I don't think I had a single conversation  
4 with Willis Towers Watson, or email.  
5 Q Going into the Club Continental meeting, do  
6 you recall sit-downs with Mr. Zahn to talk about the  
7 details of the long-term incentive plan, any of the  
8 details of the plan?  
9 A The first details that I remember was when --  
10 was the Club Continental and details -- actually doing  
11 some work on it, and that was through Jessica Lutrin.  
12 Q All right. I think --  
13 A But there -- if there was any work done prior  
14 to Club Continental, it would have been minor. But I  
15 don't -- because I don't remember anything prior to the  
16 Club Continental meeting.  
17 Q All right. I believe you said earlier that  
18 it was at the Club Continental meeting that you learned  
19 that employees would be required to purchase units in  
20 order to participate in the plan; is that correct?  
21 A That's when I first heard the discussion. I  
22 don't know that a decision was made at that meeting,  
23 but that's certainly when I first heard the discussion.  
24 Q Do you remember whether there was a  
25 discussion at that meeting of the purchase price per

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1 unit?  
2 A Yes.  
3 Q Do you remember what that value was?  
4 A I don't remember the exact dollars. I do  
5 remember Aaron saying that it needs to be affordable  
6 for all employees.  
7 Q That representative -- it seems to me that  
8 that would have represented a significant change in the  
9 construct of this plan from your perspective, in other  
10 words, a plan going from automatic inclusion to you  
11 have to buy in.  
12 Did that strike you as, wow, that's a change?  
13 A Well, I didn't know what the plan was before  
14 that meeting, so it --  
15 Q Oh, I'm sorry, I thought you -- I thought you  
16 had indicated that Aaron always talked about a plan for  
17 everyone, that everybody would be included.  
18 A That's correct.  
19 Q You thought that everybody would have to buy  
20 in to be included?  
21 A That part was not discussed.  
22 Q Was there any discussion among the people  
23 there about the underlying policy associated with a  
24 plan that required employees to buy into?  
25 A Yes.

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1 Q What do you remember of that discussion? And  
2 particularly to the extent that Mr. Zahn was included,  
3 if you would indicate that.  
4 A As I mentioned, the -- he wanted to make sure  
5 it was affordable for all employees. And then you  
6 mentioned -- my antenna went up with respect to --  
7 because I was not familiar with a plan like this in the  
8 government sector, and so that's what I remember being  
9 different.  
10 Q And would your lack of familiarity, as you've  
11 just mentioned, be because no such plan exists anywhere  
12 in any government sector that you're aware of?  
13 A I'm not aware of any.  
14 Q And, to be clear, it was never presented to  
15 you by anybody, either inside or outside JEA, pointing  
16 to a public utility in the United States of America  
17 that had a plan like what you-all were talking about at  
18 Club Continental in July; correct?  
19 A Where you were to purchase the performance  
20 units?  
21 Q Correct.  
22 A I'm not aware of any other occurrence of  
23 that.  
24 Q And as you sit here today, are you aware of  
25 any other example of a public utility with such a plan?

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1 A No, sir.  
2 Q Given your background, I would -- it seems to  
3 me that that would have been a real antenna grabber.  
4 Was it not?  
5 I mean did you ask a question, you know, Hey,  
6 where is this coming from; how is this going to fit  
7 into the public arena?  
8 A It was -- it was raised, and I had -- and  
9 there's several folks in this room, we had a lot of  
10 discussion about it with OGC.  
11 Q At Club Continental? There was no one at  
12 Club Continental from OGC, was there, other than Lynne  
13 Rhode?  
14 A I know I invited Jason Gabriel, but I don't  
15 think he attended.  
16 Q Would you please share what else you recall  
17 of this discussion about the plan at Club Continental,  
18 apart from, let's see, Mr. Zahn wants it to be  
19 affordable for everybody, and there was going to be a  
20 requirement to buy in?  
21 You don't recall a value; correct?  
22 A I remember values being discussed, but I  
23 don't remember what the numbers were. I don't know if  
24 they arrived at the \$10 price at Club Continental or  
25 sometime after that. I don't -- I don't remember.

16 (Pages 61 to 64)

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1 MR. POWELL: Jon, did you have a question?  
2 BY MR. PHILLIPS:  
3 Q I just -- when you were saying you discussed  
4 it with OGC, it would be helpful if you can make a  
5 distinction between people. Like when you say OGC, do  
6 you mean Lynne Rhode or somebody else?  
7 A Well, I know I had several discussions with  
8 Jason Gabriel.  
9 Q Okay. And I'm not -- I'm not saying you  
10 didn't. I just -- it would be helpful if we know who  
11 you talked to.  
12 A Yes, sir.  
13 BY MR. POWELL:  
14 Q Would those discussions with Mr. Gabriel have  
15 been prior to the July 23 board meeting?  
16 A Yes.  
17 Q Prior to the Club Continental meeting?  
18 A Well, my recollection is when I asked Jason,  
19 since I knew there would be people there that he had  
20 not met that OGC had retained, I suggested that it  
21 might be good if he comes out there to meet them.  
22 But, again, my recollection, it was the week  
23 of July 4th and so --  
24 Q Right. But you hadn't been involved in the  
25 weeds of the incentive plan before Club Continental;

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1 correct? I think you've sort of established that.  
2 A Yeah. My recollection of when I got more  
3 involved was on the -- after the 23rd or -- you know,  
4 kind of later on.  
5 Q Right. So it seems unlikely that you would  
6 have had any discussions of substance with Mr. Gabriel  
7 prior to Club Continental about the incentive plan.  
8 A Oh, that's correct.  
9 Q And it sounds like you didn't have any  
10 discussions with him of substance between the Club  
11 Continental plan and the July 23 board meeting. Is  
12 that also correct?  
13 A No. So Jason issued a memo on July the 22nd  
14 that he gave to me that addresses the board's authority  
15 to pass the various resolutions of the July 23rd board  
16 meeting.  
17 Q And was that memo generated as a result of  
18 conversations between you and Mr. Gabriel?  
19 A I think it was a result of conversations  
20 between Aaron Zahn and Mr. Gabriel.  
21 Q All right. Were you a party to those  
22 discussions?  
23 A I may have been. And I remember that Aaron  
24 said I'm not going to bring these resolutions to the  
25 board unless Jason Gabriel signs off on them.

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1 And to be fair to Jason, his memo on the 22nd  
2 was caveated that he was relying on specialized --  
3 outside specialized counsel.  
4 Q Let me ask you this, back to Club  
5 Continental: Do you remember any discussion at that --  
6 at that gathering of the allocation of units to  
7 employees?  
8 A No.  
9 Q Do you remember -- and by "allocation" I  
10 mean -- I'm going to make sure you understand this is  
11 what I'm trying to express -- some plan that would  
12 permit an employee in the field to buy -- to purchase X  
13 number of units, versus somebody up the chain of  
14 command from him or her to purchase X number or units,  
15 all the way up to Mr. Zahn?  
16 A No.  
17 Q Do you remember ever -- any discussion about  
18 that topic in between the Club Continental meeting and  
19 the July 23 board meeting?  
20 A No.  
21 Q After the July 23 board meeting, do you have  
22 any recollection of a discussion about that topic?  
23 A No. I remember when the City Council was  
24 discussing the subject matter of the performance  
25 units -- and this was a week or two before Aaron Zahn

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1 left JEA -- and I said, Have you had a discussion  
2 regarding the allocation of the units with the comp  
3 committee chair?  
4 Q And this is a discussion you're having with  
5 Mr. Zahn?  
6 A Yes.  
7 Q And this would have been about when?  
8 A December.  
9 Q Early December? Okay. Before the -- before  
10 the Diamond-Salem meeting?  
11 A Around that time.  
12 Q I'm sorry.  
13 A Because the reports were that folks would  
14 make a lot of money.  
15 Q I stepped on your answer, and you were  
16 telling us about a discussion with Mr. Zahn.  
17 Can you share all of it as you recall?  
18 A So if you -- if you recall, the comp  
19 committee chair makes those decisions of allocation.  
20 And I asked Aaron, Have you had a discussion with the  
21 comp committee chair about allocation? And he said no.  
22 So that was in answer to your question had  
23 there been any discussion about allocation after the  
24 July 23rd board meeting, and that was the discussion  
25 that I had.

17 (Pages 65 to 68)

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1 Q And that is the only discussion you -- is  
 2 that the only discussion you had with anybody in the  
 3 JEA leadership hierarchy about the allocation of units  
 4 through Mr. Zahn's departure on December 17th?  
 5 A Correct.  
 6 Q Have you had any discussions with Mr. Zahn  
 7 since December 17th?  
 8 A No.  
 9 Q Or any form of communication with Mr. Zahn?  
 10 A Yes.  
 11 Q Okay. How have you communicated?  
 12 A He has done a public records request.  
 13 Q For what?  
 14 A I -- I don't -- I mean I think it was -- I  
 15 can provide you that information.  
 16 Q All right. Did he make that request to you,  
 17 or did he make --  
 18 A He did. He made --  
 19 Q -- it through your public -- hold on.  
 20 Did he make it directly to you, or did he  
 21 make it through your public records office?  
 22 A He made one to -- I -- I know he made one to  
 23 me, and I think he made a second to the public records  
 24 office.  
 25 Q And the one to you, was that by email?

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1 A He -- no. He texted me. And then I sent it  
 2 to the public records people and then they were  
 3 involved.  
 4 Q Did he text you --  
 5 A But I did not reply.  
 6 Q Did he text it to the phone you have with you  
 7 today?  
 8 A Yes. But I don't have my phone with me.  
 9 Q You didn't bring your cell phone to this  
 10 meeting?  
 11 A I did not.  
 12 Q Do you still have the text on your cell  
 13 phone?  
 14 A I don't -- I don't know.  
 15 Q You realize that's a public record, do you  
 16 not?  
 17 A Well, but I provided it to the public records  
 18 people.  
 19 Q Did you forward it to them; is that how you  
 20 sent it?  
 21 A I think I -- I'll have to find out.  
 22 Q Do you remember when that request came in  
 23 relative to Christmas?  
 24 A I think it was before Christmas.  
 25 Q And you have no recollection of what it was

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1 he asked for?  
 2 A My recollection is -- I don't. My  
 3 recollection is there were two public records requests,  
 4 one relating to performance units and one relating  
 5 to -- I think to the Southern Strategy Group  
 6 procurement process. I don't remember which one he  
 7 asked me for.  
 8 Q Would the one that he asked you for require  
 9 you to obtain records for the folks that had to gather  
 10 records and furnish and respond to the request?  
 11 A The public records people respond --  
 12 Q No, I understand that. But would they have  
 13 needed to come to you for any records that he was  
 14 asking for?  
 15 Because that's the way it works; right? They  
 16 get a request and they have to go to some of the  
 17 business units to get the records they have to respond  
 18 to; right?  
 19 So my question is, would they have had to  
 20 come to you to fill that request?  
 21 A I was not -- no, I don't think so, because I  
 22 really wasn't involved in either of those scenarios.  
 23 Q All right. So let's assume that the one --  
 24 because it doesn't really matter for the sake of my  
 25 question. Let's assume that the one that came to you

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1 was related to performance units. How did you become  
 2 aware that he'd made a request down at the public  
 3 affairs office or records office for anything having to  
 4 do with Southern Strategy?  
 5 A So using that as an example, we're behind on  
 6 our public records responses, and the public records  
 7 group reports to Ted Hobson, who reports to me, and so  
 8 we had a meeting about a week ago or so to figure out  
 9 how we can help the public records people respond in a  
 10 quicker manner. And so I think as of today we've added  
 11 four additional people to help them because they're  
 12 getting lots of public records requests.  
 13 So they generate -- and they do this every  
 14 week, I think -- a list of all the public records  
 15 requests, just to --  
 16 Q No, I understand that. I'm just curious as  
 17 to how Mr. Zahn's request for something from, let's  
 18 say, Southern Strategy ever came to your attention?  
 19 A Through that method.  
 20 BY MR. PHILLIPS:  
 21 Q Can I just clarify something? I don't want  
 22 to distract you, but when you said to Aaron, Have you  
 23 talked to the compensation chair committee, who were  
 24 you referring to -- or chairperson? I'm sorry.  
 25 A Yes. Ms. Camille Lee-Jackson (sic).

1 Q Was she the compensation -- was she the chair  
 2 of the compensation committee during the entirety of  
 3 2019?  
 4 A I don't know.  
 5 Q Has she always been the chair of that  
 6 committee while you were employed there?  
 7 A I know she was chair of the committee in June  
 8 of 2019.  
 9 Q And since then?  
 10 A Yes.  
 11 Q And still is?  
 12 A As far as I know.  
 13 Q Okay. So there haven't been two during that  
 14 period of --  
 15 A Not that I'm aware of.  
 16 MR. PHILLIPS: Okay. Thank you.  
 17 BY MR. POWELL:  
 18 Q Back to the presentation you made at the July  
 19 23 board meeting, would you agree that there were  
 20 elements of your presentation that -- I'm sorry, would  
 21 you agree that the topics of your presentation would be  
 22 elements of the strategic plan?  
 23 A I think the presentation of constraints by  
 24 our Constitution and statute would have been -- and in  
 25 how you change those constraints from a government

1 affairs standpoint would be informative to our board as  
 2 to why can't we do certain things.  
 3 Q And did --  
 4 A Which would help them then develop what's the  
 5 right path for JEA.  
 6 Q And were aspects of your presentation related  
 7 to having to raise rates or consumers using less  
 8 electricity? Would those -- were elements of that in  
 9 what you were presenting?  
 10 A No, sir.  
 11 Q No. Do you know who -- I know you do know  
 12 Steve McInall. Can you tell us who Mr. McInall is?  
 13 A He is in charge of planning for both our  
 14 water and electric --  
 15 Q He's the vice president of energy and water  
 16 planning; correct?  
 17 A Yes, sir.  
 18 Q Did you have any discussions with Mr. McInall  
 19 in connection with preparing your presentation to the  
 20 board on July 23?  
 21 A Not that I recall.  
 22 Q What was your degree of interface with  
 23 Mr. McInall subsequent to your coming on board?  
 24 A We have been primarily meeting with Steve  
 25 relating to our water needs and moving water and

1 reclaimed water and wastewater throughout our system.  
 2 Q In the same document that I was reading your  
 3 background on, it says: Steve McInall is responsible  
 4 for long-term planning for JEA's energy and water  
 5 sectors, overseeing the development of a more than  
 6 \$1 billion capital program.  
 7 Would you agree with that? I know he doesn't  
 8 report to you, but is that your understanding of his  
 9 responsibilities?  
 10 A I know that planning is part of his  
 11 responsibility. I don't know -- I didn't know what the  
 12 budgetary amount would have been.  
 13 Q Did you ever seek out any input from  
 14 Mr. McInall on the subject of Mr. Zahn's view of the  
 15 future and the "frog" presentation perspective that  
 16 Mr. Zahn was bringing to the debate?  
 17 A Not that I recall.  
 18 Q You never asked him at all about his thoughts  
 19 on Mr. Zahn's perspective?  
 20 A Not that I recall.  
 21 Q Did you ever ask anybody else in the senior  
 22 leadership team similar questions?  
 23 A Fairly substantial dialogue from Ms. Dykes  
 24 and Mr. Wannemacher, because they -- you know, she was  
 25 the CFO at one time and he was the current, so -- and I

1 know that they put together the -- if you will, the  
 2 slides describing the direction of the business.  
 3 Q Where did you see this whole issue of  
 4 challenges fitting into your portfolio as chief  
 5 administrative officer?  
 6 A Well, I don't know if it was within my  
 7 portfolio, but one of the things that we were looking  
 8 at -- and I think this is stuff that McKinsey's working  
 9 on -- was are there new lines of business that we could  
 10 or should enter into that could perhaps then occur in  
 11 the right direction.  
 12 And that would mean, okay, is there a state  
 13 statute, state Constitutional issue that we might need  
 14 to address that would -- that is currently inhibiting  
 15 our ability to take advantage of potential new business  
 16 opportunities.  
 17 Q Did you participate in discussions on this  
 18 topic with -- in a group with Mr. Zahn and Wannemacher  
 19 and Ms. Dykes, maybe Mr. Eads?  
 20 Did y'all get together and just among the --  
 21 your tight core group talk about it, talk about the  
 22 presentation that Mr. Zahn was making and the reaction  
 23 it was getting among the -- in the public and  
 24 elsewhere, to understand it, to try to understand it as  
 25 a relative newcomer to the whole industry?

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1 A My recollection is is that when you discuss  
 2 about the presentations, it would have been a larger  
 3 group. For example, they -- you know, there's a whole  
 4 communications team.  
 5 Q That would be Kerri Stewart's team?  
 6 A Kerri Stewart's team. And so my recollection  
 7 is as we discuss about presentations that one or more  
 8 folks from her office would have been involved.  
 9 Q Well, okay, so Kerri Stewart drops in, or  
 10 somebody else from her office. But I'm talking that  
 11 group, the group of four or five, did y'all not -- do  
 12 you not recall any discussions in Mr. Zahn's office  
 13 where he called the three or four of you in there to  
 14 talk about, you know, these challenges, and his  
 15 presentation, and how it was being received, and what  
 16 do y'all think about that? What should we -- how  
 17 should we move forward? None of that?  
 18 A I remember having meetings in Aaron Zahn's  
 19 office with just -- with four of us. But as you've  
 20 described, if there was a discussion about  
 21 presentations or how to communicate that, I suspect  
 22 Kerri Stewart would have also been involved.  
 23 Q Do you ever remember Steve McInall being  
 24 brought into one of those meetings to get his input on  
 25 what he thought about the future of JEA and the

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1 challenges and how he would be planning to work within  
 2 these constraints, or what he saw to be constraints  
 3 that needed to be fixed?  
 4 Was Mr. McInall just never brought into the  
 5 discussion?  
 6 A I'm certain that Steve McInall was involved.  
 7 Q In your discussions, were you ever -- did you  
 8 ever see Steve McInall present with Mr. Zahn and the  
 9 others we've talked about discussing these issues?  
 10 A With Zahn, Wannemacher, Dykes, me, and Steve?  
 11 Q Yes.  
 12 A I don't recall that ever being just that --  
 13 those five, but it may have happened. I don't -- I  
 14 just don't remember.  
 15 MR. POWELL: We're at 20 of 12:00, and I  
 16 would move on to another topic, but I -- so my  
 17 question -- I'm not going to do that right now.  
 18 Do y'all have anything to follow up on  
 19 anything we've talked about so far? Because if  
 20 not, I might propose that we take -- we haven't  
 21 taken a break, which is a little unreasonable.  
 22 MR. GRANAT: I do, I do.  
 23 MR. POWELL: Okay.  
 24 BY MR. GRANAT:  
 25 Q Do you know if any of the senior leadership

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1 team had private counsel for assistance during the  
 2 negotiations or formations of the current employment  
 3 contracts?  
 4 A As I discussed, a private law firm was  
 5 engaged, and I think that generated the initial draft  
 6 of then what was utilized for the entire leadership  
 7 team.  
 8 Q What law firm was that?  
 9 A I don't remember. It was -- you -- were you  
 10 in here? The law firm -- a law firm out of Tampa.  
 11 MR. POWELL: Was it Phelps & Dunbar, by any  
 12 chance?  
 13 THE WITNESS: No.  
 14 MS. HARRELL: Was it Ford Harrison?  
 15 THE WITNESS: That's it.  
 16 BY MR. GRANAT:  
 17 Q And who engaged Ford Harrison? JEA?  
 18 A No. JEA was not the client. What we -- as I  
 19 mentioned earlier, I said I don't -- you know, Kevin  
 20 represents JEA, and I didn't think it would be  
 21 appropriate.  
 22 He said, Okay, go find somebody. And -- and  
 23 so the -- remind me again what the firm was.  
 24 MS. HARRELL: Ford Harrison.  
 25 THE WITNESS: Ford Harrison. And I got their

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1 name, and then the four of us paid for it.  
 2 BY MR. GRANAT:  
 3 Q Which four had counsel?  
 4 A Well, it was me, Melissa, Aaron, and Ryan.  
 5 And then at some point that got turned over to  
 6 everybody.  
 7 Q And being respectful of any attorney-client  
 8 privilege that you may have, certainly let me know -- I  
 9 don't intend to ask you to violate that, so if you feel  
 10 any question does, let me know -- did you have  
 11 discussions with the Ford & Harrison attorney to  
 12 discuss negotiations of that contract?  
 13 A No. They prepared the initial draft that  
 14 somehow got sent to the board or HR, and then I was not  
 15 involved after that. But they were not -- that law  
 16 firm did zero negotiations. They just did a draft  
 17 document.  
 18 Q Of what's now called the -- well, they did a  
 19 draft of the what's now your actual employment  
 20 contract?  
 21 A Correct.  
 22 Q And did they also do a draft of the what's  
 23 called -- what is the second --  
 24 MS. HODGES: The separation and transition  
 25 agreement.

1 BY MR. GRANAT:  
 2 Q Separation and transition agreement?  
 3 A I don't think that they were involved at all  
 4 in that.  
 5 Q Okay.  
 6 MR. POWELL: What about the mutual release  
 7 document that's also a part of that?  
 8 THE WITNESS: I don't think they -- I think  
 9 they just did a draft of the employment agreement,  
 10 and then it got sent to wherever into the machine.  
 11 MR. GRANAT: Okay.  
 12 MS. HODGES: Well, when --  
 13 MR. PHILLIPS: Who would have drafted the  
 14 separation and transition agreement?  
 15 THE WITNESS: I don't know.  
 16 BY MR. GRANAT:  
 17 Q Please let me know, I'm not trying to violate  
 18 attorney-client privilege. But are you aware of how  
 19 much time Ford & Harrison spent on that project in  
 20 total?  
 21 A It was minimal.  
 22 BY MR. POWELL:  
 23 Q Maybe the better way to ask is, since you  
 24 paid for it, do you remember how much you paid?  
 25 A It was a few thousand dollars.

1 Q For each of you?  
 2 A Total. It was, I think, a --  
 3 Q Well, do you remember stroking a check for a  
 4 thousand dollars --  
 5 A I think --  
 6 Q -- more or less?  
 7 A It was, I think, a total of two bills.  
 8 Q The bill -- the total bill was 2000?  
 9 A No. I'm sorry. We touched in two billing  
 10 cycles, so it may have been --  
 11 Q Oh, two bills. When you said bills, I  
 12 thought you meant like a thousand, you know, slang.  
 13 Okay. Two invoices, and the total was what  
 14 for the two?  
 15 A Certainly less than 10,000.  
 16 Q Okay. You don't remember how much you  
 17 personally paid this law firm?  
 18 A I do not. My wife wrote the check.  
 19 BY MR. GRANAT:  
 20 Q Did the four of you split the bill equally?  
 21 A That's correct.  
 22 Q And you don't -- so you didn't have contact  
 23 with Ford & Harrison that you know the name of the  
 24 attorney that did the drafting or anything like that,  
 25 do you?

1 A Oh, I can find it.  
 2 Q No, no. You don't remember?  
 3 A No.  
 4 Q Did you speak to an attorney at Ford &  
 5 Harrison?  
 6 A I did. And I gave --  
 7 Q On the phone, or did you have an in-person  
 8 meeting?  
 9 A No, it was just over the phone.  
 10 BY MR. POWELL:  
 11 Q Do you have a copy of the bills?  
 12 A I don't know.  
 13 BY MS. HODGES:  
 14 Q So, Herschel, I mean just a few questions  
 15 just to clarify, because the non-CEO agreements are  
 16 almost identical to Aaron's contract, the CEO  
 17 agreement; right?  
 18 A I don't know.  
 19 Q Okay. But who worked on Aaron's contract?  
 20 Who drafted that? I mean who -- but so you don't have  
 21 any recollection of Pillsbury or Foley working on or  
 22 reviewing any of those agreements?  
 23 A I don't. I was not involved in -- you know,  
 24 beyond the setting up the initial Tampa lawyer and --  
 25 Q And you don't recall our conversation, you

1 said, in July?  
 2 A I don't --  
 3 Q You don't recall that?  
 4 A -- Lawsikia. I will go back and look at my  
 5 calendar notice. But I don't.  
 6 Q Okay. Because I have an email from Steve  
 7 Amdur where he received a copy of Aaron's contract in  
 8 June from Jon Kendrick. So Pillsbury was definitely  
 9 involved in the crafting of the contract that you're  
 10 currently bound to. They were involved. And I think  
 11 if you review the legal bills, you'll probably see that  
 12 too.  
 13 I had some other questions, but I don't --  
 14 A I don't get any legal bills except from OGC.  
 15 MS. HODGES: Okay. Are y'all --  
 16 MS. HARRELL: I've got a quick question.  
 17 MS. HODGES: On that topic?  
 18 MS. HARRELL: Not on that topic, but I've got  
 19 too many other questions on another topic. I just  
 20 want to ask a quick question to follow up on  
 21 something that Steve asked earlier.  
 22 BY MS. HARRELL:  
 23 Q You said earlier that Aaron Zahn wanted to  
 24 get more aggressive on the water side. How did he want  
 25 to get more aggressive? Can you explain that?

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1 A Sure. Water projects, water conservation.  
2 Q What kind of water projects?  
3 A Oh, there's a -- for example, there's a water  
4 purification project that Paul Steinbrecher has been  
5 the champion for, and it's -- and they completed a  
6 pilot project on it. And it's got -- had terrific  
7 results.  
8 But there could be all sorts of -- you know,  
9 we discharge close to 40 million gallons a day into the  
10 river of treated wastewater from our Buckman plant, and  
11 that's -- I mean me personally, I think we need to look  
12 for other ways that we can reuse that water so we don't  
13 have to continue to draw it out of the Floridian  
14 aquifer.  
15 Q So the water purification that you mentioned,  
16 was that something that was constrained by Florida  
17 Constitution, public records laws --  
18 A No.  
19 Q -- Jacksonville --  
20 A The constraints on water purification is  
21 money. I don't know that they explored having a  
22 partner in that project, but right now it is just --  
23 it's expensive.  
24 Q Were there any potential water projects that  
25 were going to be part of that more aggressive strategy

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1 on the water side that you couldn't do because of the  
2 Florida Constitution, the public records laws, the City  
3 Charter, any of the constraints that you brought up at  
4 the July 23rd board meeting?  
5 A I didn't explore that on the water side.  
6 Again, the water side is a -- as I've learned, is a  
7 healthier side of the business from a financial  
8 standpoint versus the electric.  
9 BY MR. POWELL:  
10 Q At the July 23 meeting, when you're  
11 talking -- presenting to the board about these  
12 challenges and constraints, what did you say about them  
13 in terms of the Constitution, the Charter?  
14 A So, like I said, we didn't touch much on  
15 the -- because, you know, we had a limited amount of  
16 time, but right now the -- we talked about the two  
17 Constitutional provisions. We talked about the  
18 opportunity to change the Florida Constitution, and  
19 cost, and probability of success.  
20 Q What change to the Constitution did you  
21 discuss? I mean I -- am I hearing you say that you  
22 talked to the board about getting behind an initiative  
23 to change the Florida Constitution in a specific way?  
24 A It was discussed. I don't -- I don't think  
25 it's a very viable option.

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1 Q What was the change?  
2 A So -- and, Lawsikia, you may be able to help  
3 me, but my -- the lending of credit prohibits -- dates  
4 back to the 1800s when Florida municipalities invested  
5 in railroads and -- with the hopes that the railroad  
6 would then build the tracks to that community. And, as  
7 luck would have it, a number of the railroads went  
8 bankrupt, leaving the municipalities holding the bag.  
9 They've lost their investment.  
10 And so there was a provision added to the  
11 Florida Constitution that put restrictions on what  
12 investments that municipalities or government can make  
13 in other companies.  
14 Q Same Constitution that governs and restricts  
15 and constrains the Orlando Utilities Commission?  
16 A As far as I know, it restricts --  
17 Q Every other --  
18 A -- every municipal utility -- or every  
19 government equally.  
20 Q In the state of Florida; right?  
21 A In the state of Florida, yes, sir.  
22 BY MS. HARRELL:  
23 Q As part of your presentation to the board on  
24 July 23rd, did you discuss the benefits of being a  
25 public utility or the benefits of Florida laws for a

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1 public utility?  
2 A My assignment was to look at the constraints.  
3 But other folks do talk about -- I don't know if this  
4 was July 23rd meeting, but there has been discussion  
5 about the benefits of municipal utilities.  
6 Q Let me break that down. Who gave you the  
7 assignment to discuss the constraints?  
8 A Aaron.  
9 Q Who else has discussed the benefits?  
10 A Aaron. Melissa.  
11 Q In what context?  
12 A Well, I just know I've heard them -- you  
13 know, the benefits of being able to establish our own  
14 rates by local citizens is -- is a potential benefit.  
15 I'm not saying that the Public Service Commission path  
16 is bad, but there is --  
17 BY MR. POWELL:  
18 Q Actually, isn't that considered to be a  
19 substantial benefit, one of the real advantages of  
20 being a public utility, you set your own rates?  
21 A Well, it depends on what the rates are, I  
22 guess. I guess if the community views it as being too  
23 high, then not as strong of an advantage. But, sure --  
24 Q That certainly --  
25 A -- having your neighbor on the board is a

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1 good thing.

2 Q And that certainly enabled JEA to move

3 quickly in the event of a need to address a near-term

4 need; correct?

5 A Having the board being able to meet in a, you

6 know, monthly session is a great thing.

7 BY MS. HARRELL:

8 Q I know you said you were assigned to do

9 constraints.

10 A Uh-huh.

11 Q But your assignment was really to talk about

12 the traditional utility response as the board discussed

13 the options; right?

14 A No. It was -- because a traditional utility

15 response, as I've come to learn, is more focused on

16 raising rates and cutting costs. And this was a third

17 area, which is how do you -- how do you grow the

18 business; are there potential lines of business that we

19 might could get into.

20 And they have -- and I know they've explored

21 and will continue to explore different ways to bring in

22 new revenue.

23 Q And was it your assignment, then, to discuss

24 the constraints that prohibited exploring those new

25 lines of business?

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1 A So they're --

2 Q Is that what you're --

3 A There are constraints that are placed on

4 government that make it difficult, not impossible, but

5 difficult to get into new lines of business.

6 Q Did you advise the board of the other

7 benefits, though, of just operating a public utility in

8 general, without trying to get into new lines of

9 business?

10 A My only presentation was on the constraints.

11 BY MR. PHILLIPS:

12 Q Did anyone else at the July 23rd meeting talk

13 about the benefits to the board?

14 A You'll have to go back and look at the video

15 on the board meeting, because I don't -- I don't know.

16 Q Was there ever any mention of the financial

17 benefit conferred by sovereign immunity to the board?

18 A Not at the July -- not at a meeting that I

19 remember.

20 MR. PHILLIPS: Okay. Thank you.

21 MR. GRANAT: I have a follow-up. I'm sorry

22 we're bouncing around. I don't want this to be

23 rapid fire.

24 MR. PHILLIPS: We'll need a break soon, too.

25 MR. GRANAT: Yeah. And we can do that any

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1 time.

2 BY MR. GRANAT:

3 Q But back to the issue of Ford & Harrison, I

4 just have one other question. Ford & Harrison were

5 representing the interests of the four who hired them.

6 Do you know who at JEA would they have been in touch

7 with as management of JEA, who would they have been

8 interacting with as -- I don't want to say opposing

9 counsel, but as your employer?

10 A They -- to my knowledge, they didn't talk to

11 anybody at JEA. As I understand, their sole assignment

12 was to draft an employment agreement, which was then

13 submitted to somebody.

14 Q So they drafted the employment agreement and

15 presented it to their four clients, and then the four

16 of you presented it to JEA?

17 A It went to Aaron, and then I don't know where

18 it went from there.

19 Q Okay. Okay.

20 A I mean it may have come -- they may have

21 emailed it to me, but -- and then I gave it to Aaron.

22 Q And do you remember the time frame that that

23 occurred? You said there were two bills. Do you

24 remember what month --

25 A So it was just overlapping two months. I

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1 don't know.

2 Q You don't remember which months they were?

3 A No. I mean it would -- the summer.

4 MR. GRANAT: Okay.

5 BY MS. HODGES:

6 Q Hey, so on the employment agreement, do you

7 remember who briefed the board members on the content

8 of the agreement, the benefits to the board, the pros?

9 Who participated in the briefing of the board

10 members? Were you -- did you participate in any of

11 that?

12 A No. To my knowledge, Aaron was --

13 Q For the July 23rd meeting?

14 A Aaron -- to my knowledge, Aaron is the one

15 that briefs the board members individually.

16 Q Okay. I know Lynne had shared that she had

17 briefed the chair.

18 A Okay.

19 Q I thought she mentioned that you were in that

20 meeting, but maybe not.

21 A (Shakes head)

22 Q Okay, so that's on the employment agreement.

23 Just to clarify, for the June board meeting,

24 did you participate in that presentation for the June

25 board meeting?

23 (Pages 89 to 92)

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1 A July 23rd was my first presentation to the  
2 board, or that's my recollection.  
3 Q That's your recollection.  
4 A Yeah.  
5 Q So do you remember at the June meeting there  
6 was a constraint matrix that was presented? Do you  
7 recall -- do you remember this document here?  
8 Because I recall you came by with Lynne, like  
9 in passing, you were looking for Jason, I happened to  
10 be the attorney that was in the office.  
11 A Is that what --  
12 Q Do you remember this whole -- the blocked  
13 out --  
14 A Yeah.  
15 Q Yeah. So did y'all not present that to the  
16 board in June?  
17 A I don't think so. That was a chart, I  
18 think --  
19 Q I mean it's a part of the presentation.  
20 Maybe it was -- but you didn't mention this at all, not  
21 that you can recall? But you definitely -- you're  
22 familiar with this.  
23 Did you prepare this, Herschel, or was it  
24 Lynne, or did you work -- I just know the two of you  
25 came to my office.

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1 A Sure. Well, Lynne did -- did it, but with --  
2 I'm sure I was involved with her discussing those  
3 things.  
4 Q Yeah. Because basically you put the caveat  
5 at the end to basically say all of this is subject to  
6 review. Because at the time that you guys came to  
7 me --  
8 A We wanted to make certain --  
9 Q -- you had this idea --  
10 A Yeah.  
11 Q -- to put the caveat in there. Okay.  
12 MS. HARRELL: And that caveat was still in  
13 there for the July 23rd board meeting; right?  
14 THE WITNESS: I don't think we used that  
15 chart for the -- unless maybe it was an appendix  
16 or something.  
17 MS. HODGES: Yeah, this was the June meeting.  
18 I think you had a different presentation slide for  
19 July.  
20 THE WITNESS: It was the Xs and checks, is  
21 what they call it.  
22 MS. HODGES: Correct. And you had another  
23 presentation, right, okay, I just wanted to  
24 make sure you recall --  
25 MR. LOCKAMY: Can you identify the document

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1 for the record?  
2 MS. HODGES: Yeah, absolutely.  
3 MS. HARRELL: I have a copy if you want to  
4 attach it as an exhibit.  
5 MR. POWELL: I do.  
6 MS. HODGES: Yeah. So this is the  
7 presentation that was presented. It's Appendix C.  
8 It's called Constraints Matrix -- Constraint  
9 Matrix. And this was the Scenario 1 and 2  
10 presentation that was presented to the board in  
11 June, and I'm just trying to go back to the --  
12 MR. POWELL: All right. We'll make a copy of  
13 Appendix C, and we'll attach that as the first  
14 exhibit, if you will, to this transcript.  
15 (Exhibit Number 1 was marked for  
16 identification.)  
17 MR. POWELL: Does anybody else have anything  
18 else before we take a lunch break?  
19 MS. HODGES: Okay. I had a few more  
20 questions, but I can wait, if you want, until  
21 after we take our lunch break.  
22 MR. GRANAT: I think that's a good idea.  
23 MR. POWELL: I would ask that we do that, if  
24 we can.  
25 How does 1:15 sound? It's noon.

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1 THE WITNESS: Fine.  
2 MR. POWELL: Okay. Thanks very much. We'll  
3 go off for now.  
4 (Recess from 12:01 p.m. to 1:17 p.m.)  
5 MR. POWELL: So we're back after lunch at  
6 about 1:15.  
7 Lawsikia, when we broke, just before we  
8 broke, I think you mentioned that you had some  
9 questions and that you would hang onto them until  
10 we came back from break.  
11 MS. HODGES: Yes.  
12 MR. POWELL: The floor is yours.  
13 BY MS. HODGES:  
14 Q Okay. So, Herschel, how did -- can you just  
15 describe a little bit of your working relationship with  
16 Lynne? Like did she check in with you, or did you know  
17 what she was working on; did she get assignments from  
18 you; did she get assignments from the senior leadership  
19 team?  
20 What was your knowledge of her work flow,  
21 work load?  
22 A I think assignments came from everyone in the  
23 company. And then y'all added Miriam in the same sort  
24 of situation, where, you know, the people came to them  
25 for questions.

24 (Pages 93 to 96)

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1 And so certainly I knew certain things she  
2 was working on, but I think she and Miriam were getting  
3 bombarded with work from, you know, all sorts of  
4 things.  
5 Q Were you aware of any work that she was  
6 working on related to the July 23rd meeting and sort of  
7 leading up to that meeting, like any of the aspects of  
8 that meeting?  
9 A Well, certainly she was helping me. She did  
10 the legal research on my part of the presentation. I'm  
11 assuming she had some involvement with the other  
12 pieces, but I don't -- I don't recall that today.  
13 Q Okay. So in June of this year, there was  
14 correspondence that Lynne had sent to our office, Kort  
15 Parde, who's no longer with our office, where she  
16 specifically had indicated that JEA was wanting to  
17 create a long-term incentive plan, award of cash for  
18 stock to any employee, so that it was permissible to  
19 all employees based on the financial success of JEA.  
20 Were you aware that she was working with our  
21 office specifically about this general concept of a  
22 stock bonus plan in June?  
23 Who do you think -- you weren't aware of  
24 that?  
25 And she's very specific in the email, because

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1 she's saying "they." I don't know who the "they" is,  
2 but I assume the "they" would be people in the senior  
3 leadership team like yourself, maybe Aaron, maybe  
4 Melissa, maybe Ryan.  
5 But were you a part of that "they" when she  
6 says here that they specifically are wanting to know if  
7 they can have a stock bonus?  
8 MR. LOCKAMY: Can you show him the document?  
9 MS. HODGES: Yeah.  
10 BY MS. HODGES:  
11 Q Let me see if I can find -- so this is an  
12 email -- let me go down and find exactly. So this is  
13 June 4th. This is Lynne Rhode; she's corresponding  
14 with Kort. And in this email -- let me start at the  
15 beginning so that you have the context.  
16 So Kort sends Lynne the memo, a draft of the  
17 memo, as discussed, there's a rough draft of the memo.  
18 I look forward to speaking with you tomorrow. I have  
19 attached it both in Word and PDF, just in case it  
20 helps. And then -- you can't see the attachment, but  
21 we can definitely get you the attachment.  
22 A Is it the memo that --  
23 Q Yes.  
24 A -- Sean drafted?  
25 Q It was a draft of that.

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1 A Okay.  
2 Q So Lynne has a barrage of comments, but we  
3 can start at the top, you know, Thanks, okay. She  
4 goes, Need to include language confirming if accurate  
5 that an LTIP award of cash or stock to any employee is  
6 permissible; need to include analysis; overall I think  
7 they are looking for a more direct answer -- I don't  
8 know who the "they" is -- yes, no, or maybe as to each  
9 aspect related to specific contemplated long-term  
10 incentive plan, LTIP. I think the structure of that  
11 analysis would be most useful, authority and  
12 constraints, authority for and constraints on use of --  
13 all caps, financial performance, and authority for and  
14 constraints on the type of the award, cash, stocks, and  
15 others.  
16 So for the first time we have this use of  
17 this term like stock, and I'm just curious as to were  
18 you aware that somebody was really sort of telling her  
19 to get with our office and make sure we could -- or see  
20 if it was legal to have a long-term incentive plan, it  
21 looks like in the form of cash or stock.  
22 Were you aware she was working on that or --  
23 A As I mentioned this morning, my first  
24 recollection of this kind of -- and I think Jason  
25 called it akin to a stock option, was at the Orange

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1 Park meeting.  
2 Q In July, was that?  
3 A In July.  
4 Q Club Continental?  
5 A But there may have been something in the  
6 Willis Towers Watson study that they were getting ready  
7 for for the June board and compensation committee  
8 meeting. I just don't recall.  
9 Q Okay. But Lynne likely would have gotten  
10 this assignment. I mean it would have come from  
11 somewhere. I mean who do you -- you just don't have  
12 any idea who is the main senior leadership team person  
13 that was requesting --  
14 A No.  
15 Q Specifically who that would have been? Okay.  
16 So then my only other question I had was a  
17 follow-up on the PUP allocations and how they were  
18 going to be allocated.  
19 A Let me interrupt you. Just to make clear,  
20 clearly the long-term incentive plan stuff was being  
21 discussed. I don't remember at that early date whether  
22 the -- this unit thing had been discussed at that time.  
23 Q All right. Because I know that when we had  
24 our September meeting -- this was a meeting that Kevin  
25 Hyde was in, Jason Gabriel, you do recall in that

1 meeting the discussion that Jason, you know, indicated  
 2 that this plan really looks like a stock, and at that  
 3 meeting -- do you recall him mentioning that, that --  
 4 this was a meeting we had in this conference room with  
 5 Kevin Hyde. This was post July, post the July board  
 6 meeting.  
 7 A Yes. And he --  
 8 Q The AG opinion letter --  
 9 A His memo to the file mentioned -- he calls  
 10 it -- I think he used "akin to a stock option" or  
 11 something like that.  
 12 Q Okay.  
 13 A So, yes, that was -- as I mentioned earlier,  
 14 that, you know, when kind of later in the summer there  
 15 was no clear path -- there wasn't a lot of case law,  
 16 there's no case law. It was statutory discussions that  
 17 we had with all of y'all. And then that's when I made  
 18 the recommendation about going to the Attorney General  
 19 and then the Florida Ethics Commission to get their  
 20 input.  
 21 Q Do you recall at that meeting in September  
 22 yourself, along with Kevin Hyde and Lynne Rhode,  
 23 agreeing, though, that the plan -- to your knowledge  
 24 that it wasn't intended to be a stock? Do you recall  
 25 saying that?

1 A Yes. Because I think they had done some  
 2 re -- Foley had done some research that says that it's  
 3 not a stock because government doesn't have stock.  
 4 Q Okay.  
 5 A And I remember that because I think somebody  
 6 did -- said so therefore Florida securities laws don't  
 7 apply. So they were just running the traps like good  
 8 lawyers do.  
 9 Q Got it. Okay, got it. But at least back in  
 10 June, Lynne Rhode, for whatever reason, was referring  
 11 to it as a cash or stock long-term incentive plan?  
 12 A Well --  
 13 Q That was based on this email.  
 14 A I guess -- I'm assuming that the cash piece  
 15 would have been more akin to what we have on a short-  
 16 term incentive, where it would be just a cash -- you  
 17 know, a bonus plan that was based on a three-year  
 18 version rather than a one-year version.  
 19 Q Okay. And the only other question I had was  
 20 on the allocation of the PUP. So you don't recall any  
 21 discussions about how the PUP was allocated or how  
 22 those allocations were going to be done amongst  
 23 employees? You didn't have any --  
 24 A No.  
 25 Q -- insight on that?

1 Did you at least know that the employees'  
 2 position had something to do with how those would be  
 3 allocated, the position of the employee?  
 4 A I know that all 2000 employees would be -- it  
 5 would be available for all 2000, but I don't know if  
 6 there had been any by-position allocation.  
 7 Q Had you reviewed the AG letter that you  
 8 sent -- that was sent to --  
 9 A Yes.  
 10 Q -- Ms. Moody? You had reviewed that letter?  
 11 So in that letter we at least know -- I mean  
 12 I know through conversations with Lynne what she had  
 13 shared with me sometime in early October, what the  
 14 allocations would be.  
 15 But we at least know through the AG letter  
 16 that the position of the employee factored into how  
 17 those units would be allocated. And you reviewed the  
 18 AG letter.  
 19 A I did.  
 20 Q It says a pool of units will be allocated  
 21 amongst employees based on his or her position level.  
 22 MR. PHILLIPS: She's talking about that  
 23 sentence right there (indicates).  
 24 BY MS. HODGES:  
 25 Q Right. His or her position level and the

1 most recent annual performance review. And then it has  
 2 a footnote that talks about how the compensation chair  
 3 is going to allocate.  
 4 So you at least knew that there was an  
 5 element of the employee's position level that would  
 6 determine how many PUPs they would get?  
 7 A But not how many.  
 8 Q Right. But you knew that --  
 9 A It was a factor.  
 10 Q -- based on somebody being in the senior  
 11 leadership team versus being a director, manager, lower  
 12 level employee, that that would have something to do  
 13 with how many PUPs they received?  
 14 At least you knew that, because that was --  
 15 A As --  
 16 Q -- in the AG --  
 17 A As reminded by the AG letter --  
 18 Q Right.  
 19 A -- which I clearly -- which I read.  
 20 Q If you had to --  
 21 MR. PHILLIPS: For the record, that's JEA --  
 22 Bates stamped JEA 0424, and the sentence that was  
 23 on the -- the first sentence of the first full  
 24 paragraph in the letter.  
 25 BY MS. HODGES:

1 Q And I mean if you had to assume, do you think  
2 based on the higher the position you were, you would  
3 have more access to units?

4 How do you think the positioning would have  
5 been factored in?

6 A I didn't have any discussion with anyone with  
7 respect to allocation.

8 Q Okay.

9 A With the exception of the one item that I  
10 mentioned this morning.

11 MS. HODGES: Okay. I don't have anything  
12 else.

13 BY MR. GRANAT:

14 Q Do you know why 30,000 units was selected to  
15 be allocated?

16 A I -- I don't have a clear understanding, but  
17 I think it was going to be a 30,000-unit issuance over  
18 a three-year period. But --

19 Q Meaning in -- so the next year 30,000 more  
20 would be issued?

21 A Yes. But that's just my assumption. And  
22 there are people that are far more versed in how the  
23 plan would work.

24 Q Do you know who it was who came up with that  
25 number?

1 A I don't. I read it in the draft Q and A that  
2 was being created actually in preparation for the  
3 meeting on the 16th or 17th.

4 Q So were you in any meetings with Aaron Zahn  
5 where the number of units that would be issued was  
6 discussed?

7 A I don't recall being in any meetings on the  
8 number of units. I do recall it being in the -- that  
9 there was going to be a multiyear issuance.

10 BY MR. POWELL:

11 Q Mr. Vinyard, I'd like to return to a little  
12 prior to the July board meeting, and let's go back to  
13 Club Continental for a little bit.

14 I think you have described a meeting that is  
15 attended by the most senior management of JEA and,  
16 sounds like, lawyers and bankers from just about  
17 everywhere involved in a combination of things,  
18 strategic plan, the what at that point had now become  
19 the performance unit plan, a long-term performance  
20 plan.

21 Would you agree that by the time you got to  
22 this Club Continental meeting, the long-term incentive  
23 plan was now a long-term performance unit plan?

24 A I think that's when I first heard the  
25 discussion of it being referred to as a PUP.

1 Q And there may or may not have been work being  
2 done on all these employment agreements at that  
3 meeting; correct?

4 A I don't -- I don't know.

5 Q What was the -- would you describe the  
6 atmosphere of the Club Continental meeting? How would  
7 you describe the atmosphere of the Club Continental  
8 meeting?

9 A Work.

10 Q Did you appreciate an air of urgency in the  
11 gathering?

12 A I knew that the board direction to explore  
13 the nongovernmental alternatives was going to be a lot  
14 of work. I don't know that I felt an urgency.

15 Q By the time you left the Club Continental  
16 meeting, were you aware that the strategic plan/  
17 structural alternatives and the performance unit plan  
18 were going to be presented to the board on the 23rd of  
19 July?

20 A No.

21 Q When did you become aware of the package  
22 going to the board on the 23rd?

23 A I don't know when the board receives their  
24 packages.

25 Q No, no, that's not my question. My question

1 is: When did you become aware of what was going to be  
2 in that package that was going to the board on the 23rd  
3 of July?

4 A Well, I guess for certain when we received  
5 the memo from Jason on the 22nd. But -- so I don't  
6 know. Sometime between the Orange Park meeting and  
7 July 22nd.

8 Q When you left the Orange Park meeting, how  
9 would you describe your familiarity with the details of  
10 the performance unit plan?

11 A I guess I was familiar with the basic  
12 framework that it would be available to all employees,  
13 that there would be a fee for a unit. I don't know if  
14 the -- I guess the three-year piece was in there, but  
15 I'm not certain. And there was a reference to, I  
16 think, recapitalization at that point.

17 Q And by reference to recapitalization, do you  
18 mean a reference to the fact that in the event of a  
19 recapitalization event the benefit would mature, so to  
20 speak, and the units would -- the value of the units  
21 would be redeemed at that point?

22 A I don't think that that level of detail had  
23 been discussed. But I do think that there was a  
24 recapitalization piece in there, because obviously that  
25 was what -- you know, the IPO, co-op, and the ITN piece

1 was discussed at that Orange Park meeting.  
 2 Q Did you know that -- did you know at the time  
 3 you left the Club Continental meeting that the  
 4 performance unit plan had no cap?  
 5 A No. I don't think I even reviewed a document  
 6 on it at the Orange Park meeting.  
 7 Q All right. So by the time we got to July 22  
 8 and the Gabriel memo that you have mentioned, the  
 9 Gabriel memo comes in, you're now aware, I guess, that  
 10 these issues are going to the board on the 23rd of  
 11 July, the next day.  
 12 At that point, the 22nd, did you -- were you  
 13 still as uninformed about the performance unit plan as  
 14 you have described yourself as leaving the Club  
 15 Continental meeting?  
 16 A I'm certain that at some point I reviewed the  
 17 performance unit plan document, but I don't know -- and  
 18 it would have probably been in the July time period.  
 19 Q And as you went into the board meeting on the  
 20 23rd of July, how informed did you think you were about  
 21 the performance unit plan?  
 22 A When I went into the meeting on July 23rd, I  
 23 was focused on my constraints presentation.  
 24 Q As the chief administrative officer, did you  
 25 not have any concern that a plan of this magnitude was

1 being presented to the board of directors that you had  
 2 literally no comfort zone with?  
 3 A As I mentioned to you, I knew that this unit  
 4 concept was not anything that I was familiar with, and  
 5 that's why we had the discussions with Jason and  
 6 Lawsikia and Kevin Hyde.  
 7 And at some point in the summertime, because  
 8 there was not sufficient clarity on making sure that we  
 9 complied with all the Florida legal requirements, that  
 10 I recommended to Jason and to Aaron that we seek  
 11 guidance before we move forward, guidance from the  
 12 Attorney General and the Florida Ethics Commission  
 13 before we move forward with issuing the plan.  
 14 Q Well, the Attorney General letter didn't even  
 15 go out till October 1st; correct?  
 16 A That's right. We -- you know, Kevin worked  
 17 on it, I think.  
 18 Lawsikia, I don't know if you had any edits  
 19 to it or not.  
 20 MS. HODGES: Um, yeah.  
 21 THE WITNESS: So the -- but I remember it  
 22 taking more time than I wanted to to get that  
 23 letter out, and I just don't ...  
 24 BY MR. POWELL:  
 25 Q Were you at the July -- you were at the July

1 23 meeting; right?  
 2 A Yes.  
 3 Q Were you there when the performance unit plan  
 4 was on the table for discussion and review and,  
 5 ultimately, approval by the board?  
 6 A As I mentioned, the July Orange Park meeting  
 7 we had little break-out sessions --  
 8 Q No, no, I'm at the board meeting. We're at  
 9 the board meeting, July 23 board meeting.  
 10 A I was there I know for part of that board  
 11 meeting.  
 12 Q Were you there when the performance unit plan  
 13 was before the board for discussion?  
 14 A I think so. I do not attend all the board  
 15 meetings, and I don't -- and when I do attend,  
 16 sometimes I don't stay the entire time. I think I was  
 17 there --  
 18 Q Okay. Well, I --  
 19 A -- but I want to be truthful.  
 20 Q As I understand it, this was your first board  
 21 meeting that you presented at?  
 22 A Presented, yes, sir.  
 23 Q You knew that all of these really big issues  
 24 were going to be presented to the board for approval at  
 25 that meeting, did you not?

1 A Yes.  
 2 Q Okay. And as you sit here six months later,  
 3 do you -- you cannot recall whether you sat through  
 4 that entire board meeting?  
 5 A I don't know if I was there for the entire  
 6 board meeting. I can go back and look at the tape and  
 7 see if I was sitting out in the audience or sitting at  
 8 the table, but ...  
 9 Q Going into that meeting as the chief  
 10 administrative officer of JEA, did you have concerns  
 11 about the state of readiness of the performance unit  
 12 plan for consideration by the board?  
 13 A The answer is yes.  
 14 Q Did you express those concerns to anybody?  
 15 A They were expressed in Jason's memo.  
 16 Because in my view, the thing -- the plan was not -- it  
 17 was not a finished document, and Jason's memo reflects  
 18 that, that there would be further research and changes  
 19 to the documents and refinement.  
 20 Q To be clear, the plan wasn't Jason Gabriel's  
 21 idea, was it?  
 22 A No.  
 23 Q And the plan wasn't your idea, was it?  
 24 A No.  
 25 Q Whose idea was the plan?

1 A Well, the first time I remember seeing the  
 2 plan was the Willis Towers Watson kind of  
 3 recommendation or -- I guess they're the -- they made  
 4 the initial recommendation.  
 5 Q Are you suggesting that Willis Towers Watson  
 6 came up with this concept out of thin air?  
 7 A I don't know what they --  
 8 Q It's not your understanding that this idea  
 9 was entirely generated by Aaron Zahn?  
 10 A I don't -- I don't know, because obviously  
 11 they were talking -- you want to let me finish here?  
 12 Q Sure, sure.  
 13 A They were talking about long-term incentive  
 14 plan long before I arrived at JEA.  
 15 Q When you first met with Mr. Zahn, did he talk  
 16 to you about a long -- his desire to have a long-term  
 17 incentive plan established at JEA for everybody?  
 18 A No.  
 19 Q When's the first time you talked to him about  
 20 it?  
 21 A It was certainly after I started. Probably  
 22 getting prepared for the June board meeting or June  
 23 compensation committee meeting. That's just my  
 24 recollection. So after April, before -- in June.  
 25 BY MR. PHILLIPS:

1 Q Were you not told before you were hired that  
 2 one of the inducements in hiring you was that there was  
 3 going to be some sort of long-term incentive plan?  
 4 A Yes, by Angie Hiers. His question was did  
 5 Aaron Zahn mention it, and the answer was no. But  
 6 Angie did.  
 7 Q Okay. Was Aaron present for that?  
 8 A No.  
 9 Q Did she say why she believed that to be the  
 10 case?  
 11 A She just said that there was a long-term  
 12 incentive plan that was under development. And that  
 13 was not an inducement for me to join JEA.  
 14 Q So when you first talked to Aaron Zahn, that  
 15 wasn't the first time you had heard about it?  
 16 A No. I heard it first from Angie Hiers.  
 17 MR. PHILLIPS: Thank you.  
 18 BY MR. POWELL:  
 19 Q So Mr. Gabriel's memo arrives the 22nd. The  
 20 board meeting is the next say. As you said, you still  
 21 didn't feel like everything had been buttoned down on  
 22 this plan; correct? I mean is that a fair statement?  
 23 A Yes. I don't think that this -- anyone --  
 24 well, I don't think, based on what I know, that it was  
 25 assumed to be a final document.

1 And I think the resolution says that changes  
 2 can be made to the document in consultation with the  
 3 General Counsel, and I think Jason's memo contemplates  
 4 additional work being done on the documents. And there  
 5 was.  
 6 Q And --  
 7 MS. HODGES: But, Steve, just be real clear.  
 8 The changes that were allowed in the resolution  
 9 were technical, clerical changes, not substantial  
 10 changes, just for the record.  
 11 BY MR. POWELL:  
 12 Q Are you aware that no further board approval  
 13 was required prior to implementation of the performance  
 14 unit plan after it was adopted on the 23rd?  
 15 A I'm not aware of it, but I never thought  
 16 about whether it needs to go back. It probably would  
 17 depend on how many changes had been made from either  
 18 recommendations from y'all, from the Office of General  
 19 Counsel, and the Attorney General and Florida Ethics  
 20 Commission.  
 21 Q Suffice it to say that as the CAO, you did  
 22 not go to the CEO on the 22nd of July or the 23rd and  
 23 say, You know, I think we need to put the brakes on  
 24 this; I don't think it's in shape to be presented to  
 25 the board for approval. We need to slow down on this.

1 Did you have that conversation, or something  
 2 to that effect, with Mr. Zahn before the July 23  
 3 meeting?  
 4 A I did not.  
 5 Q Did you have any concerns that this plan was  
 6 being presented to the board for approval with all of  
 7 the uncertainties about it that you had?  
 8 Did you have any concerns that the board was  
 9 being asked to go forward notwithstanding the lack of  
 10 details in the plan, at least your understanding of the  
 11 plan as the CAO?  
 12 A My understanding, which does not include  
 13 human resources, but my understanding was that we would  
 14 have the opportunity -- "we," Office of General  
 15 Counsel, Pillsbury, Foley -- would have the additional  
 16 opportunity to refine the document.  
 17 BY MS. HODGES:  
 18 Q Herschel, are you -- you had indicated that  
 19 Aaron had requested Jason to do the memo, right? It  
 20 was your understanding -- the internal memo, you think  
 21 it came from Aaron?  
 22 A I think the two of them talked, yes.  
 23 Q But he was wanting to have something, because  
 24 you said that he didn't want to take it before the  
 25 board unless OGC signed off. Is that what you --

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1 A If you recall, Jason's memo addressed I think  
2 four resolutions, and this was one of them. And he  
3 said I don't want to take anything to the board unless  
4 I have a memo from Jason saying that I'm -- that the  
5 board is authorized to proceed.  
6 Q And you would agree that the caveat in that  
7 memo was a pretty big one, because it essentially read  
8 that Office of General Counsel is not confirming the  
9 legality of any of the underlying documents.  
10 I can pull the memo.  
11 A Yes, I do remember that there was --  
12 Q There was a caveat --  
13 A -- a caveat that Jason was relying on work  
14 done by specialized outside counsel or something like  
15 that.  
16 Q Right, right, something like that.  
17 So do you have any knowledge of what Aaron  
18 did with that memo? Did anybody share that memo with  
19 the board so that they could see that caveat and be  
20 fully informed of what they were voting on?  
21 Do you have any -- do you know what he did  
22 with that memo?  
23 A I don't know.  
24 Q And are you aware of any conversations that  
25 were maybe had with the board that pointed out that

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1 caveat to the board, that Office of General Counsel had  
2 not approved the underlying legality of the documents?  
3 Was that shared with the board at the July  
4 23rd meeting or prior to the meeting?  
5 A I'm not aware.  
6 Q And just -- I mean, again, just the 20 -- and  
7 I'm looking at -- you can look at this yourself,  
8 Herschel, but it's the resolution that was approved,  
9 2019-10. The way that the resolution is written,  
10 Item 3 allows, in consultation with the Office of  
11 General Counsel, to make technical and clerical  
12 amendments to the long-term performance unit plan. So  
13 that's -- all of which do not increase the financial  
14 obligations or liability of JEA under the long-term  
15 performance unit plan.  
16 So I mean, again, changes could be made, but  
17 certainly you would not disagree that these type of  
18 changes would not have included substantial changes to  
19 the plan?  
20 A Without having to go back to the board --  
21 Q Without having to go back to the board.  
22 A Going back to the board.  
23 MS. HODGES: Okay. That's it.  
24 BY MR. POWELL:  
25 Q Would I be correct in understanding --

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1 MS. HODGES: Can I just follow up real quick  
2 to the resolution?  
3 MR. LOCKAMY: Can you show him a copy of the  
4 resolution?  
5 MR. POWELL: Here you go. Here.  
6 BY MS. HODGES:  
7 Q So can you turn to the summary? This would  
8 be Exhibit -- Exhibit 1 to the resolution. See there  
9 is plan summary. I think if you go down, this is on  
10 Exhibit 1, so the second --  
11 MR. POWELL: That may not be a --  
12 BY MS. HODGES:  
13 Q The third page, where it says Conditions to  
14 Receipt --  
15 A Okay.  
16 Q -- at the very end. Prior to the July 23rd  
17 meeting, or maybe at the meeting, were you -- do you  
18 see that last Romanette, the conditions of receipt so  
19 none of the employees can receive anything under the  
20 plan unless the conditions in Section 215.425(3)  
21 Florida Statutes are satisfied?  
22 A Uh-huh.  
23 Q Do you know -- are you familiar with that  
24 statutory section?  
25 A I know that the -- 215 is the public employee

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1 compensation statute.  
2 Q Right. The extra compensation?  
3 A Yes.  
4 Q Do you know what that basically allows? I  
5 mean what's the -- at the time of the July board  
6 meeting, did you know the correlation between that  
7 statute and its parameters and what it allows with  
8 respect to the plan?  
9 Were you familiar with what these actual  
10 conditions are in the statute?  
11 A Well, I have clearly read the 215. I don't  
12 know if I had investigated the 215 at the -- on July  
13 23rd.  
14 Q But it was your understanding prior to or at  
15 the July 23rd meeting that the plan had to conform with  
16 215.425. I mean that's what it says, the conditions in  
17 Section 215.425(3) Florida Statutes are satisfied.  
18 That's a condition to anybody receiving any  
19 payment under the plan. Were you at least aware of  
20 that?  
21 A My objective was to make sure we were  
22 compliant with all of Florida law.  
23 Q Okay.  
24 A I mean I just -- we were not going to move  
25 forward with the plan, at least in my mind, unless we

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1 were compliant with all laws.  
2 Q But specifically here, 215.  
3 A I don't -- I tell you what, tell me what  
4 215.425(3) Florida Statutes says, and I'll tell you if  
5 I'm familiar with that.  
6 Q Well, generally it's the bonus -- it allows a  
7 governmental entity to have and implement a bonus plan,  
8 where their employees can receive a bonus or extra  
9 compensation, and there's certain conditions that you  
10 have to meet, one of which is you can't have a plan  
11 unless it's based on the performance of the employees,  
12 as opposed to -- like not the performance of the  
13 company, but the performance of the employees.  
14 Does that ring a bell?  
15 MR. LOCKAMY: Are you representing to him  
16 that that's exactly what these two provisions  
17 provide?  
18 MR. GRANAT: I'm pulling it up. Hold on.  
19 BY MS. HODGES:  
20 Q No. Actually, I'm just trying to get an  
21 understanding of, Herschel, if at the time of the July  
22 23rd meeting it was your understanding that the PUP was  
23 conditioned -- because I'm just reading what the  
24 summary says, the conditions in Section 215.425(3)  
25 Florida Statutes are satisfied.

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1 So I read this to say that an eligible  
2 employee will receive the cash payment in respect of  
3 his performance units if -- and there's a lot of  
4 things: Execute the agreement; the employee is  
5 continuously employed; the employee executes and does  
6 not revoke a release of claims; employee complies with  
7 the covenants set forth below.  
8 And I'm just focusing in on -- because you  
9 were charged to make sure that the plan, you know, was  
10 in conformance with the laws. You were certainly --  
11 you were concerned about that, making sure the plan  
12 met --  
13 A I wanted to make certain that the plan was  
14 compliant with all the laws, because if we were going  
15 to issue a plan to 2000 employees that we -- that it  
16 was compliant with Florida law. And, as I mentioned,  
17 because there was no case law that I recall being on  
18 point for either Chapter 215 or 4 -- or Chapter 112,  
19 that that's why we wanted to go to Tallahassee to the  
20 state's top legal officer and the Florida Ethics  
21 Commission for their review of the plan.  
22 Now, I do think that the documents did change  
23 from the time of July 23rd and the time we sent them to  
24 Tallahassee.  
25 Q Right. Because that was going to be my next

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1 question. Because here it seems somebody, maybe not  
2 you, was really focused on this one particular statute,  
3 Section 215.425(3), so much so that it was a condition  
4 for any of the employees to receive payment.  
5 But by the time we got to the AG letter, to  
6 the Attorney General, it was a different statute that  
7 it appears as if, you know, JEA was operating under.  
8 In fact, in the AG letter there was an outright  
9 statement -- and I can pull up that letter -- that says  
10 the plan is not a 215 -- it doesn't need to satisfy any  
11 of these conditions because it's not a plan.  
12 So my question is, at what point did the  
13 change in at least the legal rationale occur, to your  
14 knowledge? Because here the plan is being presented to  
15 the board, and the board is being told that the plan  
16 needs to satisfy the regular bonus scheme as allowed  
17 for government employees, and that's 215.425(3), the  
18 section that Sean just handed out. But then by the  
19 time we got to the AG letter it was no longer a plan as  
20 pursuant to 215, it was more of a deferred compensation  
21 plan, because that's what was referenced in the AG  
22 letter.  
23 So, to your knowledge, when did that shift in  
24 rationale change?  
25 A I don't know. That may be reflected in

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1 Jessica Lutrin's legal analysis, and -- because a  
2 deferred compensation plan is a federal creation, and  
3 Pillsbury handled that part of it.  
4 MS. HODGES: Okay.  
5 BY MR. POWELL:  
6 Q Can I have that?  
7 A Sure.  
8 Q I didn't want to wreck your glasses there.  
9 Were you aware when the plan went before the  
10 board on the 23rd that as structured, in the event of a  
11 recapitalization event, let's say within the -- before  
12 the end of the three-year performance period, that the  
13 plan would result in a distribution of the profit, so  
14 to speak, or the gain, so to speak, of the City on the  
15 event of a sale and could result in the return on a \$10  
16 investment on the order of \$3000 per unit?  
17 A No.  
18 Q As we sit here today, are you aware of that  
19 reality?  
20 A It was discussed in the December the 16th  
21 City Council meeting. Mr. Salem had some numbers.  
22 Q Did you have a reaction to that at that time  
23 internally?  
24 A Well, no.  
25 BY MR. PHILLIPS:

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1 Q Did you disagree with the numbers that  
2 Mr. Salem had?  
3 A My recollection is he was using numbers --  
4 I guess I did not focus on the numbers, because early  
5 on I knew that, while recapitalization was referred to  
6 in the plan documents, that it was not --  
7 recapitalization was not going to -- was not  
8 possible -- there would -- it would not be possible to  
9 have the plan implemented in connection with a  
10 recapitalization event.  
11 BY MR. POWELL:  
12 Q Why do you say that?  
13 A So deferred compensation requires you to  
14 defer your compensation the previous year. Florida  
15 law -- so -- and so it would be 2019. The ITN would be  
16 complete in 2020. Florida law requires -- I think  
17 that's in Chapter 112 -- that before any plan can be  
18 implemented it would have to have all federal approvals  
19 before it could be valid.  
20 And to get a deferred compensation approval  
21 approved from the federal government will take months,  
22 and so if I took the plan on July the 23rd and flew it  
23 to D.C. myself, it was unlikely that they could get  
24 that done in advance of 20 -- January 1 of 2020. And,  
25 of course, when we put in what I call the circuit

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1 breakers of the Ethics Commission and the AG idea and  
2 get their feedback, we weren't going to have that  
3 document approved by the Feds. The recapitalization  
4 would be all the way over. So it was -- in my view, at  
5 least, it was more of a three-year plan.  
6 Q Are you not aware that there --  
7 MR. PHILLIPS: Are -- sorry, Steve. Go  
8 ahead.  
9 BY MR. POWELL:  
10 Q Are you not aware that JEA was moving full  
11 speed ahead to offer the plan to its employees in  
12 December of 2019?  
13 A I know they were preparing. But -- and I  
14 know most of this because of the document production  
15 that was done for City Council.  
16 Q What's your response to that?  
17 A Well, they were moving forward. But it was  
18 legally and factually impossible to connect it with a  
19 recapitalization plan. And I don't think, at least in  
20 my mind, that the plan would have been approved -- we  
21 would be lucky to have it approved before December of  
22 2020.  
23 Q And do you think Mr. Zahn was aware of that  
24 on July 23 when it was presented to the board?  
25 A No. Because I wasn't. I didn't get more

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1 engaged in the -- you know, the issues started to  
2 crystallize when we worked with Jon and Lawsikia, and  
3 215 and 112 kind of stood out.  
4 Q So, in fact, when it was presented to the  
5 board on the 23rd, there was every expectation on the  
6 part of JEA management that the plan and the ITN could  
7 roll along in parallel, in lock step, and this plan  
8 could generate a massive return on a \$10 investment and  
9 that was -- that was an expectation at the July 23  
10 meeting? Is that not correct?  
11 A That's not correct.  
12 Q What's incorrect about it?  
13 A Well, there was -- there was no discussions  
14 of -- of the money that would be involved.  
15 Q Well, that's kind of precisely my point. You  
16 had no discussions with the board; correct?  
17 A No.  
18 Q Do you know whether Mr. Zahn had any  
19 discussions with the board and explained that to them?  
20 A I don't know.  
21 Q And you didn't have any discussions with  
22 Mr. Zahn, you didn't know anything about the details of  
23 the plan beyond what you've described earlier here;  
24 correct?  
25 A Correct.

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1 Q Did you do any performance reviews at the end  
2 of September of 2019?  
3 A Yes.  
4 Q Who did you do a review of?  
5 A Ted Hobson and Paul Steinbrecher.  
6 Q In those reviews did you discuss with either  
7 of them the relationship between their performance  
8 review and their -- what their ability would be to  
9 purchase units in the plan?  
10 A I think I did with Ted.  
11 Q Okay. And what was the substance of that  
12 exchange?  
13 A That if you have a meet or exceed -- no, if  
14 you have an exceed, then you may be able to participate  
15 when the plan was implemented.  
16 Q That you may be able to?  
17 A At a greater -- at a greater level.  
18 Q Quantity?  
19 A Yes.  
20 Q Number of units, is that what you mean by  
21 greater level?  
22 A Yes. Yes. Based on the -- you know, the  
23 document that -- like she said, the performance.  
24 Q So any performance component of this plan was  
25 in arrears, so to speak; would you agree with that?

1 A Explain.

2 Q So, in other words, your performance review

3 is completed at the end of the fiscal year. JEA is on

4 an October-September fiscal year; correct?

5 A Yes.

6 Q So these meetings with Mr. Steinbrecher --

7 did I get that right?

8 A Uh-huh.

9 Q And Mr. Hobson were late September, early

10 October?

11 A Uh-huh.

12 Q And so that was a backwards look at their

13 performance; correct?

14 A That's correct.

15 Q So JEA would be inviting employees into a

16 performance plan that had nothing to do with their

17 future performance; correct?

18 A Well, the plan had to take effect beforehand.

19 He's shaking his head no.

20 Q I am shaking my head no, because that's not

21 really the -- that's not responsive, so let me start

22 again.

23 You've indicated that you told at least

24 Mr. Hobson that his ability to purchase at a higher

25 level, or greater quantity, more units, would depend in

1 part upon his review for the past fiscal year; correct?

2 A Yes.

3 Q What does that have to do with incentivizing

4 employees to work harder, do better, be more creative,

5 be more innovative for the benefit of the institution?

6 A To continue working harder.

7 Q Were you ever given any indication that more

8 than 30,000 units would be allocated in the plan?

9 A No.

10 Q So if all 30,000 units were sold by the end

11 of 2019 and there was no future allocation, there would

12 be no future incentive for performance associated with

13 the plan; isn't that right?

14 A Well, you're assuming that the 30,000 units

15 could be sold in 2019, and I don't think they could be.

16 BY MR. PHILLIPS:

17 Q The internal emails do reflect that there

18 were people who were trying to get it done before the

19 end of 2019; is that not right?

20 A Yes. As I mentioned, I reviewed some of the

21 stuff that was sent to City Council.

22 Q But you were of the opinion that it probably

23 wasn't going to get to the -- if the utility had been

24 sold pursuant to the ITN that it wouldn't have -- it

25 wouldn't have flown with the IRS?

1 A I know under Florida law you have to have all

2 of the approvals in place before the effective date of

3 any plan. And we had not even prepared the submission

4 to the IRS. And it's still not prepared, so it's not

5 like there was one drafted and waiting.

6 And so if you take a multimonth process with

7 the federal government, as you can see, you don't have

8 time, particularly when we were waiting on the Attorney

9 General and then a subsequent issuance of a letter to

10 the Florida Ethics Commission.

11 Q Is that why the plan provided that if the IRS

12 disallowed the tax-deferred treatment that the JEA or

13 its successor would be liable to pay the taxes on the

14 gain?

15 A No. The whole plan had to be approved by

16 IRS. There was no -- there wasn't a piece of it.

17 Q No, I understand that. But if the plan had

18 been implemented but the requisite approvals hadn't

19 been made, the IRS would have allowed tax-deferred

20 treatment and then the plan would have ended up costing

21 more because the entities would have to pay the taxes?

22 A I guess what I'm saying is the IRS had to

23 approve the entire plan, according to Florida -- you

24 know, because it's a federal creation, and Florida law

25 requires to us to get that approval before it's

1 effective. It wasn't related to any one provision in

2 the document itself.

3 Q Does it say that in the plan, that it can't

4 take effect until the IRS approves it?

5 A That's in Florida law.

6 Q But not in the plan itself?

7 A I don't think so.

8 MR. POWELL: In the --

9 MR. PHILLIPS: One more, before I -- sorry to

10 interrupt.

11 MR. POWELL: No, not at all.

12 BY MR. PHILLIPS:

13 Q Before I forget, you said that there were

14 people in the company who are far more versed in how

15 the plan would work than you?

16 A (Nods head)

17 Q Who would those people be?

18 A I'm assuming the folks in HR.

19 Q And Ryan Wannemacher -- is it Wannemacher or

20 macher?

21 A Wannemacher.

22 Q Okay.

23 A But the nuts and bolts of how the plan would

24 operate would be -- it was not in my sphere.

25 MR. PHILLIPS: HR, okay.

1 BY MR. POWELL:  
 2 Q Are you saying that Jon Kendrick would be the  
 3 senior leadership team member who should know the most  
 4 about the plan?  
 5 A HR runs all of our benefits programs, so I  
 6 will assume that that program would be within the HR  
 7 sphere.  
 8 Q As late as late October, had you had any  
 9 discussions with Mr. Zahn about the allocation of units  
 10 to employees up and down the ranks?  
 11 A As I mentioned, my discussions with Aaron  
 12 Zahn on allocation was related to a short time before  
 13 he left the company, and there was news reports, and  
 14 that's when I asked him, had you met with -- have you  
 15 met with the comp committee chair to discuss that,  
 16 because she's the one that drives the bus. And he said  
 17 no.  
 18 Q Had the ITN not been completed in 2020 -- and  
 19 you do agree with me that it's certainly not out of the  
 20 question that it would have taken into 2021 to complete  
 21 the -- a transaction that would involve the sale of  
 22 JEA?  
 23 A My assumption always would have been that it  
 24 would be completed in 2020.  
 25 Q Why was that?

1 A Well, because we were -- we were going to be  
 2 finished with the ITN I think in 2020, you know, if we  
 3 were proceeding. It may have stopped at City Council,  
 4 and it may have stopped at the referendum.  
 5 Put it this way, there was no discussion of  
 6 having the ITN roll into 2021, that I am aware of.  
 7 Q What was driving the urgency? I guess  
 8 another question would be why not?  
 9 A I'm sorry?  
 10 Q Why did it have to get done in 2020?  
 11 A Well, if we're not -- if we weren't going to  
 12 do the ITN, then we were going to proceed with the  
 13 other alternatives, whatever the board chooses.  
 14 Q Why did the sale have to be completed in  
 15 2020?  
 16 A Well, it would have been the result of, I  
 17 guess, 18 months' work. You can't go on forever.  
 18 Q Are you saying that the leadership of JEA  
 19 would have just thrown the whole thing out the window  
 20 if a sale couldn't be completed by the end of 2020?  
 21 A The whole thing?  
 22 Q The sale, the ITN, out the window. If it's  
 23 not done by the end of 2020, we're going to can the  
 24 process?  
 25 A As I said, a discussion of having the ITN

1 transaction roll into 2021 was never discussed.  
 2 Q Well, I understand that. But my question is,  
 3 why was it so urgent that it be completed in 2020, if  
 4 you had any discussion about that with anyone?  
 5 A We did not discuss it being completed in  
 6 2020. But, at least in my mind, it would have been  
 7 completed in 2020, if at all.  
 8 Q Okay. I think you can see where I'm going  
 9 with this, because as it relates to the performance  
 10 unit plan, perhaps you don't get all the approvals in  
 11 2019, you obtain them in 2020, you roll the plan out,  
 12 employees acquire their units, we move into 2021,  
 13 there's a recapitalization event.  
 14 That couldn't have happened?  
 15 A It was never identified as a possibility to  
 16 me. And in my mind, the work that it takes -- was  
 17 taking to go through this process, it was either -- it  
 18 was either going to end in 2020 -- well, it was going  
 19 to end in 2020.  
 20 Q Why even have a performance unit plan that  
 21 has a three-year performance period if the intention is  
 22 to sell the entity within 18 months?  
 23 A There was -- the intention was not to sell  
 24 the entity in 18 months. It was exploring three  
 25 options along with the first two. But the board makes

1 those decisions.  
 2 Q And the board authorized the ITN process on  
 3 July 23; correct?  
 4 A To explore what a nongovernmental entity  
 5 would look like.  
 6 Q And until the plug was pulled in December,  
 7 was there any slowdown on the drive to complete that  
 8 process by the end of 2020 by senior JEA management,  
 9 including Mr. Zahn?  
 10 A Which process?  
 11 Q The ITN.  
 12 A So the ITN process was moving forward, as  
 13 well as the co-op and the IPO process.  
 14 Q And which one had better legs until it was  
 15 pulled in December?  
 16 A Well, the ITN was the most work, from my  
 17 perspective, but -- and I sat in on a briefing on the  
 18 co-op piece in November, and there's actually a group  
 19 that was exploring that because that was one of the  
 20 three alternatives. And I think that is going to be  
 21 presented at the January board meeting.  
 22 Q Do you have any idea how much expense was  
 23 associated with the development of the performance unit  
 24 plan?  
 25 A No. I don't -- I don't see outside legal

1 bills.

2 Q Who did at JEA, Mr. Wannemacher?

3 A No. I think that all -- to my knowledge, all

4 the outside legal bills come here to the Office of

5 General Counsel for review, and then the financial

6 people pay the bills. But I don't -- to my knowledge,

7 they don't review them.

8 BY MS. HODGES:

9 Q By Office of General Counsel, you mean to

10 Lynne Rhode; right?

11 It is your knowledge that Lynne Rhode is

12 reviewing the bills, or were you thinking that somebody

13 else over here, in addition to Lynne Rhode, because

14 she's --

15 A I don't --

16 Q You just don't know?

17 A I don't know y'all's -- the Office of General

18 Counsel process for reviewing legal bills.

19 MR. LOCKAMY: Can we take a break?

20 MR. POWELL: Sure.

21 (Recess from 2:20 p.m. to 2:25 p.m.)

22 BY MR. POWELL:

23 Q Let me show you an email from Lynne Rhode to

24 Jessica Lutrin, October 23, 2019. It's JEA Bates

25 stamped 0666 in the Diamond-Salem package.

1 You can read along with me, that this email

2 purports to be sending the final -- all caps, final

3 version of the PUP plan to Jessica and Mr. Hyde over at

4 Foley.

5 A Uh-huh.

6 Q Did you ever see this email? I know you're

7 not on it, but --

8 A I think I saw it in connection -- in reading

9 through the documents in connection with the hearing.

10 Q Does that make any sense to you? It doesn't

11 make any sense to me based on what you have just

12 described to me about the what you -- what you view to

13 be the state of affairs with the PUP plan in late

14 September, early October.

15 A Well, obviously I wasn't on the memo, or on

16 the email. But I can -- I will tell you that obviously

17 Lynne knew about the submittal to the Attorney General

18 and the proposed submittal to the Florida Ethics

19 Commission.

20 So I don't know why she wrote "final." Maybe

21 that would be the final that was being sent to the

22 Attorney General.

23 Q Did you ever have a conversation with

24 Mr. Zahn in which you explained to him the hurdles

25 that -- legal hurdles that still needed to be cleared

1 at all the places that you just mentioned earlier,

2 state, federal, in order to implement the performance

3 unit plan?

4 A I am confident that I told him about the need

5 to proceed -- or my desire to proceed with pursuing

6 opinions and feedback from the Attorney General and the

7 Florida Ethics Commission. I don't know that I

8 discussed the provision requiring approvals from the

9 Feds with him.

10 But when I made the recommendation that these

11 two other state approvals would be made, like I said,

12 to Jason Gabriel and to Aaron, both OGC and Aaron were

13 supportive of going forward with that.

14 Q When did you have this discussion with him?

15 A In the summer. Because I think -- I think I

16 talked to Jason Gabriel in the summertime and to Aaron,

17 both, about my desire to have third parties look at the

18 documents.

19 BY MS. HODGES:

20 Q Herschel, when the letter was sent to the AG,

21 was there a reason why the scope of the AG's review was

22 only limited to Section 215.425, as opposed to the 112

23 deferred compensation?

24 A So the -- as I understand it, the 112 was

25 addressed, in my recollection, in the Florida Ethics

1 Commission piece. And somebody described -- and I

2 don't remember who -- they said that the Attorney

3 General doesn't have jurisdiction over Chapter 112.

4 And that may have been Jason Gabriel --

5 Q Right. I think you're thinking about --

6 MR. LOCKAMY: Can you let him answer first,

7 before --

8 BY MS. HODGES:

9 Q Oh, sorry. So let me back up. You're

10 thinking about the ethics issues, correct. I'm talking

11 about the deferred compensation statute, and I think

12 it's another part of 112. So 112 Part 3 relates to

13 ethics. The deferred compensation statute is so 112,

14 but it's another part of 112. So my question -- which

15 the AG would have jurisdiction over that section of

16 112.

17 Why is it -- because, again, in the AG

18 letter, basically your question to the AG was whether

19 or not the plan complied with 215. I guess my question

20 is, did you see a need also for the AG to opine on

21 whether or not the PUP was compliant with deferred

22 compensation plans, as opposed to just being akin to

23 one? Why didn't --

24 A Well, my recollection is it was -- at the end

25 there was an open ended. But as I mentioned to you

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1 just then, my understanding was -- and you may have a  
2 different understanding -- was that 112 goes to the  
3 Florida Ethics Commission because the Attorney General  
4 doesn't have jurisdiction.  
5 Q 112.215, right. The statutory section is  
6 112.215, which is the section of Chapter 112 Florida  
7 Statutes that pertains to deferred compensation.  
8 Okay. So then there was no thought, it looks  
9 like, that was given to Section 112.215, which is  
10 deferred compensation plans, sending that to the AG to  
11 confirm that the plan is compliant?  
12 MR. LOCKAMY: When you say no thought, are  
13 you talking about his thoughts or --  
14 BY MS. HODGES:  
15 Q Your thoughts. Well, let's start with your  
16 thoughts first and then if you were aware of other  
17 thoughts that other people may have had.  
18 A So as you're aware, Foley & Lardner was hired  
19 by y'all to look at these issues, and we had a number  
20 of discussions with them. And so -- and I don't know  
21 who else -- obviously Lynne Rhode at OGC, and I don't  
22 know if anybody else over here reviewed it, but I don't  
23 know who all looked at it -- at the letter before it  
24 was sent.  
25 I do know that I had discussions with Jason

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1 Gabriel about it, and he said that he and y'all's  
2 office routinely work with the Florida Ethics  
3 Commission and that he would be happy to assist as  
4 needed in any of the discussions.  
5 He may have said that about the Attorney  
6 General's office as well, but I don't -- I specifically  
7 remember him saying that y'all routinely reach out to  
8 the Florida Ethics Commission.  
9 Q Okay. And just really quick, you had shared  
10 that you thought that the plan was moot, or it would be  
11 moot because of recapitalization. Can you explain  
12 that?  
13 A So that would be the plan part if -- on the  
14 recapitalization. The three-year plan could move  
15 forward --  
16 Q Correct.  
17 A -- if -- once we got all the approvals.  
18 But, remember, we were focused on more of  
19 just the fundamental issue, does this comply with all  
20 the laws.  
21 Q Right. Which is why I was asking. All the  
22 laws, to me, would have also included 112.215, deferred  
23 compensation, which is why I was wondering why the AG  
24 wasn't opining on that.  
25 But do you -- so do you recall the meeting

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1 that we had November 5th?  
2 A Well, we've had lots of meetings.  
3 Q So this was, let's see, the meeting that --  
4 A Was it in this room or was it over at JEA?  
5 Q It was over actually at Kevin Hyde's office,  
6 very last meeting with Jason Gabriel.  
7 A Okay. Yes, yes, yes, yes, yes. I do  
8 remember that.  
9 Q Did you recall raising this concern about the  
10 PUP being moot upon recapitalization because of  
11 deferred compensation and tax issues? Did you raise  
12 that concern, that you recall, at the November 5th  
13 meeting?  
14 MR. LOCKAMY: Were you at the November 5th  
15 meeting?  
16 MS. HODGES: I was.  
17 A I do recall discussions with -- and I don't  
18 know if it was at this meeting or some other meeting  
19 with OGC, about having -- that federal approval was  
20 required under Florida law.  
21 Q Do you recall what the purpose of the  
22 November 5th meeting was?  
23 A It was to discuss the performance units;  
24 right?  
25 Q Right. And OGC's position on the performance

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1 unit plan, the legality of it, was that your  
2 understanding?  
3 A That y'all -- I mean there was no -- there  
4 wasn't really any new issues. We all focused on  
5 Chapter 112 and 215 from the outset. And -- and --  
6 Q Right.  
7 A And we had no more clarity yet from the --  
8 y'all expressed concerns. It's the same concerns that,  
9 you know, others had expressed, and, you know, the  
10 things that we flagged for AG and Ethics Commission.  
11 Q And so just two more questions. So you do  
12 recall at that meeting specifically it being brought to  
13 everybody's attention that it was required to get some  
14 federal approvals in order for the plan to be  
15 effective?  
16 A I don't know that -- if it was at that  
17 meeting, but it was in one of our meetings the Office  
18 of General Counsel, not Lynne Rhode -- I mean you  
19 understand --  
20 Q Right.  
21 A Somebody with -- either when we met with Jon  
22 or with you or with Jason, that that issue was  
23 discussed, that federal approval of a deferred  
24 compensation plan is required before the effective date  
25 of any plan, and it's required under Florida law.

1 Q But do you recall anybody at that meeting  
 2 stating that recap would just be a moot point having  
 3 not gotten that?  
 4 Do you recall just anybody stating that at  
 5 the meeting, that really we don't really need to worry  
 6 about this, because if the recapitalization happens,  
 7 then the PUP just becomes moot? Do you recall that in  
 8 those terms being stated at that meeting?  
 9 A The whole plan is not effective until federal  
 10 approvals are obtained, not just one component of it.  
 11 But neither the recap side -- the recap side would not  
 12 be effective and neither would the three-year piece.  
 13 MS. HODGES: Okay. That's it.  
 14 BY MR. POWELL:  
 15 Q Did you meet with Mr. Zahn in early  
 16 November -- I'm sorry, in fairness, the first 10, 12  
 17 days in November, leading up to his November 12 letter  
 18 to Mr. Gabriel regarding the decision to not  
 19 implement -- JEA's decision to not implement the long-  
 20 term performance unit plan?  
 21 A I met in early November with Mr. Zahn and  
 22 Mr. Gabriel about that issue, in Mr. Gabriel's office.  
 23 Q Are you familiar with Mr. Zahn's November 12,  
 24 2019, letter to Mr. Gabriel in which he communicates  
 25 JEA's decision to not implement the plan?

1 A I'm generally familiar with that, yes. And I  
 2 don't know if he sent it to me or if I was copied on  
 3 it, if he sent it to me after the fact or if I was  
 4 copied. But I know --  
 5 Q Looks like he just copies the board of  
 6 directors.  
 7 So this is JEA document 0471 and 0472 from  
 8 the Diamond-Salem binder. So could you read along with  
 9 me -- I'm going to try to do it upside down -- this  
 10 bottom paragraph, which reads: The decision to not  
 11 implement the plan --  
 12 A Do you want me to read it?  
 13 Q -- is based in the incongruity of the plan's  
 14 long-term nature and very real potential short-term  
 15 implications of the JEA's strategic planning process.  
 16 That sentence. I've been trying to make sense of that  
 17 sentence, and I think you've sort of helped me a little  
 18 bit.  
 19 But doesn't that sentence reflect Mr. Zahn's  
 20 awareness that the plan could have an anticipated  
 21 bonanza payoff if it is in place at the time of a  
 22 recapitalization event?  
 23 A I'm not aware of what Mr. Zahn meant.  
 24 Q Well, this is, I think, more your speak than  
 25 my speak. Can you interpret that sentence for us in

1 any other way?  
 2 A I don't know.  
 3 Q I mean if Mr. Zahn understood on November  
 4 12th that it didn't really make any difference whether  
 5 the PUP existed or not because it couldn't be in place  
 6 in time to be a component or a parallel event with a  
 7 recapitalization event, don't you think we might have  
 8 expected to see something from him on that front?  
 9 A I don't know what you would expect. He  
 10 clearly was aware of the outstanding AG opinion  
 11 request -- or feedback, and the commission on ethics,  
 12 and so --  
 13 Q With all due respect, the AG might well just  
 14 have said, in fact, you know, we're not going to --  
 15 we're not going to give you an answer.  
 16 AG does that all the time. You know that;  
 17 right?  
 18 A Yeah. I had that discussion with Jason, that  
 19 it's optional whether or not she responds.  
 20 Q So there was no AG approval really required  
 21 in order to get the PUP done as a matter of law;  
 22 correct?  
 23 A In my -- as a matter of law, in my mind this  
 24 plan could not move forward unless we had third-party  
 25 input.

1 Q And was Pillsbury working hard to get that  
 2 done? Was Pillsbury working at trying to get the PUP  
 3 moved through all these gates that you have indicated  
 4 needed to be resolved in order for it to be launched?  
 5 A No.  
 6 Q Was Foley working on it?  
 7 A No.  
 8 Q Was Lynne Rhode working on it?  
 9 A No.  
 10 Q Are you telling me that nobody was --  
 11 hundreds of thousands, if not millions, of dollars are  
 12 being spent to develop this plan, and you're telling me  
 13 that nobody was worried about the end game on getting  
 14 the PUP in place to be launched?  
 15 A You have to have -- you would not want to  
 16 submit a plan to the federal government for approval  
 17 and then have either the Attorney General or Florida  
 18 Ethics Commission come back with proposed changes to  
 19 the plan and you start over. So you had to go in  
 20 sequence.  
 21 And as I mentioned, the document was -- was  
 22 changing throughout. And I fully anticipated that if  
 23 we got any -- if the Attorney General decided to opine  
 24 that we would get -- that there would be changes  
 25 recommended. So you could -- you can't submit a

1 document to the Feds for approval until you're  
 2 comfortable that the document is final in what would be  
 3 implemented.  
 4 BY MS. HODGES:  
 5 Q Herschel, do you remember at the November 5th  
 6 meeting talking about timelines as to when you wanted  
 7 the plan to be implemented -- when JEA wanted the plan  
 8 to be implemented? Was the timeline brought up at that  
 9 meeting?  
 10 A I don't remember, Lawsikia. Do you remember?  
 11 Q I do.  
 12 I have another question. At the time of the  
 13 November 5th meeting, were you aware of the projected  
 14 numbers, November 5th meeting?  
 15 A No.  
 16 Q Are you aware that anybody else in the room,  
 17 whether it was the lawyers on the phone, Aaron, Lynne,  
 18 Kevin Hyde, were they aware of the projected numbers?  
 19 Do you believe anybody in that room had knowledge of  
 20 the numbers at the November 5th meeting?  
 21 A I -- I don't know.  
 22 Q Do you recall Jason, at the November 5th  
 23 meeting, asking if anybody had financial analysis or  
 24 projection of the numbers? Do you remember him asking  
 25 that question?

1 A I don't.  
 2 MS. HODGES: Okay. That's it.  
 3 BY MR. POWELL:  
 4 Q Would you -- would you consider it a  
 5 responsible action by a CEO to present a plan of this  
 6 magnitude to his or her board of directors for approval  
 7 absent knowledge and appreciation of its financial  
 8 ramifications?  
 9 A Watching the tape of that board meeting, Ryan  
 10 did give an assessment of the potential payout over  
 11 the -- I think it was a three-year period. I can't  
 12 remember maybe if the board members asked him that  
 13 question or not.  
 14 Q Well, the potential payout over a three-year  
 15 period would be not the kind of payout that would have  
 16 been realized in the event of a recapitalization event;  
 17 correct?  
 18 A I don't know.  
 19 Q You don't recall any discussion with the  
 20 board, an explanation that, you know, okay, we've got  
 21 this plan, but should we get it launched and we recap  
 22 in 2020, \$10 could very well turn into 3000?  
 23 A I'm not aware of any discussions on that.  
 24 Q You didn't hear any of that at the board  
 25 meeting on July 23; correct?

1 A Not that I remember.  
 2 Q And, again, given that --  
 3 BY MR. PHILLIPS:  
 4 Q What did Ryan say?  
 5 A I'm sorry.  
 6 Q What did he say? What --  
 7 A So I think he used the number 6 percent of --  
 8 like I say, I went back and watched the video of the  
 9 meeting. And I did not recall it at the time, but in  
 10 the last couple of weeks, watching the board meeting,  
 11 or at least pieces of it, he says -- I think he said if  
 12 we, you know, hit all of our numbers that it would  
 13 be -- or goals, 6 percent of the total salary.  
 14 If you took, you know, whatever JEA's salary  
 15 number is, it would be 6 percent.  
 16 BY MR. POWELL:  
 17 Q As the CAO, wouldn't -- didn't -- wouldn't  
 18 you have expected your CEO to know these numbers, to  
 19 know these outcomes, and to have informed his board  
 20 before they voted to approve it?  
 21 A I wasn't familiar enough -- or at all on the  
 22 various formulas. As I said, my involvement was far  
 23 more basic, and that is making sure the document is  
 24 legally compliant.  
 25 Q Wouldn't you have expected, as the chief

1 administrative officer, that in fulfillment of his  
 2 fiduciary obligations, your CEO would have informed the  
 3 board before it approved this plan all of its -- of all  
 4 of its potential financial ramifications?  
 5 A I'm -- I'm guessing that certain financial  
 6 ramifications were discussed with the board members,  
 7 but I don't know that.  
 8 Q Is it really so hard to answer my question?  
 9 Honestly.  
 10 As the CAO of JEA, wouldn't you have expected  
 11 your CEO in fulfillment -- in fulfillment of his  
 12 fiduciary obligations to have informed the board before  
 13 it voted to approve the performance unit plan of all of  
 14 its potential financial ramifications?  
 15 A I would have expected that there would be  
 16 some discussion with the board members about the  
 17 financial ramifications. I don't know that all of them  
 18 were -- they couldn't be known.  
 19 Q Well, that's the flip side, isn't it.  
 20 Would you have expected -- as the CAO, would  
 21 you have expected your CEO to not present a plan of  
 22 this magnitude to your board of directors for approval  
 23 unless he knew and understood all of the financial  
 24 ramifications of the plan?  
 25 A I am assuming that he understood the

1 financial ramifications of part of the plan, but I  
 2 don't know -- I don't know all the plan or if that was  
 3 the CFO. I don't know whose duty it falls on.  
 4 Q Ultimately it's all on the CEO, isn't it?  
 5 A The buck stops, I guess, with the CEO.  
 6 Q I'm going to switch topics here for a minute.  
 7 Were you involved in the recruitment, so to  
 8 speak, of Sherry Hall?  
 9 A Yes.  
 10 Q Can you tell me about that -- by the way, I  
 11 forgot to ask, did you replace anybody at JEA? Was  
 12 there a CAO before you?  
 13 A There was not.  
 14 Q Okay. So this position was created for you?  
 15 A I don't know that it was created for me. It  
 16 was created, and I was the first person to hold it. I  
 17 don't know who else they interviewed, if anyone.  
 18 Q Was it ever explained to you why the position  
 19 was being created?  
 20 A Well, in some measure because of my -- the  
 21 water issue, as I discussed earlier.  
 22 Q Because of your interest in it?  
 23 A Because that was an area that I have a lot of  
 24 knowledge in.  
 25 Q Well, it sort of sounds like the position was

1 created for you because of your knowledge in the area  
 2 of water. Is that what you're saying?  
 3 A No, that's not what I said. They wanted to  
 4 be sure and continue a -- have a robust environmental  
 5 program and take that to the next level, particularly  
 6 in the water side. And that's where I have a  
 7 substantial amount of experience.  
 8 I also have 20 years of government affairs  
 9 experience, and obviously I've been a lawyer for 30  
 10 years.  
 11 Q Well, did Mr. Zahn reach out to you about  
 12 coming to work at JEA before or after your position was  
 13 created?  
 14 A I don't know when the position was created.  
 15 Q So let's talk about Sherry Hall. At some  
 16 point she was brought on board as the government  
 17 affairs liaison; is that about right?  
 18 A That's correct.  
 19 Q Okay. What was her -- what were her duties?  
 20 What was her title, and what were her duties and  
 21 responsibilities?  
 22 A Vice president for government affairs, and  
 23 she was responsible for liaison with the City Council,  
 24 the Mayor's office, and the Florida legislature.  
 25 Q Did she replace anybody?

1 A Yes.  
 2 Q Who did she replace?  
 3 A Mike Hightower retired.  
 4 Q Was Mr. Hightower still at JEA when you got  
 5 there?  
 6 A He was.  
 7 Q Why did he leave?  
 8 A He retired.  
 9 Q Did you have any discussions with him about  
 10 his decision to retire?  
 11 A We talked about that his wife was in North  
 12 Carolina at their home and that he would be joining  
 13 her.  
 14 Q And at that point you reached out to Sherry  
 15 Hall?  
 16 A It was obviously sometime after that. I  
 17 don't know that it -- exactly when. But I first got to  
 18 know Sherry when she worked for Mayor Peyton.  
 19 Q And at the time you reached out to her, she  
 20 was working in the tax collector's office; correct?  
 21 A That's correct.  
 22 Q In a similar capacity?  
 23 A I think she had maybe more of a  
 24 second-in-command role, but part of her duties were to  
 25 continue with government affairs.

1 Q Can you tell me about the -- your contact  
 2 with Ms. Hall and the process that led to her being  
 3 hired?  
 4 A So I reached out to her and talked to her to  
 5 see if she had interest, and she did. And so I  
 6 interviewed her.  
 7 Q Where did you interview her?  
 8 A I don't remember when I first interviewed  
 9 her -- or don't remember where.  
 10 Q Do you remember interviewing her outside of  
 11 JEA, off premises, so to speak?  
 12 A I do remember an interview that included  
 13 Aaron Zahn, and it was at a restaurant, like a lunch  
 14 place downtown.  
 15 Q That would have followed a meeting with you,  
 16 correct, an initial meeting with you?  
 17 A Yes.  
 18 Q How did -- and so was that -- you met with  
 19 her once, and then she met with you and Mr. Zahn, and  
 20 she was hired?  
 21 A I don't know if she met with any of the other  
 22 team members. She is -- she worked closely with Kerri  
 23 Stewart, and so she may have met with Kerri. I don't  
 24 remember if she met with Melissa or not.  
 25 Q Do you remember anything about how the job

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1 was described and opportunities that might be available  
2 to her coming on board when you and Mr. Zahn met with  
3 her?  
4 A I think they -- the position paid more than  
5 what the tax collector's office was paying.  
6 Q Do you remember whether there was any  
7 discussion with her about the intention to develop an  
8 incentive plan for employees at JEA?  
9 A At the -- at the meeting with Aaron Zahn?  
10 Q Well, whether you met with her privately or  
11 whether in the conversation with Mr. Zahn, was this  
12 concept presented to her as an inducement to come to  
13 work at JEA?  
14 A I don't know if that was discussed with her  
15 prior to her joining JEA.  
16 Q What can you tell me from your recollection  
17 of Mr. Zahn's representations to Ms. Hall when you-all  
18 met at a restaurant to interview her for the job?  
19 A I think Aaron told her that it was going to  
20 be a difficult job, because, just like what he told me  
21 in the previous months, that the landscape was changing  
22 significantly for our industry, and that it may  
23 require, you know, Charter changes. I know we  
24 discussed the need to get funds from Tallahassee for  
25 our water projects.

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1 Q That would have been pretty standard,  
2 wouldn't it have been?  
3 A No. I mean --  
4 Q Well, if JEA is looking to do a project, it's  
5 a public agency, is it all that unusual to make a  
6 request through the processes to get an appropriation  
7 to help with a project?  
8 A It is -- it has been at JEA. I'm not aware  
9 of them receiving any substantial dollars for the -- I  
10 mean for the -- for water projects from the state.  
11 Q That's not a farfetched notion, is it? I  
12 mean it's not a particularly novel thing to do, for a  
13 public agency to try to get funding from Tallahassee to  
14 further its work; right?  
15 A It was for JEA.  
16 Q Okay. I didn't ask if it was for JEA, but  
17 just in general that's not that novel an undertaking,  
18 is it?  
19 A There are a number of governmental entities  
20 that go to Tallahassee asking for money, including  
21 governmental utilities.  
22 Q Of course they do. They do it every year,  
23 don't they?  
24 A Yeah.  
25 Q So there was nothing particularly hard about

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1 JEA's entry into that, other than it's hard to do, and  
2 it's just as hard for JEA as anybody else to get money  
3 out of Tallahassee; right? Right?  
4 A It's hard to get money out of Tallahassee,  
5 yes.  
6 Q What else about the job was described to  
7 Ms. Hall as being -- it's going to be a lot, you know,  
8 hard work? You said something earlier, it was going to  
9 be a big challenge, hard work.  
10 So you mentioned trying to get money from the  
11 State. What else was discussed with her as being a  
12 daunting undertaking?  
13 A I don't remember discussing at the  
14 interview -- like I said, I do remember saying we were  
15 going to have challenges, but I don't remember  
16 itemizing them.  
17 Q Any discussions with her during those  
18 interviews about one of those challenges being to  
19 develop the case for selling the agency and gaining  
20 City Council approval for that?  
21 A I don't recall that. I don't know that that  
22 was -- I don't recall that.  
23 Q So in discussing the challenges facing JEA,  
24 when you're interviewing somebody who's going to come  
25 in as your vice president for governmental affairs, you

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1 don't recall having discussions with her about the  
2 potential that the agency could be sold in the near  
3 term and the challenges that would be associated with  
4 that and her position?  
5 A I think if -- I don't remember when we  
6 interviewed her, but certainly if it was after our June  
7 board meeting, it would have been discussed.  
8 Q After the July board meeting, did you  
9 personally put any effort into further development of  
10 the status quo plan, Scenario 1?  
11 A No.  
12 Q After the July 23rd meeting, did you put any  
13 effort personally into development of Scenario 2, the  
14 traditional utility response plan?  
15 A We continued to look at the constraints,  
16 which that was what we -- you know, my focus was on.  
17 Q Were you looking at the constraints in the  
18 context of the ITN?  
19 A I don't ...  
20 Q In other words, were you really looking at  
21 the constraints independently of the efforts that were  
22 being put into pursuit of the ITN?  
23 A I think -- I think probably Lynne Rhode and I  
24 probably did some more legwork on looking at the work  
25 that she had previously done. I don't remember

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1 doing -- looking at the constraints in connection with  
2 the ITN.  
3 Q How about your efforts after July 23 to  
4 pursue Scenario 3, the community ownership plan?  
5 A That being the co-op?  
6 Q Well, I'm just reading. Yes, I guess that's  
7 what it's talking about.  
8 A The co-op, as I mentioned, there were --  
9 continued to be research done by the banks and  
10 Pillsbury and Foley regarding the co-op plan. And then  
11 I sat in on a briefing, for part of it at least, with  
12 Councilman Becton, who had fairly significant interest  
13 in the co-op option. And there was -- it was a  
14 multihour discussion with somebody from J.P. Morgan on  
15 co-ops.  
16 So the co-op track continues. And, like I  
17 said, the -- the plan was or is, is at the January  
18 board meeting that there will be a co-op presentation.  
19 I don't know if Melissa is going to continue with that  
20 or not.  
21 Q Same question with respect to Scenario 4, the  
22 IPO plan, post July 23?  
23 A I think that the banks and the law firms are  
24 going to continue to do work on the IPO piece. I  
25 haven't been personally involved in any of those

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1 discussions.  
2 Q Would you say that the lion's share of your  
3 efforts at JEA post July 23 were devoted to pursuit and  
4 development of the Scenario 5, the ITN?  
5 A Significant amount of work was done up until  
6 it stopped with the ITN, for sure.  
7 Q Would that have been the lion's share of your  
8 daily endeavors?  
9 A It kept me busy. But, you know, we continued  
10 to move forward with our cyber concerns. We continued  
11 to move forward with our water and environmental  
12 issues. And so I don't --  
13 Q Fair answer.  
14 A I don't want to -- I don't want to downplay  
15 the amount of work that went into the various options,  
16 but it was --  
17 Q That's a fair answer, and I appreciate it. I  
18 should have asked it in these terms.  
19 As between scenarios 1, 2, 3, 4, and 5, after  
20 July 23, to the extent that you worked on these  
21 scenarios, was the lion's share of your effort devoted  
22 to Scenario 5, the ITN?  
23 A After July 23rd, of those five options I  
24 worked on the ITN more than the other four.  
25 Q In your observation of Mr. Zahn, would you

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1 agree, in your observation, that he, too, as to the  
2 extent that he was working on these scenarios 1 through  
3 5, devoted the lion's share of his efforts after July  
4 23 to the development of Scenario 5, the ITN?  
5 A That would be fair.  
6 MR. LOCKAMY: Mr. Powell, what document are  
7 you referring to, for the record?  
8 MR. POWELL: Well, I'm back to Mr. Zahn's  
9 letter to Mr. Gabriel on November 12. It just  
10 lists the scenarios. I wasn't really using the  
11 document. I was just using it as a reference so I  
12 could remember --  
13 MR. LOCKAMY: Okay. I just saw you looking  
14 and indicating to the --  
15 MR. POWELL: Well, that's where I've got this  
16 list of scenarios. I've got it elsewhere, but I  
17 don't have it memorized. So that's why I was  
18 looking at JEA Bates stamped document 0472.  
19 That's all I was doing. I wasn't trying to trick  
20 anybody.  
21 BY MR. POWELL:  
22 Q I hope you don't feel like I've been trying  
23 to --  
24 A No, sir.  
25 Q -- trick you here. Okay, good.

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1 A Sorry about that.  
2 MR. POWELL: I haven't been.  
3 Anybody else have any questions on these  
4 topics?  
5 BY MR. PHILLIPS:  
6 Q I just wanted to, just for the record say,  
7 could you just explain what the co-op option was?  
8 A Sure. So the --  
9 Q Or is.  
10 A Yeah. And because I guess our board can  
11 still consider that option. And I have obviously  
12 learned a lot about the co-op option as part of this  
13 process. I've learned more than what I knew.  
14 So Florida has a number of co-ops in the  
15 area. And actually co-ops occur nationally. They were  
16 part of, I believe, USDA, so this is a program that  
17 dates back when the rural electrification initiative  
18 occurred at the federal level. And so there are now  
19 areas that were once rural that are -- but are now  
20 urban centers that are no longer rural anymore, just  
21 because over the, you know, 75 years, for example, that  
22 co-ops kind of have existed. And I don't know exactly  
23 when the co-op issue was created at the federal level  
24 for electrification.  
25 The closest co-op here is in Clay County, and

1 they -- so -- you know, at one time obviously Clay was  
 2 pretty rural, and now as it's grown there's -- it  
 3 serves a more urbanized area. There is access to  
 4 federal loans and loan guarantees that are available  
 5 for co-ops that aren't available for other utilities.  
 6 Q Is a co-op a government agency like JEA is?  
 7 A It is a nongovernmental agency owned by the  
 8 community members.  
 9 Q So it would not have sovereign immunity?  
 10 A It would -- it would not.  
 11 Q What's the advantage to the co-op form versus  
 12 the current form, other than access to federal loans,  
 13 if any?  
 14 A Well, then you don't have -- like, for  
 15 example, the Constitutional constraints on municipal  
 16 purpose, you know, whatever would go on with the  
 17 Charter.  
 18 But that analysis was -- you know, the pros  
 19 and cons were being done by the banks and the law  
 20 firms, I guess, and so I don't know if they touched on  
 21 sovereign immunity or not.  
 22 Q Have you been following the PG&E story in  
 23 California?  
 24 A No.  
 25 Q They got sued over starting the big fire?

1 A Oh, yes, that I guess put them in bankruptcy.  
 2 Q Put them in bankruptcy. Is it your  
 3 understanding that if the same kind of thing happened  
 4 with the JEA that our liability would be statutorily  
 5 capped at \$300,000?  
 6 A Say that again.  
 7 Q If the same thing happened to JEA, our  
 8 liability would be limited to \$300,000 absent a  
 9 legislative claims bill.  
 10 Do you consider that to be significant?  
 11 A I think sovereign immunity is a wonderful  
 12 thing for government.  
 13 MR. LOCKAMY: Time for another break?  
 14 MR. PHILLIPS: Let's take another break.  
 15 It's been an hour.  
 16 (Recess from 3:16 p.m. to 3:32 p.m.)  
 17 MR. POWELL: Thank you, sir, for this last  
 18 little break. I'm going to turn it over to  
 19 Mr. Phillips.  
 20 You've asked a couple of times what we're  
 21 looking like in terms of time. I think, you know,  
 22 we'll probably need the rest of the business day.  
 23 And, you know, we certainly hope to get out of  
 24 here by 5:00.  
 25 MR. LOCKAMY: Mr. Powell, before we go

1 forward, can we clear up one thing that I just  
 2 want to make sure.  
 3 MR. POWELL: What's that?  
 4 MR. LOCKAMY: You had a line of questioning  
 5 earlier talking about the approvals of the PUP  
 6 plan, the AG, and the ethics, and then the IRS as  
 7 well. And you asked a question about whether  
 8 Pillsbury was working hard to get that done and  
 9 was Pillsbury working at trying to get the PUP  
 10 moved through all of these gates that you have  
 11 indicated need to be resolved in order to be  
 12 launched, but you didn't define what the gates  
 13 were.  
 14 And his response was no, but I think it's  
 15 clear to everyone that they were -- the PUP was  
 16 working -- excuse me, Pillsbury was working on  
 17 gaining PUP approval and that sort of thing. Is  
 18 that right?  
 19 THE WITNESS: No.  
 20 MR. LOCKAMY: Okay. Who was working on it?  
 21 THE WITNESS: So I thought you were asking  
 22 the question about gaining federal approval, and  
 23 there were no -- as I mentioned, we weren't going  
 24 to submit anything until we had it finalized. So  
 25 that's why I answered that no on Pillsbury, no on

1 Foley, and no on General Counsel on pursuing  
 2 federal approval.  
 3 BY MR. POWELL:  
 4 Q Well, specifically, what are the federal  
 5 approvals required?  
 6 A I don't know. The statute requires all  
 7 federal approvals, and I know that IRS is one of them,  
 8 but there may be others.  
 9 Q All right. Actually, I'm glad we're getting  
 10 back into this.  
 11 So you never really looked into what would  
 12 need to be done in Washington to enable the PUP to  
 13 launch?  
 14 A No. Just a general discussion that federal  
 15 approval is required and I --  
 16 Q When you say general discussion, what is  
 17 that? Who is it with? Where is it? When is it?  
 18 A So I know I had the discussion with Kevin  
 19 Hyde. And, again, I don't know exactly when. But in  
 20 discussions with OGC, they knew that a federal approval  
 21 was required pursuant to Florida law.  
 22 Q Do you think if I asked Kevin Hyde whether he  
 23 anticipated the PUP would launch in 2019 he would tell  
 24 me no?  
 25 A Say that again.

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1 Q Do you think if I asked Kevin Hyde whether he  
2 anticipated that the PUP would launch in 2019 that he  
3 would say, No, of course not, we had too many approvals  
4 to obtain before we could do that?  
5 A I think he would say that given his knowledge  
6 of the two, as I described, circuit breakers that I  
7 recommended happen.  
8 Q That being the ethic -- state Ethics and the  
9 Attorney General?  
10 A Yes, sir.  
11 Q But those -- I don't hear any federal circuit  
12 breakers in this process; correct?  
13 So there was nothing really to prevent -- I  
14 mean AG approval wasn't required by statute or law, and  
15 the Ethics Commission signoff wasn't required by  
16 anybody by law; correct?  
17 A It was recommended by me and well received by  
18 all.  
19 Q Well, I understand that. But for Mr. --  
20 A There is no -- there is not a legal  
21 requirement that we get AG approval, but given that  
22 there was no case law and this was -- as the letter  
23 points out, this is a unique thing for government --  
24 common in private sector but unique in government -- it  
25 would be prudent. And so that's what we did.

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1 Q Okay. But I can't let that one go. You say  
2 common in the private sector. Are you aware of plans  
3 like this long-term incentive plan in the private  
4 sector that include all employees?  
5 A I don't know.  
6 Q I think you might be aware of plans in the  
7 private sector that include management, but I'm asking  
8 you, are you aware of any long-term incentive plan in a  
9 private utility that includes all employees?  
10 A I don't know.  
11 Q All right. So we can speculate all day about  
12 what Mr. Hyde might or might not say in response to my  
13 question. But I can ask you whether you had any  
14 conversations with Mr. Hyde after July 23 through the  
15 time the PUP was pulled by JEA regarding the inability  
16 to launch the PUP in 2019?  
17 A I remember discussing timing with him and how  
18 long it may take for the AG to get feedback -- to  
19 provide feedback, as well as the Ethics Commission,  
20 because he has experience in that. I don't know that  
21 we were as specific to talk about not being able to  
22 launch in 2019. But clearly we had discussions on the  
23 timeline.  
24 Q Fair to say that you don't recall a  
25 discussion with Mr. Hyde in the fall of last year in

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1 which he just kind of threw up his hands and says,  
2 Well, that's it, there's just no way we're going to get  
3 this thing off the ground in 2019?  
4 A I don't remember him saying that with your  
5 level of exuberance.  
6 Q Or even without my level of exuberance.  
7 A I don't remember specifically. Like I say, I  
8 do remember knowing that -- and discussing that when  
9 you start looking at the number of weeks and then you  
10 look at the fact that a federal approval was  
11 required -- and I asked him, you know, how -- that this  
12 takes months, I'm assuming, and he said yes.  
13 Q Did you ever have a discussion -- along the  
14 lines of what I've asked you with Mr. Hyde, did you  
15 ever have any discussions with any of the Pillsbury  
16 lawyers working on the plan that included any of them  
17 saying, Well, there's just no way we're going to get  
18 this thing launched by the end of the year?  
19 A I did -- I had far less interaction with  
20 Jessica Lutrin, the Pillsbury lawyer that was the --  
21 that put it together, than I did with Kevin. So I  
22 don't remember having timeline discussions with her.  
23 Q Okay. So the answer is no, you didn't have a  
24 discussion with her in which she said, Wow, given all  
25 that, there's no way we're going to get this thing off

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1 the ground in 2019?  
2 A As I said, I don't recall that discussion  
3 occurring. And I don't know if she had any discussions  
4 with Lynne Rhode on whatever the IRS approval process  
5 is.  
6 Q All right. How about any discussions in the  
7 fall of 2019 with Lynne Rhode in which Lynne said,  
8 Jeez, we're just not going to get this done and off the  
9 ground this year, it's just not going to happen?  
10 A Again, we were more focused on the timeline,  
11 and I don't know that we reached the -- we discussed  
12 reaching that conclusion.  
13 Q What timeline, now? I mean I know you keep  
14 coming back to discussing the timeline. What is that?  
15 A So if we submitted the request to the  
16 Attorney General in October and then how long -- you  
17 know, I remember talking to Jason about timelines for  
18 Ethics Commission, about how long things take to  
19 approve, and also discussing the fact that they may  
20 examine -- "they" the Attorney General's office may  
21 examine the issue for some period of time and then  
22 ultimately decline to issue an opinion on that.  
23 Q Did there come a point in October when it  
24 occurred to you to have a discussion with Mr. Zahn, for  
25 example, since you know you've got this AG opinion up,

1 request for an opinion outstanding, and whatever was  
2 going on with the Ethics Commission, you suggested to  
3 him, said, Look, you know, we may as well just put a  
4 stop on all this work until we find out if the AG is  
5 going to say good to go, or the Ethics Commission is  
6 going to require some changes?

7 Because you -- I mean did that ever occur to  
8 you to have that conversation with him?

9 A Well, the discussion would have -- we weren't  
10 required to do this in 2019, to have all the approvals.  
11 That was not -- the objective was to make sure we're in  
12 compliance with all the laws, and if that took one year  
13 or two years or however long it takes. So there was  
14 not a mandate, couldn't be, that you've got to finish  
15 in 2019.

16 And that's why we, you know, had the luxury  
17 of going ahead and saying we're going to take our time  
18 and get all the -- we're going to get the AG and Ethics  
19 Commission approvals as part of the process.

20 Q But it does sound to me like you got to the  
21 point where you were not -- it was a deal killer to the  
22 plan if the AG didn't give a thumbs up and if you  
23 didn't get all the questions answered to the Ethics  
24 Commission; right? Would you agree with that?

25 A I -- I would want to have as many approvals

1 happened or not.

2 But at that point, why continue to spend any  
3 effort on the plan developing the materials to go into  
4 the notice to the employees and all of the -- anything  
5 else until you got that absolute must approval from the  
6 Attorney General?

7 A I think that the lawyers continued to work on  
8 that plan.

9 Q And that's my question. Did it occur to you  
10 to have a chat with Mr. Zahn, or did Mr. Zahn -- did  
11 you have a discussion with him about, well, why don't  
12 we slow down these high-priced lawyers and turn off  
13 the, you know, faucet here until we get it clear in our  
14 own state that we can do this thing?

15 A I don't -- no, because we were continuing to  
16 talk with OGC about the potential issues with that.  
17 So, for example, Office of General Counsel would raise  
18 issues, and you may see that Foley & Lardner prepared  
19 legal memos of their analysis in response to the Office  
20 of General Counsel's questions. So the work continued  
21 answering everybody's questions.

22 Q In any event, you never had a sit-down with  
23 Mr. Zahn where you said to him, Well, let's just put  
24 things on hold until we get that critical approval from  
25 the Attorney General?

1 as we can. Because I said, to my knowledge, there  
2 wasn't any case law on this.

3 Q You know, it would be great if we could all  
4 have guarantees of everything that we decide to do, but  
5 for sure there were two approvals -- or at least one  
6 approval, the AG, that you desired -- and for you it  
7 was a deal breaker; right?

8 A In my mind, if we didn't have some additional  
9 comfort on the legalities of providing for sale these  
10 units, it would not make sense to invite 2000 employees  
11 to participate in that.

12 Q Okay. I agree. That certainly makes sense  
13 to me.

14 A You would imagine the logistical nightmare,  
15 if we found out subsequently that it was not consistent  
16 with all the laws, of having to unwind a plan. And so  
17 I thought, and I think today, it was still a very  
18 prudent decision to make those requests.

19 Q But once that request was made, what would  
20 have been the point of really any further work on the  
21 plan until -- because as we saw from Ms. Rhode's email,  
22 October 3, as far as she was concerned the plan  
23 documents were done, the request was off to the AG. I  
24 guess you had sent some sort of request to the state  
25 Ethics Commission -- I'm not sure whether that ever

1 A No. We were continuing to answer the  
2 questions of the Office of General Counsel, and I  
3 wanted to make sure that we were -- I mean if the OG --  
4 if Jason or Lawsikia or Jon had questions, then they  
5 were obviously a key part of making sure -- we had to  
6 satisfy the Office of General Counsel as well.

7 MR. POWELL: Okay. I think I'm kind of at  
8 the end of my list.

9 Jon, did you want to jump in?

10 MR. PHILLIPS: Yeah, sure, I could.

11 BY MR. PHILLIPS:

12 Q So -- and I apologize in advance if you've  
13 answered some of these while I wasn't here, but I think  
14 I'm -- I'll try to keep them pretty short.

15 So to the best of your recollection, when was  
16 the first time you heard about financial projections  
17 from the PUP?

18 A At the July 23rd board meeting. But I did  
19 not recall that until I reviewed the video recently.

20 Q I was going to ask you, did you actually hear  
21 Ryan say that on the date that he said it, or are you  
22 just remembering that because you reviewed the tape?

23 A I reviewed the tape.

24 Q Do you remember anybody telling the board  
25 that the potential cost of the PUP, or the long-term

1 incentive, whatever you want to call it, was 3.4  
 2 million?  
 3 A No.  
 4 Q So 6 percent of the total payroll was what  
 5 Ryan said at the meeting?  
 6 A Based on my review of the tape, yes.  
 7 Q What is the annual total payroll?  
 8 A I don't know.  
 9 Q No idea, ballpark?  
 10 A No.  
 11 Q Now, you were present at the December the  
 12 16th meeting with Rory Diamond and Ron Salem?  
 13 A I was.  
 14 Q And at that meeting Ryan Wannemacher tossed  
 15 out a figure of 60 million for the PUP. Do you  
 16 remember that?  
 17 A I don't. I'm not disputing what you said,  
 18 but I don't remember what numbers he provided.  
 19 Q Subsequent to the July 23rd board meeting,  
 20 when was the next time you heard any kind of number  
 21 projection for the PUP?  
 22 A Meeting with Kyle Billy on Halloween.  
 23 Q When was that?  
 24 A October 31st.  
 25 Q Did you talk to Aaron Zahn at all about what

1 Ryan said at the meeting about the cost of the PUP  
 2 before October 31st?  
 3 A Say -- say that again.  
 4 Q So I asked you what you knew, and now I'm  
 5 asking you what you heard from Aaron. Do you see what  
 6 I'm getting at? I want to know what Aaron knows, to  
 7 the best of your knowledge, which would be based on  
 8 what he said.  
 9 So did he say anything to you about -- or did  
 10 you hear him say anything to anyone about what he  
 11 thought the PUP was going to cost before October 31st?  
 12 A No.  
 13 Q So the timeline, though, if I understand it  
 14 correctly, is you had the board meeting on July 23rd,  
 15 '19, and the AG letter went out on October the 1st.  
 16 That's all correct? Yes?  
 17 A The letter is dated October 1st.  
 18 Q Did the letter to the Ethics Commission ever  
 19 go out? I have only an undated copy.  
 20 A Yes. So the Florida Ethics Commission did  
 21 not receive the letter because we decided that it would  
 22 be done in sequence, and so that way we would have the  
 23 benefit of any feedback the Attorney General would  
 24 provide to us. And if they say you've got to do this  
 25 change or that change or, heck, no, then that of course

1 would stop it. But if they had some feedback  
 2 suggestions, that we could make those changes and then  
 3 have a more refined document to provide -- or an  
 4 up-to-date document to provide to the Florida Ethics  
 5 Commission.  
 6 Q And the day after the letter went to the AG's  
 7 office there was a meeting at JEA that I was present  
 8 for with Lynne Rhode, you, Jason Gabriel, and Lawsikia.  
 9 A We -- I remember having a meeting with you.  
 10 I didn't know exactly what date.  
 11 Q Does 10-2-19 sound about right to you?  
 12 A It does.  
 13 Q And at that meeting I expressed, did I not,  
 14 concern about Lynne's participation in the plan?  
 15 A You did.  
 16 Q And I also expressed concern about Florida  
 17 Bar rules of disclosure regarding acquiring an interest  
 18 in a client. Do you remember that?  
 19 A I don't remember that part.  
 20 Q Okay. After the meeting, did you converse  
 21 with Lynne Rhode about the meeting?  
 22 A Yes.  
 23 Q Can you please tell us everything that you  
 24 can remember you and Lynne said about that meeting?  
 25 A Well, the only thing I remember, Jon, is how

1 loud you expressed your opinion in that meeting. And  
 2 that was the -- that's all I recall discussing with  
 3 Lynne, because, as you know, y'all get into a vigorous  
 4 or rigorous debate.  
 5 Q No, I understand. I asked her questions that  
 6 she didn't like, and our voices respectively got louder  
 7 and louder. And I agree with you that it was  
 8 acrimonious.  
 9 But what I want to know is what did she tell  
 10 you about her participation in the plan going forward,  
 11 if anything, after that meeting?  
 12 A I don't remember her talking about  
 13 participation in the plan one way or the other.  
 14 Q Did she express any desire that maybe she  
 15 should drop out of participation?  
 16 A I don't recall that.  
 17 Q Now, let me back up the timeline here. After  
 18 the board meeting on July the 23rd, there was an email  
 19 from Jessica Lutrin on August 23rd that expressed the  
 20 concern that she had spoken with Michael Kirwan, and  
 21 his calculations are showing that the PUP formula is  
 22 spitting out much larger numbers than we anticipated.  
 23 And Ryan replied to that email, and it appears that it  
 24 was copied to you and Lynne Rhode.  
 25 So what did you do once you got that email?

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1 A My recollection is that I called Stephen  
2 Amdur at Pillsbury and said, Is there a problem?  
3 And he said, I think they found a problem in  
4 a definition, and that was the -- but they are going to  
5 correct it.  
6 Q Did you inquire of Stephen Amdur, or anyone,  
7 about the numbers that were now being spit out?  
8 A I didn't.  
9 Q Do you know if Lynne Rhode did?  
10 A I don't.  
11 Q Do you know if Aaron Zahn did?  
12 A I don't.  
13 Q Do you know if anyone did?  
14 A I don't.  
15 Q Do you remember Jason Gabriel asking for the  
16 projected financials at the November 5th meeting and  
17 being told by Aaron Zahn he didn't know?  
18 A I don't recall that exchange.  
19 Q One way or the other?  
20 A One way or the other. And Lawsikia is an  
21 excellent note taker, so she probably knows. But I  
22 don't --  
23 Q Did you --  
24 A Put it this way -- let me --  
25 Q Go ahead. Sorry.

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1 A In other words, I don't recall any discussion  
2 of any dollars at that meeting.  
3 Q Well, but specifically what I was asking you  
4 was was there a question about dollars, and the  
5 response then was, We really don't know, from someone?  
6 A I don't remember that -- that exchange from  
7 the two of them.  
8 Q Okay. Do you have any idea whether Mr. Amdur  
9 or Ms. Lutrin knew what the projected financials were  
10 by the time of that meeting?  
11 A I don't.  
12 Q You don't know one way or the other?  
13 A I -- that's correct. It's never been  
14 disclosed to me.  
15 Q Have you ever texted with anybody from  
16 Pillsbury?  
17 A Yes.  
18 Q Have you ever texted with anybody from Foley,  
19 including but not limited to Kevin Hyde?  
20 A Yes.  
21 Q So let me -- I just had a couple of questions  
22 about the AG letter, which I -- Lawsikia mostly  
23 covered. That would be 13.  
24 Now, I had it noted -- just hang on a second.  
25 I'm sorry. Oh, here it is. Sorry, I'll have to come

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1 back to that.  
2 But I can ask you generally, the letter  
3 represented to the AG's office that this kind of plan  
4 is commonplace in the private sector, and I think you  
5 discussed that with Steve a little bit.  
6 Do you remember that?  
7 A I do.  
8 Q And then you said, however, in the public  
9 utility context it's unique. But the letter that was  
10 sent to the AG's office doesn't say unique. It says  
11 it's "less so" with respect to whether it's  
12 commonplace.  
13 A Uh-huh.  
14 Q Implying that it's rare, but it happens. Do  
15 you agree with that characterization?  
16 A I'm not aware of it existing in any  
17 governmental function.  
18 Q So saying "less so" was perhaps not  
19 completely accurate, as opposed to unique?  
20 MR. LOCKAMY: Can you show him a copy of the  
21 letter?  
22 MR. PHILLIPS: Yeah. I can't find it right  
23 now, but I will. I'll come back to it if you need  
24 to see it. I guess the point that I'm making --  
25 MS. HODGES: I have it on my computer if you

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1 want -- it's only a couple of pages.  
2 MR. PHILLIPS: Well, if you could find it for  
3 me and then just point it out to me, I can move on  
4 so I'm not wasting anybody's time.  
5 MS. HODGES: Wait, where are you --  
6 MR. PHILLIPS: It says in the private sector  
7 this kind of plan is commonplace but in public  
8 utility less so.  
9 BY MR. PHILLIPS:  
10 Q When did you first hear that Lynne Rhode and  
11 Miriam Hill were going to be participating in this  
12 plan?  
13 A Really from the outset, when --  
14 Q From whom did you hear that?  
15 A Aaron.  
16 Q And I'm assuming -- and correct me if I'm  
17 wrong -- that wasn't your idea. It was Aaron's idea;  
18 is that fair?  
19 A Yes.  
20 MR. PHILLIPS: Okay. Thank you, Lawsikia.  
21 Here it is right here.  
22 MR. POWELL: Wait a minute. Let's use --  
23 let's use a copy of a letter that's got a Bates  
24 stamp on it.  
25 MR. PHILLIPS: Well, once again, we're --

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1 what page is that? I thought I had this marked,  
2 but I guess I didn't.  
3 BY MR. PHILLIPS:  
4 Q Oh, here it is. It's JEA 0423, and it is in  
5 the third full paragraph. And it reads -- did you find  
6 it yet -- Benefits like the plan are commonplace in the  
7 corporate world where employees benefit for the success  
8 of a company but are less so in government.  
9 Did you approve the content of this letter?  
10 A I reviewed it. I don't know that I approved  
11 the content.  
12 Q And I'm not trying to say that you're  
13 responsible for every word in it, but you didn't write  
14 the letter?  
15 A No.  
16 Q Lynne Rhode wrote the letter; is that  
17 correct?  
18 A No. I think -- I think Kevin Hyde wrote the  
19 letter.  
20 Q Okay.  
21 A Or at least played a -- you know, a large  
22 role.  
23 Q Was there any discussion of which you're  
24 aware, either verbally or by email or any other way, of  
25 the choice of the words "less so" in that sentence, as

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1 opposed to "unique and unprecedented"?  
2 A I'm not aware of any discussion related to  
3 that.  
4 Q When Aaron told you that Lynne was  
5 participating in the plan, when was that?  
6 A July, I believe.  
7 Q Did you respond to his statement? Like did  
8 you ask him a question?  
9 Did you say anything like, Wow, can we do  
10 that, or something like that?  
11 A I don't know if I responded at that time  
12 whether you could, but it was something we were going  
13 to have to look at.  
14 Q You weren't sure at that time when you first  
15 heard it that it would be allowed?  
16 A That's correct.  
17 Q Did you ever have occasion to research  
18 yourself, as opposed to relying on others, the legality  
19 or lack thereof of the PUP plan?  
20 A No. Let me --  
21 Q You relied on others; you didn't do --  
22 A I have now read -- or I've read portions of  
23 215 and 112. But I did not do any other -- the legal  
24 research.  
25 Q So you wouldn't have looked at the IRS

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1 provisions that are related to the PUP plan?  
2 A No.  
3 Q Were you ever made aware that in order to  
4 qualify as a proper tax deferred plan the participants  
5 needed to be limited to employees or certain  
6 independent contractors?  
7 A No.  
8 Q Did you ever hear that before today, just  
9 now?  
10 A No.  
11 Q And would you agree that Miriam and Lynne  
12 were neither independent contractors nor employees?  
13 A That's correct.  
14 Q Did you ever hear any discussion from anyone  
15 at any point about people from Foley, or Kevin Hyde,  
16 participating later in the PUP?  
17 A No.  
18 Q Or any other independent contractors?  
19 A No.  
20 Q Did you hear any discussion about Foley  
21 participating in -- by virtue of essentially a  
22 contingent fee arrangement that they would get a  
23 percentage of the sale proceeds instead of hourly rate  
24 billing?  
25 A So there was some initial discussion about

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1 whether or not -- and this is for both Foley and  
2 Pillsbury. Foley really was less interested in the  
3 success fee concept, but Pillsbury was interested, and  
4 they provided a proposal to Jason Gabriel that would  
5 include a cap on the monthly fees, or, you know, a flat  
6 fee with the opportunity for a success fee.  
7 And Jason -- Jason and others at the Office  
8 of General Counsel I think did some research, and Jason  
9 told me that that was not allowed under the  
10 Jacksonville ordinance code.  
11 Q Did you hear Aaron Zahn ever say anything  
12 about that topic?  
13 A Yes.  
14 Q What did he say, and when did he say it?  
15 A Well, I remember him saying it when we met  
16 with Jason about it, Jason Gabriel, and --  
17 Q Was he in favor of having a success fee  
18 concept for the legal fees?  
19 A I think what he was trying to do was lower  
20 the cost of legal fees, you know, particularly in the  
21 event that there would be no transaction. So I think  
22 that's what he was focused on.  
23 Q The concept would be they would discount  
24 their fees if there was no sale but that they would get  
25 a percentage of the action if there was a sale?

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1 A I don't recall the details, and I don't know  
 2 that I've ever actually seen Pillsbury's proposal to  
 3 the Office of General Counsel. But, as I recall, there  
 4 was a flat fee for their work and an opportunity for  
 5 success, which is similar to what the banks had in  
 6 their contract.  
 7 Q So it would be fair to conclude that  
 8 Pillsbury viewed the success of their efforts as  
 9 defined by completing a sale of the utility; is that  
 10 fair?  
 11 A At one -- at one point the proposal had, you  
 12 know, that as a component. But obviously that didn't  
 13 come to fruition.  
 14 Q From whom were they taking their direction on  
 15 focusing their efforts?  
 16 A I'm sorry?  
 17 Q Pillsbury, who were they getting their  
 18 direction from as far as what they were supposed to be  
 19 doing?  
 20 A Really from the banks, from JEA, from OGC.  
 21 Pillsbury was --  
 22 Q Are you aware -- I'm sorry. Go ahead.  
 23 A Pillsbury obviously was the one with the most  
 24 experience in doing a transaction of this magnitude and  
 25 obviously had experience in some of the other

1 alternatives.  
 2 Q Was Aaron Zahn directing this effort to  
 3 Pillsbury? Did you ever hear him tell anything to  
 4 Amdur that would constitute, you know, You need to help  
 5 us sell a utility?  
 6 A The idea would be to bring the best deal  
 7 possible for our board to consider. I've never heard  
 8 him express that to Pillsbury in the way you described  
 9 it.  
 10 Q Did Aaron ever say anything to you to  
 11 indicate that he believed that a sale of the utility  
 12 pursuant to the ITN process was the best deal for the  
 13 utility?  
 14 A Yes.  
 15 Q And it certainly would have been the best  
 16 deal for him with respect to his PUP participation; is  
 17 that not fair?  
 18 A Well, it depends on if the recapitalization  
 19 occurred in 2020.  
 20 Q Did Aaron Zahn ever give you any indication  
 21 prior to December the -- November the 5th that he  
 22 thought, well, maybe we won't get this done in time for  
 23 the sale to occur and still have the PUP plan in place?  
 24 A As I mentioned, we -- we were looking at  
 25 timeline, but I don't know that he -- he was not -- at

1 least he did not articulate matching the entire plan  
 2 with recapitalization, because we had the three-year  
 3 component.  
 4 Q Well, you've indicated that on November the  
 5 5th -- by November the 5th you didn't think it could  
 6 get done if the sale occurred; right?  
 7 A Oh, I thought that it would -- earlier than  
 8 that I thought that the amount of work that would be  
 9 required to obtain the circuit breakers, as I call  
 10 them, of the two Florida approvals and the federal  
 11 approval, that that would not occur in 2019.  
 12 Q Did Aaron Zahn ever tell you anything to  
 13 indicate that he believed the same thing that you just  
 14 described, prior to November the 5th?  
 15 A I -- I don't recall him saying that.  
 16 Q Now --  
 17 BY MS. HODGES:  
 18 Q May I ask a quick question, real quick?  
 19 Do you recall at the November 5th meeting  
 20 Aaron Zahn specifically asking Jason Gabriel if the  
 21 plan would be more legally palatable if it were only  
 22 tied to the recapitalization event?  
 23 Do you recall him asking that question?  
 24 A No.  
 25 BY MR. PHILLIPS:

1 Q Now, walk me through the ITN process. It  
 2 began with respect to putting something out to invite  
 3 bids?  
 4 A So that was on August the 2nd.  
 5 Q Okay. And when did the bidders, for lack of  
 6 a better word, send in their proposals?  
 7 A Jon, I used to know that date, but I don't  
 8 offhand remember.  
 9 Q I'm just looking for ballpark.  
 10 A I think it was in September.  
 11 Q Okay. At what point would they have provided  
 12 the numbers that we've seen in the paper recently, like  
 13 the FP&L was willing to bid \$6.2 billion.  
 14 Is that an accurate number? Did the paper  
 15 get that right?  
 16 A I didn't read what the newspaper wrote about  
 17 it.  
 18 And I will tell you right now I'm not sure  
 19 I'm at liberty to discuss the numbers, because I don't  
 20 know the law on when this process ends.  
 21 Q Okay. I don't actually need to know the  
 22 numbers. What I'm getting at is, when did the numbers  
 23 come in to the utility?  
 24 A So the proposed -- the second round of  
 25 proposals were due the Tuesday before Thanksgiving, and

1 I don't remember what that date was.  
 2 Q And the original plan for the PUP was that it  
 3 was going to be issued in December, November or  
 4 December?  
 5 A That was the initial re -- plan. But, again,  
 6 that --  
 7 Q When the numbers came in, who at JEA knew the  
 8 numbers?  
 9 A I don't know all of the folks that knew the  
 10 numbers, but I was one that was tasked to review the  
 11 various proposals.  
 12 Q And what about Lynne Rhode?  
 13 A I don't know if she was tasked to do that or  
 14 not.  
 15 Q Aaron Zahn?  
 16 A Aaron Zahn had access to the numbers, I  
 17 believe.  
 18 Q Anybody else that you know had access to the  
 19 numbers that you can remember right now?  
 20 A I think the banks had access.  
 21 Q Anybody at JEA in particular?  
 22 A Melissa Dykes and Ryan Wannemacher. I am  
 23 assuming some of the procurement people, but I don't  
 24 know that. I don't know who was -- surely the  
 25 procurement people had access.

1 Q But we're talking about a small amount of  
 2 people overall. Those numbers weren't available to  
 3 anybody below a certain rank, at least; right?  
 4 A It was not available to many. I think you  
 5 had to be a negotiator or a designated subject matter  
 6 expert.  
 7 Q But if the plan had gone forward in December  
 8 as was at one point being pushed, there would have been  
 9 a limited amount of people at the utility who knew what  
 10 the numbers were, and everybody else wouldn't have  
 11 known when they made their decisions of how many PUPs  
 12 to purchase. Is that right?  
 13 A That would be correct.  
 14 Q And did Lynne Rhode ever express to you that  
 15 she had any concerns about that with respect to the  
 16 Florida Statutes on misuse of confidential information?  
 17 A I don't recall that discussion between me and  
 18 Lynne Rhode.  
 19 Q And I think you said you didn't know whether  
 20 she knew the numbers or not?  
 21 A I don't recall.  
 22 Q If she did, who would know besides her?  
 23 A I'm sorry?  
 24 Q Do you have any idea who would know whether  
 25 she knew or not, other than her?

1 A Presumably Aaron.  
 2 Q Thank you. The Ethics draft letter didn't  
 3 address the misuse of confidential information idea in  
 4 the letter. Was that letter also drafted by Kevin  
 5 Hyde?  
 6 A It was. Or by individuals at Foley.  
 7 Q In the Council Auditor's report they  
 8 expressed concerns -- and this is JEA 0446, Paragraph  
 9 9, on Page 3 of the report, it says, The plan is not  
 10 limited strictly to JEA employees. In addition, the  
 11 CEO can recommend and the plan administrator can  
 12 approve participants that are not JEA employees.  
 13 Did you ever hear anybody ever discuss adding  
 14 anybody else to this plan that wasn't a JEA employee,  
 15 other than Lynne or Miriam?  
 16 A Yes.  
 17 Q When was that?  
 18 A That was at the Council Auditor's meeting.  
 19 Q That you heard it mentioned that that was a  
 20 problem with the plan?  
 21 A That's correct.  
 22 Q Okay. But did Aaron, for example, or Lynne  
 23 ever express to you maybe we're going to add somebody  
 24 else to the plan?  
 25 A Never.

1 Q And then it goes on, in Paragraph 10, The  
 2 plan administrator has the ability to delegate any or  
 3 all responsibilities to any member of JEA's senior  
 4 executive management. This could create a conflict of  
 5 interest and should be reviewed by the City's ethics  
 6 officer.  
 7 Did Lynne Rhode ever express a concern about  
 8 that to you or to anyone in your presence?  
 9 A Read that again.  
 10 Q Sure. The plan administrator has the ability  
 11 to delegate any or all responsibilities to any member  
 12 of JEA's senior executive management. This could  
 13 create a conflict of interest and should be reviewed by  
 14 the City's ethics officer.  
 15 A I don't remember that being discussed.  
 16 Q Did Lynne ever express to you that that was a  
 17 problem in any way, shape, or form?  
 18 A I don't think so.  
 19 Q Almost done. Sorry. Just mechanically, you  
 20 have two people who don't work there, on your payroll  
 21 at least, Lynne and Miriam. How would that salary  
 22 deferral have worked mechanically?  
 23 A Well, I think you brought that up at our  
 24 meeting on -- no, that was with Kyle Billy. I don't  
 25 know the --

1 Q I actually did, but --  
 2 A Did you?  
 3 Q Yeah. That's okay.  
 4 A The answer is we don't know yet. That had  
 5 not been fully explored.  
 6 You know, Lynne was not involved in that  
 7 piece for -- because of her potential involvement in --  
 8 she was not involved in discussions of how it impacts  
 9 her and how it might mechanically work when -- as you  
 10 may recall, when the discussion about her involvement  
 11 was -- first appeared, I, you know, personally went to  
 12 Jason Gabriel to discuss that with him, and along with  
 13 some -- some of the others, like the retention  
 14 agreement, and he said that the retention agreement  
 15 would not be appropriate for the OGC employees because  
 16 they could be reassigned to other duties.  
 17 But I think he -- well, I know he considered  
 18 leaving the OGC employees in that document.  
 19 Q I think that's all -- did you ever talk with  
 20 Aaron Zahn about how the PUPs would be allocated?  
 21 A No.  
 22 Q Were you aware that he had a list of people  
 23 that -- with their performance reviews, scores, and  
 24 that sort of thing?  
 25 A No.

1 Q The way the PUP was set up, the compensation  
 2 committee chair could have delegated the allocation of  
 3 the PUPs to Aaron Zahn; correct?  
 4 A I was always under the understanding that the  
 5 compensation committee chair would make the ultimate  
 6 decision.  
 7 Q Based on input from somebody, likely --  
 8 A I'm assuming that she would be talking with  
 9 Aaron Zahn.  
 10 MR. PHILLIPS: That's all the questions I  
 11 have. Thank you very much.  
 12 MR. GRANAT: I just have a few.  
 13 BY MR. GRANAT:  
 14 Q So what is Project Scampi? What does that  
 15 mean?  
 16 A Well, it doesn't mean anything, but it was  
 17 referring to the ITN --  
 18 Q The ITN process?  
 19 A Yes.  
 20 Q Do you know why "Scampi" was picked, who  
 21 picked it?  
 22 A Actually, I think it's the name of the Jumbo  
 23 Shrimp mascot.  
 24 Q Okay. What was the reason for a code name,  
 25 or secrecy with this?

1 A I don't know if there was a reason for a code  
 2 name. I mean, as you know, the ITN process was very  
 3 public.  
 4 Q Do you know who decided that it should be  
 5 called Project Scampi?  
 6 A I don't know.  
 7 Q Okay. Was there ever something called  
 8 Project Freebird with JEA?  
 9 A I'm not familiar if -- I mean it may have  
 10 been for some period, but I'm not familiar of Project  
 11 Freebird ever being referred to as the ITN.  
 12 Q Have you ever heard of a Project Freebird at  
 13 JEA?  
 14 A Yes.  
 15 Q And what was that in reference to?  
 16 A It showed up on the weekly list of public  
 17 records requests.  
 18 Q It showed up as a request? There was a  
 19 request made?  
 20 A Somebody has asked for documents relating to  
 21 Project Freebird.  
 22 Q Okay. And, I guess, are you saying that if  
 23 there was a Project Freebird at JEA, you don't know  
 24 what it was; is that what you're saying?  
 25 A That's correct. I had not heard of that

1 phrase until I saw it on a public records request.  
 2 Q And did you ever investigate and find out  
 3 what it was?  
 4 A No.  
 5 Q Okay. And so as we sit here today, you don't  
 6 know anything about a Project Freebird -- or details  
 7 about a Project Freebird at JEA?  
 8 A I don't know anything about a Project  
 9 Freebird.  
 10 Q Other than there was a PRR for it, a public  
 11 records request?  
 12 A That's correct.  
 13 Q Okay, I got you. Have you read Kyle Billy's,  
 14 the Council Auditor's, report?  
 15 A I have not.  
 16 Q Okay. I'm going to give you a copy. I can  
 17 tell you I'm going to just ask you some questions about  
 18 some of the information in here.  
 19 A Okay.  
 20 Q But if you'd like, I'm going to give you the  
 21 opportunity to read it. I'm not going to ask you about  
 22 everything in here, but if you prefer to take a minute  
 23 to read it, that's fine. If you want to hear what my  
 24 questions are and then decide, that's fine too, but  
 25 I -- I don't want to put a document in front of you and

1 not give you the chance to look at it first. I'm going  
 2 to just let you review it and decide what you want to  
 3 do first, okay.  
 4 THE WITNESS: What do you -- should I read  
 5 this?  
 6 MR. LOCKAMY: Have you read it before?  
 7 THE WITNESS: No.  
 8 MR. LOCKAMY: Yeah, take -- I would look  
 9 through the main pieces of it.  
 10 MR. GRANAT: Okay. So with that being said,  
 11 just so we can give our court reporter some  
 12 relief, if you don't mind, we'll go off the record  
 13 while you review it. Is that okay?  
 14 THE WITNESS: That's fine.  
 15 (Recess from 4:29 p.m. to 4:34 p.m.)  
 16 BY MR. GRANAT:  
 17 Q Just for the record, the report -- Kyle  
 18 Billy's report we're referring to is Bates stamped JEA  
 19 444 through 452.  
 20 Let me ask you if you would look at the  
 21 second page of the report, please, Mr. Vinyard. Do you  
 22 see the table down below?  
 23 And what this table represents is, in  
 24 Column A it shows the net proceeds to the City if a  
 25 recapitalization event occurred, and if you look at

1 the -- for example, in the second figure under  
 2 Column A, 4 billion, if \$4 billion was the net proceeds  
 3 to the City upon recapitalization --  
 4 A Yes.  
 5 Q -- that each performance unit would have  
 6 increased by \$3140. Do you see that?  
 7 A I do.  
 8 Q And that the total payout would be  
 9 \$315 million to the PUP participants. Do you see that?  
 10 A I see it.  
 11 Q Okay. Now, I'll represent that these figures  
 12 are based on 100,000 shares -- or units being issued,  
 13 and it was contemplated, at least until the time the  
 14 PUP was killed, that 30,000 shares would be issued.  
 15 So --  
 16 A I think that they would be available for  
 17 purchase.  
 18 Q 30,000 would be available for purchase?  
 19 A Yes.  
 20 Q You don't think that all 30,000 would be  
 21 purchased?  
 22 A Well, it depends on if all 2000 employees  
 23 purchased -- purchased their allocation.  
 24 Q Okay. Again, you don't know whether vice  
 25 presidents would have the ability to purchase more

1 units than linemen?  
 2 A As Lawsikia pointed out, the position -- your  
 3 position in the company was part of the allocation  
 4 criteria in the -- in the resolution.  
 5 Q But you're not aware of what that -- the  
 6 difference in the allocation --  
 7 A No.  
 8 Q -- would have been; right? Okay.  
 9 But would you agree with me that if this  
 10 number -- and if you would assume that the arithmetic  
 11 in this chart is correct, okay -- and Mr. Wannemacher  
 12 has reviewed this chart and told us that he believes  
 13 the arithmetic in this chart is correct.  
 14 But assuming the arithmetic is correct and we  
 15 took -- if the City realized \$4 billion proceeds from a  
 16 recapitalization, then would you agree with me that if  
 17 all 30,000 shares had been allocated, then the total  
 18 payout would be 30 percent of this \$315 million number?  
 19 A No.  
 20 Q Why not?  
 21 A Because all 30,000 units would had to have  
 22 been purchased.  
 23 Q Okay. Would you agree with me -- let me  
 24 restate the question.  
 25 Would you agree with me that if all 30,000

1 available units were purchased and a recapitalization  
 2 occurred and the City realized \$4 billion, then the  
 3 payout would be 30 percent of this \$315 million figure?  
 4 A Based on the formula you described and based  
 5 on the assumption that the math here is correct --  
 6 which I haven't done and I haven't ever done a  
 7 calculation on that -- I assume that it would be  
 8 correct.  
 9 Q Okay. And I just did 30 percent of  
 10 \$315 million is \$94.5 million.  
 11 And so my question is, assuming this is  
 12 correct, on July 23rd when the PUP was presented to the  
 13 board, were you aware that there was a potential cost  
 14 of, what did I say, \$94.5 million if the City realized  
 15 a \$4 billion profit?  
 16 A No.  
 17 Q Do you know if Aaron Zahn was aware of that  
 18 figure?  
 19 A I'm not aware of that.  
 20 Q As we sit here today, if this had gone  
 21 through and there was a recapitalization and all 30,000  
 22 shares had been purchased, and \$4 billion had been  
 23 realized by the City, do you feel that paying JEA  
 24 employees \$94.5 million would have been appropriate?  
 25 MR. LOCKAMY: You're asking for his opinion?

1 What's -- we're getting a little farfetched,  
 2 aren't we, a little far afield?  
 3 MR. GRANAT: What, are you objecting? This  
 4 is an interview. I'm asking what I asked.  
 5 MR. LOCKAMY: It's a factual interview. Are  
 6 you asking him opinions?  
 7 MR. GRANAT: That's my question to you.  
 8 THE WITNESS: Can you ask it again?  
 9 BY MR. GRANAT:  
 10 Q If the PUP had passed and there was a  
 11 recapitalization and \$4 billion was realized by the  
 12 City, do you feel that it would have been appropriate  
 13 that JEA employees would have been paid out 94 and a  
 14 half million dollars out of the proceeds of the sale of  
 15 JEA?  
 16 A I have not analyzed that. As I mentioned  
 17 earlier on, I was far more focused on the basics of  
 18 would this plan even meet all the legal requirements of  
 19 Florida and federal law.  
 20 Q Did you have an idea that that kind of number  
 21 would be possible -- would be realized with the PUP?  
 22 A No.  
 23 Q Did you ever have any discussions at all with  
 24 Aaron Zahn about the amount of money that each PUP unit  
 25 may be worth?

1 A No.  
 2 Q At all?  
 3 A No.  
 4 Q Have you ever heard the PUP described as a  
 5 unicorn?  
 6 A Yes.  
 7 Q Who has used the term "unicorn" to describe  
 8 the PUP?  
 9 A It's -- it was utilized -- heck, I think we  
 10 used it when we were talking to Jason Gabriel about  
 11 this, that this was a pretty unique concept.  
 12 Q Is that why the term "unicorn" was used,  
 13 because it was unique?  
 14 A What other reason, I mean, would you use that  
 15 term?  
 16 Q I don't know. Do you know who came up with  
 17 the term?  
 18 A No. I know -- I think I've used it in the  
 19 discussions.  
 20 Q Can you tell me what you know about Aaron  
 21 Zahn's decision to postpone the PUP?  
 22 A Well, we had the meeting with him -- with  
 23 Aaron and Lawsikia and Kevin.  
 24 And, Lawsikia, I think you said it was --  
 25 MS. HODGES: November 5th.

1 THE WITNESS: -- early November. And I think  
 2 Aaron and Jason had some conversations subsequent  
 3 to that.  
 4 BY MR. GRANAT:  
 5 Q Do you know specifically Aaron Zahn's reasons  
 6 for issuing his letter postponing the PUP?  
 7 A No.  
 8 Q Did he ever discuss with you that he was  
 9 going to postpone it or seek your counsel about  
 10 postponing it?  
 11 A I don't specifically recall him verbalizing  
 12 that decision to me.  
 13 Q Can you remember how you found out that it  
 14 was going to be postponed?  
 15 A I received an email copy of his letter to  
 16 Jason Gabriel.  
 17 Q From Aaron?  
 18 A From Aaron Zahn to Jason Gabriel, and at some  
 19 point I received Jason Gabriel's response.  
 20 Q Okay. On average, how often would you meet  
 21 with Aaron Zahn face to face?  
 22 A Just the two of us or --  
 23 Q At all. Would it be every day?  
 24 A I'd see him every day, or every day that we  
 25 both were in the office. We didn't meet every day.

1 Q You didn't discuss JEA business face to face  
 2 every day?  
 3 A Oh, we -- I'm sure we -- if we were together  
 4 in the hallway we discussed items, but --  
 5 Q Would you say at least every week you met  
 6 specifically with Aaron to discuss JEA business?  
 7 A I don't think by myself. It may have been on  
 8 a specific matter that he was participating in the  
 9 meeting that I also was participating in.  
 10 Q On average, how often would you meet with  
 11 Aaron Zahn by yourself?  
 12 A I don't want to speculate. It wasn't routine  
 13 that just the two of us would --  
 14 Q You didn't have any standing meetings between  
 15 the two of you?  
 16 A We had what are called feedback meetings that  
 17 were standing but often had to be canceled for, you  
 18 know, other issues.  
 19 Q And how often were those scheduled for?  
 20 A I think every two weeks. And he was  
 21 generally available. Like if I had a question, I could  
 22 go in, and it wouldn't be a sit-down meeting, but I  
 23 could go in and say -- I mean he was available.  
 24 Q Was Mr. Zahn in the office more than he was  
 25 out of the office, would you say?

1 A Yes.

2 Q What about face-to-face meetings with Lynne

3 Rhode, would you meet or have a face-to-face meeting

4 with Lynne Rhode every day?

5 A Probably not every day.

6 Q Did you have any standing meetings with Lynne

7 Rhode?

8 A My feedback sessions with the people that --

9 the four that I interacted most were scheduled weekly,

10 but also for scheduling reasons had to be rescheduled.

11 Q Did Aaron Zahn ever direct you that public

12 records requests should be handled in a certain way?

13 A What do you mean?

14 Q I mean did he ever give any direction that he

15 wanted public records requests handled in any

16 particular way? Did he ever give input on how he

17 wanted public records requests handled?

18 A Not that I recall.

19 Q Okay. Do you know if there was ever a policy

20 or a rule that was instituted that required certain

21 types of public records requests to be reviewed by you

22 before they were released?

23 A I am told that there is such a policy and

24 that all public records are sent to me, public records

25 responses.

1 Q Throughout all of JEA, any public records --

2 A I think so.

3 Q And do you know whose rule that is?

4 A I am told that there is a policy that was

5 described, but it was before I got there.

6 Q So the policy --

7 A The policy that talks -- that -- says that

8 for the review of accuracy and completeness, as I

9 understand it.

10 Q That the public records responses would go to

11 the CAO?

12 A I don't know if it says CAO, but I am told --

13 and, Lawsikia, I think you've got a copy -- I'm told

14 you have a copy of this policy. And it was written but

15 has been at OGC for approval.

16 Q So --

17 A So from the time that I got there, they were

18 sent to me.

19 Q So how many public records request responses

20 do you get daily, a lot?

21 A Well, more recently, obviously, the frequency

22 has increased. But not daily in -- you know, prior to

23 recent time.

24 Q So do you review the public records request

25 responses before they go out?

1 A I review them generally, and if -- and it's

2 not unusual that if I happen to know, hey, there are

3 some other people that might be working on something,

4 did you contact this individual.

5 Q And so are you saying that the rule is that

6 any JEA public records request that goes out comes to

7 you, not just certain specific topics?

8 A To my understanding, it's all. And if it's

9 not -- doesn't go to me, I think then it goes to Ted

10 Hobson.

11 Q But that's not your rule. It was in place

12 before you got there?

13 A Yes. I mean, like I say, that was assigned

14 to me, from what I understand, is how JEA operates.

15 Q Do you know anything about anyone

16 establishing a rule that there's a built-in automatic

17 five-day delay before releasing public records?

18 A That would be incorrect.

19 Q Okay. You're not aware that that rule

20 exists?

21 A That rule does not exist.

22 Q Rule does not exist, okay.

23 BY MS. HODGES:

24 Q So, Herschel, while Sean is looking at that,

25 I just have a few little questions here.

1 With respect to the PUP and the access that

2 the employees would have to the PUPs and how many units

3 based on their employee position, did you understand

4 this to be a part of the PUP as presented to the board

5 July 23rd, this concept of the employee position being

6 tied to how many PUPs they could receive?

7 Was that your understanding?

8 A Well, y'all showed me the document. I don't

9 recall if that was in the plan that was submitted to

10 the board --

11 Q The board on --

12 A -- or included in the resolution that that --

13 describing it. So I don't know --

14 Q Okay. So the first time that it comes up

15 actually is in the AG letter. It wasn't in the

16 documents presented to the board, based on the

17 resolution that was approved July 23rd. Okay.

18 Do you have --

19 MR. GRANAT: I don't have any other

20 questions. Thank you, Herschel.

21 MR. LOCKAMY: Do we have a fifth attorney

22 that's going to ask questions, or are we done with

23 four? Are we done?

24 MR. POWELL: No, we're not done. I have a

25 couple of quick follow-ups.

1 THE WITNESS: Bye, Jon.  
 2 MR. PHILLIPS: Bye, Herschel.  
 3 (Mr. Phillips leaves the room.)  
 4 BY MR. POWELL:  
 5 Q So I want to go back to Mike Hightower for  
 6 just a minute. You had indicated earlier that it was  
 7 your recollection that Mr. Hightower retired from JEA?  
 8 A Correct.  
 9 Q Prior to his departure, did you ever form an  
 10 opinion that Mr. Hightower was not performing up to  
 11 standards?  
 12 A I don't think he was getting accomplished  
 13 what Aaron wanted to get accomplished.  
 14 Q Did Mr. Zahn express that to you, express his  
 15 opinion to you that Mr. Hightower was not getting it  
 16 done as far as Mr. Zahn was concerned?  
 17 A Not that bluntly.  
 18 Q How about less bluntly?  
 19 A I think Aaron and Mike Hightower had some  
 20 friction.  
 21 Q Did Mr. Zahn direct you to terminate  
 22 Mr. Hightower's employment?  
 23 A He did not.  
 24 Q Did you ever discuss your opinion that  
 25 Mr. Hightower was not performing to standards with Jon

1 Kendrick?  
 2 A I don't remember discussing with Jon  
 3 Kendrick -- no, yes -- yes. I think, when things were  
 4 getting more frustrating for Aaron, that Jon and Aaron  
 5 and I met.  
 6 Q And when you say getting more frustrating for  
 7 Aaron, you mean his frustration with Mr. Hightower's  
 8 performance?  
 9 A That's correct.  
 10 Q And you recall the three of you meeting, you,  
 11 Mr. Kendrick and Mr. Zahn, to discuss Mr. Hightower?  
 12 A We did.  
 13 Q Do you remember the substance of that  
 14 meeting?  
 15 A I think that we discussed the best way to --  
 16 and most polite way to have a discussion with Mike  
 17 Hightower.  
 18 Q And what did the three of you determine to be  
 19 the most polite way to have a discussion with  
 20 Mr. Hightower to be?  
 21 A To be polite and respectful. I'm -- I'm  
 22 friends with Mike Hightower, and so there was some  
 23 personal discomfort on my part, because Mike is a great  
 24 guy and -- but my boss was not pleased with his  
 25 performance.

1 Q Were you not pleased with Mr. Hightower's  
 2 performance, independently of Mr. Zahn?  
 3 A I think that my short time there, I had not  
 4 fully formed an opinion on Mike's capabilities.  
 5 Q What was the takeaway from the meeting  
 6 between you and Mr. Zahn and Mr. Kendrick about what to  
 7 do with Mr. Hightower?  
 8 A To have a discussion with Mike.  
 9 Q And who was to have that discussion with him?  
 10 A Jon Kendrick, me, and Aaron Zahn.  
 11 Q Did the three of you meet with Mr. Hightower?  
 12 A We did.  
 13 Q And can you tell me the substance of that  
 14 meeting?  
 15 A Based on the discussion, Mike decided to  
 16 retire.  
 17 Q Would Mr. Hightower have interpreted from  
 18 that meeting that he was being given an opportunity to  
 19 retire in lieu of being terminated?  
 20 A Probably.  
 21 Q Is it fair to say that Mr. Zahn wanted  
 22 Mr. Hightower out of JEA either by way of termination  
 23 or his retirement?  
 24 A As I mentioned, Aaron was frustrated with  
 25 Mike Hightower.

1 Q Had Mr. Hightower not resigned, would he have  
 2 been terminated?  
 3 A I don't know that.  
 4 Q Who would know that?  
 5 A I guess Mr. Zahn.  
 6 MR. POWELL: I think we're done. Want to  
 7 wrap us up, Robert? Oh, I'm sorry.  
 8 BY MR. POWELL:  
 9 Q Thank you. Appreciate your time today. I do  
 10 have one additional general question, and it's an  
 11 opportunity for you, really, more than a question.  
 12 So as I said at the outset, this interview  
 13 was -- has been in the course of our assignment to  
 14 determine whether there are grounds to terminate  
 15 Mr. Zahn's employment contract for cause, and so I  
 16 would ask you if you have anything to add or to offer  
 17 based upon your working relationship and observations  
 18 of Mr. Zahn, whether you want to communicate anything  
 19 to the board of directors from your perspective as to  
 20 whether or not there are grounds to terminate Mr. Zahn  
 21 for cause.  
 22 And let me define the cause: Either willful  
 23 misconduct, gross negligence, misappropriation of  
 24 funds, misuse of confidential information.  
 25 Are you aware of any facts surrounding either

1 of those topics that the board should be aware of in  
 2 your opinion in its -- in the process it's engaged in  
 3 to determine whether to terminate Mr. Zahn for cause?  
 4 A Other than what was already discussed here?  
 5 Q Correct.  
 6 A No, sir, I'm not.  
 7 MR. LINSNER: Mr. Vinyard, do you have  
 8 anything additional to offer or add?  
 9 THE WITNESS: No, sir.  
 10 MR. LINSNER: Okay. Just be aware, as this  
 11 is an ongoing Office of General Counsel  
 12 investigation, you are being advised not to  
 13 discuss the case with others.  
 14 The interview has now concluded. It is now  
 15 January 6th. The time now is 5:02 p.m.  
 16 (Sworn statement concluded at 5:02 p.m.)  
 17 ---  
 18  
 19  
 20  
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 25

1 CERTIFICATE  
 2 STATE OF FLORIDA )  
 3 COUNTY OF DUVAL )  
 4 I, Marianne Branson, RPR, FPR, do hereby  
 5 certify that I was authorized to and did report the  
 6 foregoing proceedings, and that the transcript, pages 1  
 7 through 218, is a true record of my stenographic notes.  
 8 I further certify that I am not a relative,  
 9 employee, attorney, or counsel of any of the parties,  
 10 nor am I a relative or employee of any of the parties'  
 11 attorney or counsel connected with the action, nor am I  
 12 financially interested in the action.  
 13 Dated this 9th day of January, 2020.  
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*Marianne Branson*  
 Marianne Branson, RPR-CP  
 Court Reporter



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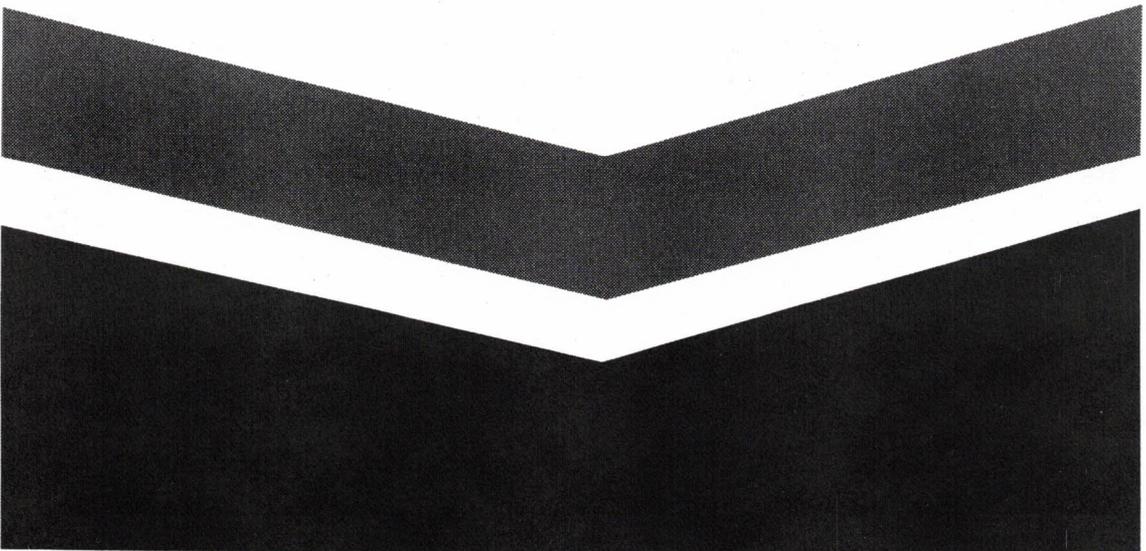
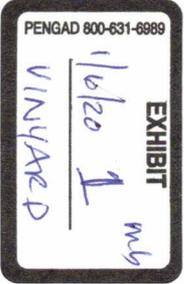
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**APPENDIX C:**  
**Constraint Matrix**



CONTINGENT INITIATIVE	EXAMPLE	CUMULATIVE IMPACT OF CONSTRAINTS *
CHANGE RATE STRUCTURE	<ul style="list-style-type: none"> <li>Preferential rate structure</li> <li>Fid. rates</li> <li>Critical peak pricing</li> <li>Rate decoupling</li> <li>Real time pricing</li> </ul>	
RAISE RATES	<ul style="list-style-type: none"> <li>Raising water and sewer rates by 52%</li> <li>Raising electric rates by 21%</li> </ul>	
SELL CUSTOMIZED ELECTRICITY, WATER AND SEWER	<ul style="list-style-type: none"> <li>Increase premium services (from waste-sourced electricity, custom power, premium reliability)</li> <li>Increase chilled water sales</li> <li>Increase reclaimed water sales</li> </ul>	
SELL MORE NATURAL GAS	<ul style="list-style-type: none"> <li>Local Distribution Company (retail)</li> <li>Expand wholesale sales</li> <li>LNG</li> </ul>	
EXPAND ELECTRICITY, WATER, SEWER & NATURAL GAS SERVICE TO MORE CUSTOMERS IN ADJACENT COUNTIES	<ul style="list-style-type: none"> <li>Territorial agreements</li> </ul>	
EXPAND ELECTRICITY, WATER, SEWER & NATURAL GAS SERVICE TO CUSTOMERS IN NON-ADJACENT COUNTIES	<ul style="list-style-type: none"> <li>Develop a utility system in a non-adjacent county</li> </ul>	

CONTINGENT INITIATIVE	EXAMPLE	CUMULATIVE IMPACT OF CONSTRAINTS *
SELL OR LEASE NEW ELECTRIC, WATER OR SEWER RELATED PRODUCTS & SERVICES	<ul style="list-style-type: none"> <li>Warranty and protection services (electric, HVAC, surge protection)</li> <li>Electrification (provision/maintenance of EV charging infrastructure)</li> <li>Energy Services Company</li> <li>DER (local distributed generation, energy storage, demand response, backup generation, microgrids)</li> </ul>	
SELL NEW OTHER SERVICES	<ul style="list-style-type: none"> <li>Telecom</li> <li>On and off-road electric vehicles sales and financing</li> </ul>	
CUT OPERATING EXPENSES	<ul style="list-style-type: none"> <li>Customer communication</li> <li>Employee training</li> <li>Security</li> <li>Tree trimming</li> <li>Targeted outsourcing</li> <li>Access the utility in/offs</li> </ul>	
CUT WORKFORCE	<ul style="list-style-type: none"> <li>Eliminate annual assessment</li> </ul>	
REDUCE CITY CONTRIBUTION		
SELL ASSETS (10% OR LESS)	<ul style="list-style-type: none"> <li>Sell underperforming assets (ferrom, etc.)</li> <li>Sell surplus or antiquated equipment (real estate, etc)</li> </ul>	

CONTEMPLATED INITIATIVE	EXAMPLE	CUMULATIVE IMPACT OF CONSTRAINTS *
SELL ASSETS (MORE THAN 10%)	Sell underperforming assets (more than 10% of total assets)	
ACQUIRE, GROW & OPERATE NEW UTILITY & CERTAIN INCIDENTAL BUSINESSES THROUGHOUT THE U.S.	Buy 100% of a solid waste disposal co. Buy 100% of a bio-mass facility Buy 100% of natural gas utility	
ACQUIRE, GROW & OPERATE NEW NON-UTILITY TYPE BUSINESSES THROUGHOUT THE U.S.	Buy or start water and energy financing platform Buy a sensor co. Buy 100% of a software or AI company Buy 100% of a vehicle fleet management company	
JOINT OWNERSHIP/VENTURE WITH ELECTRICAL ENERGY GENERATING OR TRANSMISSION FACILITY	Buy less than 100% of an electric generating or transmission facility	
JOINT OWNERSHIP/VENTURE WITH NON-UTILITY	Buy less than 100% of a technology company	
CONTRACT WITH OTHER UTILITIES FOR UTILITY SERVICES		
SELL A PORTION OF EQUITY TO FUND GROWTH OR DELEVERAGE		

CONTEMPLATED INITIATIVE	EXAMPLE	CUMULATIVE IMPACT OF CONSTRAINTS *
RESEARCH & DEVELOPMENT FOR MONETIZATION	Advanced data analytics solutions Real time operations software	
MAKE INVESTMENTS PURPOSED TO ACCELERATE & GROW UTILITY TECHNOLOGIES, SERVICES OR PLATFORMS		
<b>SIGNIFICANT CONSTRAINTS</b>		

\* NOTE: Constraints considered are the Florida Constitution, the Florida Public Service Commission jurisdiction, intellectual property (IP) considerations, the City of Jacksonville Charter, JEA's Bond Resolutions, JEA's business structure, and policy considerations. The cumulative impact analysis assumes current law, is based on general and not specific initiative terms, and is subject to confirmation and change by legal counsel. It is not possible to analyze the universe of policies, laws, and regulations that may impact the development, adoption, funding, and implementation of a proposal at this point in the discussion. Any specific initiative will require extensive and detailed legal analysis and counsel.