

JACKSONVILLE CITY COUNCIL
SPECIAL INVESTIGATORY COMMITTEE ON JEA MATTER

EXAMINATION UNDER OATH of JOSEPH E. ORFANO,
taken at One Independent Drive, Suite 3300,
Jacksonville, Duval County, Florida, on May 19, 2020,
at 2:00 p.m., before Terry T. Hurley, Registered
Professional Reporter, and Notary Public in and for the
State of Florida at Large.

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I N D E X

Witness: JOSEPH E. ORFANO

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EXAMINATION
By Mr. Russell-----04

E X H I B I T S

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A P P E A R A N C E S

On Behalf of Special Investigatory Committee

E. LANNY RUSSELL, ESQUIRE
Smith Hulsey & Busey
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Jacksonville, Florida 32202

On behalf of the Office of General Counsel

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JOSEPH E. ORFANO,

Having been produced and first duly sworn, testified as
follows:

EXAMINATION

BY MR. RUSSELL:

Q Would you please tell the court reporter your
name.

A Formal name Joseph E., as in Edward, Orfano,
and spelled O-r-f-a-n-o.

Q And let me get a little bit of background
information about you Mr. Orfano.

Did you attend college?

A I did.

Q Did you get a degree?

A I did.

Q And what was that degree in?

A A bachelor's of business administration in
finance.

Q And just the material points. After you
graduated can you tell me about your career?

A I can.

I graduated from University of Notre Dame in
1982, and my first job out of college was with what is
now PNC. It was Pittsburgh National Bank. Went through
the training program there and became a lending officer

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1 in Pittsburgh.
2 From there I moved to Tampa, Florida and took a
3 corporate banking job with Southeast Bank, and was with
4 them roughly another two and-a-half or three years.

5 From there I went to work for one of my
6 customers, which was Florida Progress Corporation in St.
7 Petersburg, which was the parent company for Florida
8 Power Corporation, which is an investor-owned utility in
9 St. Pete serving the west coast of Florida.

10 From there I spent approximately two years in
11 Columbia, South Carolina with SCANA Corporation. All
12 caps. It doesn't stand for anything. S-C-A-N-A
13 Corporation.

14 And then I was recruited from SCANA out to
15 Vegas, Las Vegas, where I worked for NV Energy, which
16 was the parent company for investor-owned utilities in
17 Las Vegas in Reno, Nevada. Las Vegas Utility at the
18 time was referred to as Nevada Power Corporation and
19 Reno Sierra Pacific Power Corporation.

20 I think they've kind of -- they have since been
21 acquired.

22 Q What was your position with the Las Vegas
23 Energy company?

24 A I was assistant treasurer. In most of my
25 career increasing positions of responsibility in the
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1 treasury department at these various utilities.

2 From there I spent approximately two years in
3 Scottsdale, Arizona with a copper mining -- copper and
4 molybdenum mining company.

5 THE WITNESS: I doubt she knows how to spell
6 molybdenum.

7 MR. RUSSELL: She's going to look it up.

8 A And I left there -- that turned out to just be
9 a big mistake. It was my first foray in quite some time
10 outside of the utility industry, and it was a heavily
11 leveraged mining entity, and I ended up leaving, and
12 found out about the opportunity at JEA, and was
13 interviewed and was offered a position as treasurer in
14 December of 2013.

15 So I've been with JEA for approximate -- almost
16 six and-a-half years now, and was hired by Melissa Dykes
17 in her prior capacity as chief financial officer.

18 Q What position were you hired for?

19 A Treasurer.

20 Q Okay. And as treasurer of JEA, could you tell
21 me what your day-to-day functions are?

22 A Absolutely. I'm responsible for managing the
23 debt and investment portfolios for our various -- for
24 our electric system, our water and sewer system. We
25 have a St. Johns River Power Park system and a bulk
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1 power system, along with a district energy system.

2 So we issue debt under all those various
3 entities. So I manage the debt or borrowings and also
4 our cash and investment holdings.

5 I'm also responsible for cash management, and a
6 couple of years ago I was assigned the accounts payable
7 department as well.

8 So that was a little bit -- I had some
9 experience doing that out in Las Vegas, so my boss at
10 the time thought it would be a good fit, and was in that
11 role as treasurer until December of last year, 2019, and
12 Melissa Dykes appointed me, just after Christmas,
13 December 27, to interim chief financial officer, and I
14 retained my treasurer title as well, and I'm in that
15 position right now treasurer.

16 Q Who did you replace?

17 A Ryan Wannemacher.

18 Q Ryan Wannemacher. Okay. I remember that name.

19 During the time you were with JEA and treasurer
20 from 2013 up until your recent change of initial
21 responsibilities did you have a particular person you
22 would have reported to?

23 A Yeah. Until April of 2018 I reported to
24 Melissa Dykes as CFO, and then Ryan Wannemacher was
25 appointed the interim CFO in April of '18, and it became
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1 full-time in the summer of 2018, roughly, and at that
2 point -- prior to that point Ryan and I were colleagues
3 reporting to Melissa, and he became my boss that summer
4 of '18. So I reported to Ryan between roughly August of
5 '18 and December of '19.

6 Q Did you have much direct interaction with Aaron
7 Zahn?

8 A Quite a bit.

9 Q What was that about?

10 A We had quite a number of meetings with the
11 rating agencies.

12 One -- another task of mine was maintaining the
13 rating agency relationships for JEA, which is something
14 I had done really throughout my career.

15 So we were meeting quite often with them as
16 these various issues were arising, and issues being the
17 litigation with MEAG, the first -- the first -- I don't
18 how do I characterize it, but --

19 MR. POWELL: If I could interject. Let's make
20 sure -- I think we're all in agreement here, but
21 let's just make sure.

22 I'm going to remind you to stay out of MEAG --

23 THE WITNESS: Oh, that's right.

24 MR. POWELL: -- and litigation details.

25 You can do tree tops, but --
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1 THE WITNESS: I won't get into any detail at
2 all.

3 MR. POWELL: I know that. I'm just -- as a
4 caution.

5 THE WITNESS: Right.

6 MR. POWELL: Watch out for the -- the -- the
7 litigation component of JEA.

8 THE WITNESS: Understood.

9 MR. POWELL: Okay.

10 THE WITNESS: I -- I -- I'll just refer to it
11 generally as MEAG litigation.

12 MR. POWELL: That's fine.

13 THE WITNESS: Thanks, Steve.

14 A And we went through -- from that time of prior
15 board chair, Mr. Petway's, request to the board to
16 explore privatization, and the subsequent report by PFM,
17 Public Financial Management, our -- our senior financial
18 advisor at PFM, Michael Mace, from that point in time on
19 there -- there just -- it was obviously eliciting a -- a
20 significant interest from the rating agencies on just
21 what was going on. We -- we were constantly in the
22 news. So we -- we were meeting quite often.

23 Q Since we're talking about Mr. Zahn, did you
24 ever discuss the Participation Unit Plan with Mr. Zahn?

25 A We did.

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1 Q When was the first time you can recall doing
2 that?

3 A Prior to -- prior to it being named the
4 Performance Unit Plan there were general discussions
5 about a long-term incentive plan that I first heard
6 about roughly at the end of May of 2019, and I heard
7 about that through Ryan Wannemacher.

8 Q But not Mr. Zahn. It was Ryan who talked to
9 you about it?

10 A Well, I think it was -- it was both, but it was
11 initially -- it was initially Ryan Wannemacher.

12 Q Do you recall what Ryan Wannemacher told you
13 about the plan?

14 A He asked me specifically to analyze -- he had
15 -- he -- and I believe Aaron was involved. They had
16 a -- what -- what -- they had developed a thought around
17 how it might work in terms of -- well, how it might be
18 measured, how this value creation would be measured.

19 So Mr. Wannemacher asked me to analyze that in
20 May of -- toward the end of May of last year.

21 Q Did you ever calculate the potential amount of
22 payout that could be achieved under the PUP plan, or the
23 long-term investment that you were talking about then
24 based upon a sale of JEA?

25 A No.

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1 Q Are you aware of anybody at JEA who ever did
2 that, made that calculation of what the prospective
3 payouts could be under the PUP plan if there was a sale?

4 A I'm not aware of any analysis that was done.
5 My analysis geared -- was geared toward creating metrics
6 around value creation.

7 So when I say that, I was told to look at from
8 year to year over -- over a ten-year period the change
9 in JEA's net position and the contribution to the -- to
10 the City of Jacksonville, and how -- how much -- how did
11 that -- the change plus the contribution, what was that
12 return when compared to the beginning that position.

13 So it was -- it was a quasi equity calculation.

14 Q Okay. So the component part of the PUP plan
15 that you were looking at was going to be the source that
16 would determine what amount of payout would be, and you
17 were determining what the measuring -- the beginning
18 point was, and you --

19 A Validating it. Validating a concept that Ryan
20 had come to me -- or Mr. Wannemacher had come to me
21 with.

22 MR. POWELL: Let me interject, because I think
23 we're all -- we're all trying to get the same
24 information out, and I want to make sure that we
25 don't jump back and forth between LTI and PUP

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1 without clarity.

2 So the question was did you calculate in the
3 PUP, is that correct, or was it a calculation for
4 LTI?

5 THE WITNESS: That was a calculation for a
6 long-term incentive plan. I didn't really hear
7 about the PUP specifically, and -- and saw documents
8 related to the PUP until the offsite meeting at Club
9 Continental in Orange Park.

10 MR. POWELL: Okay.

11 A That was the first I saw documents. There
12 were -- there were still no calculations. And that --
13 that's the first that they were -- they were called PUP.

14 Now, prior to that time there was a desire by
15 both Mr. Zahn and Mr. Wannemacher to issue JEA bonds,
16 and at that time I believe they went to our bond
17 counsel, Nixon Peabody, and sometime later I -- again,
18 this would have happened, say, in June after I first
19 found out about the incentive plan.

20 The long-term incentive plan kind of morphed
21 into the PUPs really. But there was -- the first step
22 was to evaluate whether JEA bonds could be distributed
23 to employees, to all employees.

24 I understood that -- my limited understanding
25 was that every employee had to be offered whatever comp-

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1 -- whatever incentive compensation was going to be
 2 awarded.
 3 So Nixon Peabody was not able to provide an
 4 opinion, a satisfactory opinion. There were a couple
 5 issues there. So Nixon was against it. When I say
 6 Nixon, that's short for Nixon Peabody.
 7 And as -- as that concept was further explored
 8 it would have been very difficult to -- to track these
 9 bonds, because, first of all, there's 2000 employees,
 10 and -- and we had no idea, like, would there be --
 11 with -- with common stock it's so much easier, and
 12 there's banks and transfer agents set up to administer
 13 common stock. But bonds, it would -- it was just -- I
 14 think at some point it was determined that this
 15 long-term incentive plan would take the form of these
 16 performance units or bonds.
 17 Q Let me get back and go over some preliminary
 18 stuff first.
 19 If you would look at what is exhibit -- the
 20 first exhibit there on your page should look like these
 21 answers to interrogatories.
 22 Did you have any role in providing information
 23 that was used to answer these interrogatories?
 24 A Interrogatories?
 25 MR. POWELL: Here, he's got it up here.
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1 A Oh, the special investigative -- investigatory
 2 committee. I did. I did.
 3 Q Did you provide the information that's under
 4 Interrogatory 2, which is a list of all outside
 5 attorneys and law firms engaged on behalf of JEA with
 6 respect to inquiry matters? That means basically
 7 everything going on about the restructuring of JEA.
 8 A We explored through accounts payable every firm
 9 that appeared to -- to be a law firm. So I -- I -- at
 10 my direction my staff was preparing -- they were
 11 researching invoices pertaining to anything that looked
 12 like a -- a legal invoice.
 13 Q Okay. And then if we go to number three it's
 14 consultants as opposed to law firms, consultants or
 15 public relation firms that were hired by the attorneys.
 16 And did you help develop the list that's under
 17 Interrogatory 3?
 18 A I did, because I had specific knowledge about
 19 Gabriel, Roeder, Smith & Company. They're an actuary.
 20 McKinsey consulting firm, FTI, Leidos, and Intralinks.
 21 Q Why were these entities hired by the attorneys
 22 who JEA had hired?
 23 A I was not involved with that procurement
 24 process.
 25 Q Do you know who was?
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1 A These firms?
 2 Q Yes. Who would have been involved in the
 3 decision to hire these firms?
 4 A Again, I -- I -- I'm not familiar with who
 5 would have given the direction to hire these firms.
 6 I know McKinsey though was under a prior
 7 contract, and I came to find out that McKinsey was -- a
 8 second McKinsey contract was let through Pillsbury
 9 Winthrop Shaw.
 10 Q And in 4 there's a list of other vendors and
 11 consultants, which includes the investment -- two
 12 investment banks.
 13 Would you have any involvement in the hiring of
 14 those entities?
 15 A I was not involved in the hiring, and I was
 16 told at the time that they were engaged that they would
 17 be working on the ITN process.
 18 Q Okay. Got it.
 19 Okay. The next, Exhibit 2, was just the
 20 supplemental answer to these interrogatories. I gave
 21 that to you in case you needed to refer to it.
 22 A Okay.
 23 Q Apparently you didn't, so we can move on.
 24 A Okay.
 25 Q Let me ask you about the questions that I just
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1 went over.
 2 Are you aware of any inaccuracies in those
 3 lists, or have any other entities been discovered who
 4 should have been named in those lists?
 5 A Well, I specifically directed or took over the
 6 preparation of the ITN-related engagement schedule. So
 7 I -- I believe the list is -- is as current as it could
 8 be.
 9 The legal -- the legal fees have been a
 10 challenge, and some of these firms, including our former
 11 bond counsel, Nixon Peabody, billed quite a few months
 12 later, and when I saw the bill I saw that it was related
 13 to the PUPs specifically, so we added -- we added that
 14 line. That line had not been on the original schedule,
 15 but to the best of my knowledge this schedule is
 16 complete. It's been updated. I believe it's been
 17 updated a little bit since.
 18 Q Later on in the outline there's a couple that I
 19 think should have been on here, but weren't. When we
 20 get that point --
 21 A Okay.
 22 Q -- maybe I'll remember them.
 23 A Okay.
 24 Q And Exhibit 3 shows an amount listing
 25 companies --
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1 MR. POWELL: Lanny, these aren't numbered.
 2 THE WITNESS: These aren't numbered, so I'm not
 3 sure.
 4 MR. POWELL: Mine aren't numbered.
 5 MR. RUSSELL: They go ahead right in order if
 6 you want to just order them now. They follow right
 7 in the order in which I had them stacked up. And
 8 when we get done with them -- thank you, Steve --
 9 let's -- when we finish with them we will hand them
 10 to the court reporter and she's going to mark your
 11 set.
 12 THE WITNESS: Okay.
 13 MR. RUSSELL: So let's give her the first two.
 14 THE WITNESS: These are the first two.
 15 MR. RUSSELL: She can put a sticker on those.
 16 (Exhibit Nos. 1, 2 and 3 were marked for
 17 identification.)
 18 Q 3 is a summary of what was paid to the
 19 consultants in connection with the potential restructure
 20 of JEA, and the question I have about that, are any of
 21 the amounts that are still shown as owing, of the
 22 \$12 million to the first group of companies, is any of
 23 that amount disputed by JEA, do you know?
 24 A I believe the Pillsbury Winthrop Shaw invoices
 25 are under review by OGC. So a significant number of
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1 Pillsbury invoices have not been paid.
 2 Milam Howard was paid.
 3 And, again, these amounts may have been reduced
 4 from the -- from the figures you're seeing here.
 5 Pennington --
 6 MR. POWELL: Do we have a date for this
 7 document? Do we know when this document was
 8 generated?
 9 THE WITNESS: I think I put a date on it going
 10 -- this might have been an older -- it doesn't have
 11 a date on it here, but --
 12 MR. RUSSELL: The only date I see was: Updated
 13 by John McCarthy --
 14 THE WITNESS: John McCarthy.
 15 MR. RUSSELL: -- in January.
 16 Let's double-check the back.
 17 A The amounts are -- are relatively -- this is a
 18 relatively recent file though, because I know Hopping
 19 Green, for instance, removed some monthly retainers
 20 that -- that dropped that fee.
 21 Carlton Fields was paid. Again, there was
 22 negotiated amounts. Foley & Lardner was paid.
 23 So the law firms have largely been paid, but
 24 there's -- the -- the invoices -- Pillsbury has not.
 25 And then Hopping Green I believe was paid.
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1 JP Morgan and Morgan Stanley have not been
 2 paid. Segal Consulting has not been paid. Holland &
 3 Knight has been paid. Nixon was paid.
 4 And then I'm not sure what the status is of
 5 this 1.4 million from McKinsey. I know it was billed
 6 through Pillsbury. I -- I think it's still pending.
 7 And I know FTI and Leidos are still outstanding.
 8 Q Do you know if JP Morgan or Morgan Stanley have
 9 asserted a claim to some sort of initial payment based
 10 upon a success-based fee?
 11 A Well, I'm familiar with the engagement letter.
 12 Q Did it provide for it?
 13 A It did.
 14 Q Do you recall -- I have that coming up in a few
 15 minutes. Let's just wait until we get there.
 16 A Okay.
 17 (Exhibit No. 4 was marked for identification.)
 18 Q And 4 should be a Request For Proposals from
 19 the City -- for the City of Jacksonville. The date of
 20 the Request For Proposals is December 20, 2017.
 21 Are you familiar with this document?
 22 A I'm not familiar with the document, but I was
 23 involved with the -- with the process.
 24 Q What was this process? What was being done in
 25 connection with this request for -- what was the winner
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1 of this Request For Proposal going to provide to the
 2 City of Jacksonville?
 3 A Again as it says, strategic initiatives, which
 4 -- which may have involved privatization.
 5 Q Of JEA?
 6 A Of JEA.
 7 Q Do you know, does this Request For Proposal
 8 relate to anything other than JEA?
 9 A I believe so. I believe the City was looking
 10 at outsourcing its parking garages, for instance. That
 11 might have been included.
 12 There were other initiatives that were
 13 unrelated to JEA.
 14 Q The Request For Proposal, on page 2, Mr.
 15 Orfano, requires that this -- whoever wins this process,
 16 gets the work, is going to work with PFM.
 17 Is PFM an entity that worked exclusively with
 18 JEA in the City structure?
 19 A PFM, which is an acronym for Public Financial
 20 Management, works with a significant amount of public
 21 entity utilities government. They represent the City of
 22 Jacksonville as well.
 23 Q Okay. But they do work directly with JEA?
 24 A Absolutely. They're under contract with JEA,
 25 and I oversee that contract.
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1 Q In connection with this Request For Proposal
2 and the work that was going to be done thereunder, do
3 you recall a data room being created after this work was
4 started?

5 A No, I don't.

6 Q Okay. So you don't recall having access to
7 that data room?

8 A No, I don't.

9 Q Okay. We will skip over those.

10 Between December 2017 up through the present
11 who are the people at JEA who are responsible for
12 approving invoices that would be submitted to JEA by the
13 consultants for the restructure of J -- potential
14 restructure of JEA?

15 A It was not -- it wouldn't have been me or my
16 areas. I presume it would be -- and again, it's a
17 presumption, I don't know for a fact, but presuming it
18 was Ryan Wannemacher.

19 (Exhibit No. 5 was marked for identification.)

20 Q Okay. And the reason I ask that question, what
21 I have next in the package is a memo. It's from Jill
22 Luster to you asking that you approve a particular
23 Pillsbury invoice. And the memo goes on to say that you
24 are the second approver.

25 Do you know who the first approver would be?
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1 A Lynne Rhode.

2 Q Okay.

3 A And I actually saw the check request executed
4 by Lynne Rhode, so I'm familiar with it.

5 Q So you and Lynne approved the payment of bills.

6 Do you know who approved the hiring of law
7 firms for JEA?

8 A By procurement code, OG -- Office of General
9 Counsel is required to approve --

10 Q Approve also.

11 A -- those firms.

12 Q And then did somebody at JEA also have the
13 ability to -- was it necessary for somebody at JEA to
14 approve that hire?

15 A I would presume.

16 Q Okay.

17 A But I -- I know by procurement code that Office
18 of General Counsel is required to -- to -- to approve
19 the engagements.

20 Q Okay. In connection with analyzing a bill from
21 a consultant, who at JEA would be looking -- in this
22 case it's a law firm's bill -- who analyzes that bill
23 and makes sure it's appropriate and should be paid?

24 A That would have had to have been Lynne Rhode.

25 Q Changing topics.

1 In May, June and July there were in each of
2 those months a meeting of the JEA board, and there were
3 a number of presentations given by Mr. Zahn and the
4 senior leadership team at those board meetings.

5 Did you attend those board meetings?

6 A I did.

7 Q Did you review the packages given to the board
8 members prior to those meetings?

9 A Generally not. I was reviewing them as they
10 were presented.

11 Q Do you recall when you were attending those
12 meetings hearing anything that you believed was
13 inaccurate? That's a broad question. Materially
14 inaccurate.

15 A There was a significant amount of conversation
16 around the sales forecast, particularly for the electric
17 utility.

18 Q Say that again. I just didn't hear you.

19 A There was a significant amount of discussion
20 around the projections for the sales forecast for the
21 electric system in particular.

22 Q Oh, okay.

23 A And what was called the status quo case showed
24 a declining -- declining revenues and sales, unit sales
25 I should say in particular, from -- from where we were
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1 at the present time, and -- and it created quite a few
2 questions from the rating agencies, among others in the
3 community. So there -- there was a considerable amount
4 of debate.

5 Q From what you're telling me, there was
6 different perspectives of what that was, either, fine,
7 having its own view, but you're not making a judgment on
8 what was correct or what was incorrect?

9 A We, up until that date, had used a flat sales
10 forecast. It was a conservative approach to -- we were
11 one of the first municipal utilities to actually show a
12 flat sales growth, and we did that beginning in -- we
13 did that beginning in 20 -- fiscal year 2014 with our
14 rating agency presentation at that time.

15 So I recall in the summertime getting a
16 considerable amount of questions on the rating agencies
17 challenging the projections.

18 Q Can we go back and look at Exhibit 3, which was
19 the list of agencies. This wasn't a memory test. There
20 was -- on the list of consultants in this document the
21 Dalton Agency wasn't listed.

22 Do you know why that was?

23 MR. POWELL: You mentioned Exhibit 1.

24 THE WITNESS: Was this -- I've got Exhibit 3.

25 MR. RUSSELL: Exhibit 3.

1 MR. POWELL: Excuse me. I'm sorry.
2 A My understanding was that they were on a
3 retainer, a monthly retainer to JEA, so -- so I was not
4 aware that there were specific Dalton Agency fees
5 related to the ITN.

6 Q Okay. Do you know today as we sit here, was
7 the Dalton Agency in fact doing things related to the
8 ITN?

9 A They -- they were, because we met in their
10 offices on July 13th.

11 Q And do you know what it was that the Dalton
12 Agency was doing?

13 A I -- I don't really. I don't know exactly what
14 they were doing, to tell you the truth.

15 Q Were you aware that the Dalton Agency was
16 providing to the senior leadership team at JEA talking
17 points for use by the board in selling to the board
18 recapitalization?

19 A At a later date through Nate Monroe's Twitter.

20 Q Okay.

21 A Not at the time.

22 Q I take it you never received such talking
23 points from them?

24 A I would refuse talking points.

25 Q Okay.

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1 Agency.

2 There were three meetings. Orange Park was
3 supposed to be a three-day meeting. It turned out to be
4 a two-day. Day three was spent -- and this was July 11,
5 12 and 13. The 13th meeting was held at the Dalton
6 Agency with a smaller group, and then around the 24th or
7 so we met here at Foley & Lardner. And those are the
8 meetings that I attended.

9 Subsequent research that was requested from the
10 Office of Inspector General uncovered a significant
11 amount of offsite meetings by senior -- by the senior
12 leadership team. I'm -- I'm now aware of those
13 meetings.

14 Q The meeting in Orange Park you talked about
15 attending, those two days of meetings, was that a
16 meeting at Club Continental?

17 A It was.

18 Q Who attended that meeting?

19 A A significant number of individuals.

20 Q Would it have been the senior leadership team
21 from JEA?

22 A Yes.

23 Q Do you recall what outside lawyers attended?

24 A I do.

25 Q Tell me, please.

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1 A If I can't speak to something intelligently I
2 shouldn't be speaking about it. My opinion.

3 Q At the time of those meetings, May, June and
4 July, were you aware that some members of the senior
5 leadership team were in fact using talking points
6 provided to them by the Dalton Agency?

7 A I wasn't aware until I found that out in the
8 media.

9 Q Okay.

10 A It's a touchy -- I would just add a little side
11 color that that's a touchy topic, because with prior
12 boards staff had been preparing talking points and
13 scripts for the board members, and that was viewed very
14 negatively.

15 Q You said the Dalton Agency was on a retainer.
16 Do you know who hired the Dalton Agency at JEA?

17 A I believe Kerri Stewart.

18 Q And do you know what the monthly retainer was?

19 A I -- I don't remember. At -- at some point
20 I've seen it, but I -- I can't recall.

21 Q There were a number of offsite, not at JEA's
22 building, meetings of the senior leadership team.

23 Did you attend some of those meetings?

24 A I did not. Well, I -- I attended the ITN
25 meetings specifically in Orange Park at the Dalton

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1 A Pillsbury Winthrop Shaw, Foley & Lardner. I
2 don't remember anybody else.

3 Q Okay. Investment bankers.

4 A JP Morgan and Morgan Stanley.

5 Q Okay. Can you recall any others who may have
6 attended that meeting?

7 A Other than JEA, I believe Michael Munz was
8 there from the Dalton Agency. Alan Howard was there for
9 part of the time.

10 Q I believe McKinsey --

11 A McKinsey. They were there.

12 Q -- was there?

13 A Thanks for refreshing my memory. There were a
14 lot of people there.

15 Q Can you remember -- you said you were there for
16 two days?

17 A Two days.

18 Q I've looked for and never have been able to
19 find an agenda for these meetings.

20 Was there materials passed out at these
21 meetings?

22 A They were being more done by putting the
23 documents on the screen on T -- large TV screens, but --
24 but there were documents produced.

25 Q Okay.

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1 MR. POWELL: Lanny, before you drill deep into
2 this can I just ask for clarification on the senior
3 leadership team members that you remember being
4 there? Because you -- you had -- you said SLT
5 members.

6 THE WITNESS: Not all of the members.

7 MR. POWELL: My understanding has always been
8 of a few.

9 THE WITNESS: Not all of the members were
10 there.

11 MR. POWELL: Do you remember specifically who
12 was there?

13 THE WITNESS: I do. Well, again, it's been a
14 little while, but clearly Mr. Zahn, Ms. Dykes, Mr.
15 Wannemacher, Mr. Vinyard, Ms. Rhode, myself. Well,
16 I'm not part of senior lead -- was not part of
17 senior leadership, but...

18 Who else would have been there?

19 Q Kerri Stewart?

20 A Kerri was there.

21 Q And she's not part of the --

22 A She's part of the senior leadership team.

23 Q So to help my thinking too, that list you just
24 gave me, everybody's on the senior leadership team
25 except for you at that time.

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1 but -- but McKinsey was at Orange -- at Club Continental
2 as well.

3 MR. POWELL: Lanny, just real quick.

4 Do you remember if Jon Kendrick was at Club
5 Continental?

6 THE WITNESS: He was.

7 MR. POWELL: And what about Ted Hobson?

8 THE WITNESS: He was not. I don't think he was
9 at either meeting. I -- I don't recall him being at
10 either meeting, now that you ask.

11 I -- I forgot about Ted because he's retired.

12 MR. POWELL: Those are the last two.

13 THE WITNESS: But I don't believe he was. I --
14 I don't remember Ted being there.

15 Q I asked about an agenda. Another thing I guess
16 I could ask about, were people -- did people sign in or
17 was there some --

18 A No.

19 Q -- way that you kept a record of who was there?

20 A No. And there were bankers there that I never
21 met.

22 Q Okay.

23 A Because our municipal bankers were represented,
24 but then there were what are called mergers and
25 acquisition bankers, and I knew a few of these bankers

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1 Was there anybody else on the senior leadership
2 team that you didn't mention who wasn't there?

3 MR. POWELL: Who wasn't or was there?

4 A Was not there?

5 Q Who else was -- I understand that's everybody
6 from the senior leadership team who was there. I'm
7 trying to find out who --

8 A It's interesting, because at the July -- I'm
9 saying July 24th, that's the approximate date -- at
10 Foley there were additional JEA members at that meeting
11 that were not at Club Continental.

12 So John McCarthy was at Foley & Lardner. He
13 was not at Club Continental. Paul Steinbrecher was not
14 at Club Continental. Steve McInall was not at Club
15 Continental, but -- but Steve was at Foley & Lardner.

16 Other folks at -- other JEA employees at Foley
17 & Lardner that were not at Club Continental would have
18 included Julie Crawford, who was the director of
19 financial planning and analysis. One of her associates,
20 a manager in that group.

21 Because at that point there was a consid- --
22 there was becoming a focus on a financial forecast, and
23 that's where FTI would have been involved, at that
24 point.

25 And I believe McKinsey was at that meeting,

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1 from my days with investor-owned utilities, but that
2 went back many, many years.

3 But, no, there were bankers there that I -- I
4 can't recall their names today, but there were documents
5 there.

6 Q Can you tell me what the topics were that were
7 discussed at Orange Park?

8 A The focus was on timeline.

9 Q Timeline for what?

10 A For the ITN.

11 Q Okay. So at that point in time you'd already
12 gone into focussing on the ITN, which means there was
13 going to be some recapitalization sale of JTA, and there
14 was not a focus on the other scenarios that had
15 previously been considered. Stay the course; that was
16 not discussed?

17 A No.

18 Q Move on. We're past that. We're now at
19 July 10th, and we're not thinking about any scenario
20 except something that involved a sale?

21 A I will say down the road, and I look back at my
22 calendar, because this question has come up, in
23 November, actually late October I was tasked with
24 heading up the IPO alternative, exploring it with Morgan
25 Stanley as the lead bank. And Julie Crawford --

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1 actually it was Ted Hobson and Julie Crawford were
2 assigned the co-op alternative, and presentations were
3 prepared.

4 But at this point the IT -- the invitation to
5 negotiate was very far down the -- down the path by --
6 by that point in time.

7 Q Okay. And then I have a list of the offsite
8 meetings. You said they're not listed as offsite.

9 After Club Continental there was a further
10 meeting of people at Foley & Lardner to discuss again
11 the ITN?

12 A Yes.

13 Q Was it basically the same group of people?

14 A An expanded group.

15 Q An expanded group.

16 A Because there were -- there were analysts. I
17 call Julie analy- -- Julie Crawford, Victor Blackshear,
18 and John McCarthy.

19 There was -- there was more vetting to ensure
20 that the ITN process was being properly handled. So
21 there was a lot of discussion around process, and so --
22 so there were groups splitting off.

23 And that same thing was happening at the Club
24 Continental as well. There was a group assigned to look
25 at the PUPs. There was a group --
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1 Q Who was in that group, if you recall?

2 A Jon Kendrick, I believe Herschel Vinyard, Lynne
3 Rhode, and Pillsbury's -- Pillsbury brought in a -- a
4 benefits attorney by the name of Jessica Lutrin.

5 Q Lutrin.

6 A I can't believe I just come up -- came up with
7 that.

8 Jessica was kind of spearheading the drafting
9 of documents. There was an ITN group that was looking
10 at -- that was preparing the ITN document. So a
11 significant amount of effort that's been talked about,
12 obviously, in the media as well.

13 Q Do you know if at the Club Continental meeting
14 which occurred on the -- I guess it was the 10th and
15 11th -- was there actual drafting of a document that
16 would become the participation unit plan?

17 A Yes.

18 Q Do you know who was the draftsman or
19 drafts-lady of that?

20 A Jessica Lutrin was the lead, but Lynne Rhode
21 was assisting with that, and there was a summary
22 document that Mr. Wannemacher would have been involved
23 with.

24 I -- I have old drafts. I found old drafts of
25 a couple of those documents, the early forms of those
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1 documents.

2 Q Have you provided those drafts to anybody?

3 A I've indicated that I have them.

4 Q They would have been covered by the request we
5 made to JEA, so I'm going to follow up with you and try
6 to get those drafts.

7 A Sure.

8 Q Do you recall at Club Continental that Tim
9 Baker was there?

10 A I've heard recently in the media that he was
11 there, but I -- I never met him, so I wouldn't know.

12 Q Did you, in connection with what you were doing
13 in regards to the recapitalization/restructure of JEA,
14 ever have any interaction with anybody on the mayor's
15 staff?

16 A No, not -- not associated with the ITN. We --
17 we are in -- in fairly close contact with our -- with
18 Mr. Grivey and Mr. Barnes, but, no, there was no
19 discussion around the ITN.

20 Q Then after the Foley & Lardner meeting, which I
21 guess would have been sometime after July -- can you
22 give me an approximate time when in 2019 the Foley &
23 Lardner meeting that you just described would have
24 occurred?

25 A Yeah. July 24th.
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1 Q Okay.

2 A In that timeframe.

3 Q That's fine. And after that you mentioned a
4 meeting at the Dalton Agency.

5 Do you recall when that one occurred?

6 A That was day three of the -- that was supposed
7 to be day three of the Club Continental, so that would
8 have occurred, I believe, July 13th.

9 Q Okay.

10 A That predated the 24th meeting.

11 Q So it was the Club Continental the 10th and the
12 11th. And my records show we go from 10 to 12.

13 A Oh, okay. Sorry if my dates are one day out of
14 whack.

15 Q That's not a problem.

16 A So the 10th and the 11th would have been at the
17 Club Continental and the 12th would have been at the
18 Dalton Agency, followed by Foley & Lardner.

19 Q And what you were participating in in each of
20 those meetings was working on this ITN?

21 A It was an extensive document, so there -- there
22 were a number of areas that needed to be fleshed out,
23 and with my responsibility for debt, for instance, there
24 had to be a strategy on defeasance of the outstanding
25 debt obligations at JEA. And I -- I was also listed as
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1 a subject matter expert for the MEAG power -- power
2 purchase agreement.

3 Q Okay. I think you told me this answer already.

4 It was the -- when the idea of something like the
5 performance unit plan was first conceived I think you
6 said in early 2019?

7 A It was in early 2019. I didn't actually do any
8 arithmetic around it.

9 MR. POWELL: And, again, I think the early 2019
10 was the LTI.

11 THE WITNESS: Oh, let's call it the LTI. It
12 wasn't the --

13 MR. POWELL: Really --

14 MR. RUSSELL: There's not really a difference,
15 Steve.

16 MR. POWELL: No, there is a difference at the
17 beginning with the LTI, and I -- and -- and I'm just
18 wanting Mr. Orfano not to get mixed in this
19 discussion, because he said earlier that that the
20 LTI morphed into the PUP, but it -- it -- it is
21 really important not to put words in -- I mean, you
22 may -- there might be other people saying these
23 things, but I just don't want Mr. Orfano to be
24 misspeaking. That's all I'm saying, so that we're
25 clear as to who's recounting what.

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1 meetings.

2 Q Okay.

3 A Again, Mr. Powell's characterization is
4 correct. I both participated in long-term incentive
5 plans, and prior to that point I wrote about them with
6 SEC reports. I'm very familiar, particularly with
7 investor-owned electric utilities, what those plans
8 looked like, because I did extensive research in my past
9 on them.

10 Q Well, you'll have an opportunity at the end of
11 this interview to make corrections, and I understand
12 what you've said, and if I said PUP and you didn't
13 mean -- you didn't understand that --

14 A I really didn't mean PUPs.

15 MR. POWELL: He's talking about reading this
16 when we're done.

17 And I appreciate that, Lanny, but if we can
18 avoid the need to make --

19 MR. RUSSELL: I'm doing that, Steve.

20 MR. POWELL: I know you are, and I --

21 THE WITNESS: Thanks. I appreciate that.

22 MR. POWELL: We both appreciate it.

23 THE WITNESS: I appreciate that.

24 Q Okay. It was at the July 23 JEA board meeting
25 that I believe the PUP plan was actually approved by the
Hedquist & Associates Reporters, Inc.

1 MR. RUSSELL: Right.

2 MR. POWELL: That's all I'm asking.

3 MR. RUSSELL: My perception is that a long-term
4 incentive plan is a large group of potential plans,
5 a PUP is a specific kind of long-term incentive
6 plan.

7 MR. POWELL: Well, I think maybe you should --
8 I -- I think it would help us all if you got his
9 perspective on that rather than assuming yours,
10 because I think there are lots of ways to look at
11 this, and I can tell you that Mr. Orfano has a lot
12 of understanding of long-term incentive plans in
13 general, certainly in the private sector.

14 So perhaps that might be fruitful. I just
15 don't want confusion on LTI and PUPs.

16 MR. RUSSELL: Sure. Let's see if we can
17 straighten it out.

18 Q What you first heard talk about in -- talked
19 about in early 2019 was what you would perceive as a
20 long-term incentive plan.

21 A Correct.

22 Q Do you recall the time when it became a
23 participation unit plan? When did you first hear that
24 concept?

25 A Right around the time of the Club Continental
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1 board?

2 A I believe that's correct.

3 Q So by then it was clearly the PUP plan?

4 A It was.

5 Q And from there forward until the termination of
6 the effort to recapitalize JEA do you know anybody at
7 JEA who ever calculated the potential payouts under the
8 PUP plan?

9 A I'm not aware of any, and I -- I really didn't
10 understand the magnitude of the dollars until the
11 December 16th special investigatory committee meeting.
12 (Exhibit No. 6 was marked for identification.)

13 Q If you look at the next document which should
14 be --

15 A Yes.

16 Q -- Resolution 2019, and I think this will be
17 Exhibit 6 if I'm counting right, and this is what we
18 just talked about. This was the resolution that was
19 opted by the board at the July 23rd meeting of the
20 board?

21 A Uh-huh.

22 MR. RUSSELL: That's all I have on that. If
23 you hand that to her she will mark it as Exhibit 6.

24 Q In connection with what's now the PUP plan as
25 approved by the board, do you know how many units were
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1 authorized to be issued?
 2 A 30,000 I believe.
 3 Q And in connection with the allocation of those
 4 units that were authorized to be issued, would the
 5 position of the employee within JEA determine how many
 6 of the units would be available to that employee?
 7 A I recently became aware of a schedule that was
 8 produced and -- and reported on by local media.
 9 Q Do you recall who was given the authority to
 10 allocate the units?
 11 A I believe Mr. Zahn.
 12 MR. POWELL: Well, I'm going to interject.
 13 It's important, Mr. Orfano, that in asking
 14 these -- answering these questions you -- if you --
 15 if you are answering with after-acquired knowledge,
 16 and by after I mean after December 16th, it's
 17 important that you clarify that. And if you knew
 18 something in August of 2019 it's important to know
 19 that as well. Actually for everything.
 20 A I believe Mr. Zahn, by virtue of the
 21 resolution, was given authorization to allocate shares,
 22 but I didn't become aware of a proposed allocation until
 23 weeks ago, a couple of weeks ago.
 24 Q And in connection with the --
 25 THE WITNESS: Thank you.
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1 Q -- PUP plan there was a document -- the next in
 2 your package -- long-term performance unit agreement.
 3 (Exhibit No. 7 was marked for identification.)
 4 Q Are you familiar with this document?
 5 A Generally.
 6 Q Did you ever execute this document?
 7 A I did not.
 8 Q Was there a particular reason you did not?
 9 A The documents had not been finalized. This is
 10 a draft.
 11 Q Let me show you the next -- this was 7, and the
 12 next will become 8.
 13 (Exhibit No. 8 was marked for identification.)
 14 Q This, I understand, is a spreadsheet that was
 15 prepared by Mr. Wannemacher.
 16 Have you ever seen this spreadsheet before?
 17 A Only recently within the last two or three
 18 weeks.
 19 Q How did you come to see it within the last two
 20 or three weeks?
 21 A It was again -- I believe it was obtained by
 22 the council auditor.
 23 Q Okay.
 24 A And posted on the special investigatory
 25 committee website, I believe. I -- I -- I haven't seen
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1 these calculations.
 2 Q I'm sorry. You haven't seen them?
 3 A I haven't seen -- well, up until --
 4 Q Until then?
 5 A -- until then --
 6 Q Right.
 7 A -- I had not seen these calculations.
 8 Q I wonder if you can help my understanding,
 9 because I'm not following this very clearly.
 10 The first line on the first page is Cumulative
 11 Units Outstanding, and it says 100,000.
 12 Does that mean that there were going to be
 13 100,000 units of the PUP available at the time this
 14 document was prepared?
 15 MR. POWELL: Lanny, it's a little un- -- I
 16 mean, I mean, you're asking -- I mean, I'm just --
 17 I'm just -- for the interest of everybody, you're
 18 asking him about how a document was prepared that he
 19 doesn't know anything about. I mean, you can ask
 20 him -- can't you just ask him more, you know,
 21 clearer and almost fairer questions?
 22 MR. RUSSELL: That was very fair. I showed him
 23 the number that said the cumulative units
 24 outstanding to see if that would change his
 25 recollection about the number of units that could be
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1 issued.
 2 MR. POWELL: Okay. That's clear. Because
 3 earlier you said something about 30,000.
 4 MR. RUSSELL: That's the question I just asked.
 5 MR. POWELL: No, it's not. I mean, I don't
 6 know why you're not just rolling through this in a
 7 straightforward fashion.
 8 A Yeah, I just -- I can't -- I can't answer that.
 9 My -- my understanding was that it was 10,000 a year for
 10 three years, or 30,000 to be awarded.
 11 Q And from this document that you saw recently
 12 were you able to determine what amounts could be
 13 distributed under the PUP plan?
 14 A No.
 15 Q No, you didn't do it. Do you know if it can be
 16 done from this document?
 17 MR. POWELL: Number 8 document; right?
 18 A This is Number 8 document?
 19 Q I don't know. Just tell me.
 20 A If I spend some time. You know, I'm at heart
 21 an analyst, so if I studied this I'm certain I would be
 22 able, but I can't -- I can't give you an immediate
 23 response to this.
 24 Q Okay. I've heard descriptions of the ways of
 25 sending information at JEA is the use of a whiteboard.
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1 Are you familiar with that?

2 A There are whiteboards in virtually every, if

3 not all, senior leadership team members' offices.

4 Q And have you ever heard that the calculation of

5 a potential payout was put on a whiteboard at JEA?

6 A I'm not aware of that.

7 (Exhibit No. 9 was marked for identification.)

8 Q Let's look at Exhibit 9, please, which is a

9 small chart.

10 Have you seen this document before?

11 A Only recently.

12 Q How did you come to see this document?

13 A Within the last week. Parts of this were

14 included in a Twitter, so I went to the document itself.

15 Q Do you understand the document to show the

16 allocation of PUPs to various different positions in

17 JEA?

18 A I do. I studied this at length.

19 Q And to whom was the greatest amount of PUPs

20 going in the JEA structure?

21 A Executives.

22 Q And what was that percentage?

23 A 40 percent.

24 Q And what percent would bargaining units

25 receive?

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1 A 1 percent.

2 Q And bargaining units, that's the frontline of

3 the JEA, the people that are doing the work?

4 A There's about five different bargaining units.

5 Q Okay.

6 A There's also a Professional Employees

7 Association. It's called PEA. I believe it stands for

8 Professional Employees Association. They're a

9 bargaining unit, but they're degreed. It's a little

10 unusual.

11 Q Okay. But that professional group would have

12 been in that -- if you know -- in bargaining units used

13 in this document?

14 A I believe.

15 Q Okay.

16 MR. RUSSELL: The next one, Steve, we have is

17 10. It's a Nixon Peabody invoice.

18 MR. POWELL: Yeah.

19 (Exhibit No. 10 was marked for identification.)

20 Q You're familiar with the Nixon Peabody law

21 firm?

22 A Quite.

23 Q And why is that?

24 A They were our bond counsel dating back to 2011.

25 Q And this particular invoice is not related to

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1 bond work, is it?

2 A It is not, and this amount was included in our

3 ITN-related expenses. This was the invoice that

4 surfaced fairly late in the summertime, the end of

5 August.

6 Q The end of August of 2019?

7 A '19.

8 Q Okay. Well, that's the date of the invoice.

9 A That's the date, but I -- I don't recall seeing

10 this for a while. That might have been the date, but

11 their billing was a little bit on a lag.

12 Q Okay. And the document shows in some of the

13 highlighted portions, Mr. Orfano, you having discussions

14 with lawyers at Nixon Peabody?

15 A Correct.

16 Q And those were discussions about a long-term

17 incentive plan?

18 A That's correct.

19 Q And Nixon Peabody was doing legal research to

20 see if such a plan could be done legally for JEA?

21 A That's correct.

22 Q And you were actually involved quite a bit in

23 terms of talking with Nixon Peabody up through about --

24 let's see, I could be wrong -- April 2019, and then it

25 seems, Mr. Orfano, you stopped talking to Nixon Peabody.

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1 Is there a reason for that?

2 A For one reason or another they, Mr. Wannemacher

3 and Mr. Zahn, just decided to keep me involved with our

4 bond matters, and -- and they would proceed with this on

5 their own. They never really discussed their reason.

6 Q But it was a specific directive of Mr. Zahn

7 that you no longer participate in this matter?

8 A It wasn't specific. It just evolved over time.

9 Q Okay. And when you quit your involvement with

10 Nixon Peabody and this work do you recall where Nixon

11 Peabody was in their opinion about whether such a plan

12 could be lawful?

13 A They did quite a bit of work specifically on

14 the issuance of JEA bonds, and they were having a

15 tremendous amount of difficulty finding a path forward

16 for -- for what I deem to be, again up to the Club

17 Continental meetings, a broader incentive compensation

18 plan. And that's, I believe, how they referred to it.

19 Q Did you ever speak to anybody in JEA about what

20 the conclusion of Nixon Peabody was in connection with

21 this work?

22 A Did I speak to anybody? I recall specifically

23 a discussion with Mr. Vinyard and -- well, it was

24 principally Mr. Vinyard and Ms. Rhode, but Mr. Zahn and

25 Mr. Wannemacher were involved.

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1 They were upset that Nixon was not providing
2 them with -- with a path forward. Again, this is my
3 opinion how they -- how I viewed the situation.

4 Q Did you ever see the memorandum that was the
5 work product of Nixon Peabody?

6 A I did not. I've since read it within the
7 last -- again, the last two or three weeks. There's
8 been quite a bit of information that's come about in the
9 last two or three weeks. There's no coincidence that
10 I'm looking at it right now, I don't believe.

11 Q Well, having now read it, what's the conclusion
12 of Nixon Peabody in regards to the plan that JEA was
13 presenting?

14 A They didn't believe it was lawful.

15 Q And do you know if the plan that Nixon Peabody
16 was looking at was in the nature of what became the PUP
17 plan?

18 A It's hard to say. I can't tell you
19 specifically, because as bond counsel they were focussed
20 on a specific path toward issuing JEA bonds right --
21 right up until the Club Continental meetings. So I -- I
22 -- I would again call it more broadly defined as the
23 long-term incentive plan.

24 Q Yeah, that's what they called it, long-term
25 incentive plan.

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1 Q So you believe there wasn't a new engagement
2 letter?

3 A I don't believe there was.

4 Q Okay.

5 A No, because I believe the payment was made by
6 my treasury depart -- we were the responsible party, as
7 opposed to -- at that -- at the time.

8 Q Okay.

9 MR. POWELL: Lanny, you're talking about
10 payment of the August 28, 2019 invoice?

11 MR. RUSSELL: Yes.

12 A I believe -- I believe -- my recollection is we
13 paid that invoice out of treasury.

14 (Exhibit No. 12 was marked for identification.)

15 Q The next document I have, which will become
16 Number 12, is an invoice from Foley & Lardner dated
17 September 20, 2019.

18 MR. POWELL: Sorry. Help me out. What's
19 Number 11? You're going back and forth invoices and
20 you're not using numbers, and so I haven't seen
21 these until today and I'm just trying to keep up.

22 MR. RUSSELL: Do you want us to stop and number
23 them?

24 MR. POWELL: No, I got it. Number 12 is the
25 Foley invoice of September 20, 2019; right?

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1 MR. RUSSELL: That will be 11, please.
2 (Exhibit No. 11 was marked for identification.)

3 Q Is Nixon Peabody still bond counsel for JEA?

4 A They're under contract, but we have not been
5 utilizing them.

6 Q And I guess after this invoice you've had no
7 further involvement with Nixon Peabody in any work on a
8 long-term incentive plan?

9 A Correct.

10 Q Did you ever see an engagement letter for this
11 work by Nixon Peabody?

12 A No, I did not.

13 Q And did you authorize the payment of this
14 invoice?

15 A Yes, I did.

16 Q The invoice would have been paid by a check?

17 A We call it a check request, but probably sent
18 by either ACH or wire transfer.

19 Q Amongst all the documents we've asked for we
20 haven't seen either.

21 Do you know if there was an engagement letter
22 for this work for Nixon Peabody?

23 A We had an engage -- a preexisting engagement
24 letter, but because JEA bonds were involved it was
25 deemed to be an expense under our existing engagement.

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1 MR. RUSSELL: Yes.

2 MR. POWELL: Okay.

3 Q Were you also responsible for approving Foley's
4 invoices in connection with this matter?

5 A No.

6 Q Who did that?

7 A Ms. Rhode and Mr. Wannemacher.

8 Q And the first service -- is this -- do you know
9 -- you probably don't. Is this the first bill that

10 Foley & Lardner submitted in connection with the
11 recapitalization of the JEA or the long-term incentive
12 plan?

13 A I don't know.

14 Q Okay. I see that the date of the first billing
15 entry is 8/16/19.

16 A Yeah. It wouldn't surprise me, but having
17 looked at -- yeah, there's July dates here too. I don't
18 know for a fact.

19 MR. POWELL: There's June dates.

20 A Are there June dates in here? There are June
21 dates in here.

22 I -- I don't know if there's a prior invoice,
23 but it wouldn't be unreasonable to -- to make that
24 assumption.

25 Q So the first billing -- if this is the first

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1 bill, the first time entry on this bill by Foley &
 2 Lardner is June of '19.
 3 MR. RUSSELL: I'm going to jump around on you,
 4 Steve. I'm going to go back to Number --
 5 MR. POWELL: That's fine. Just indicate what
 6 document you're on and the number and we're good.
 7 And that will help me out. I'm mostly interested in
 8 Mr. Orfano understanding what he's being asked
 9 about.
 10 MR. RUSSELL: He's doing just fine.
 11 Q Number 10 is the bill from Nixon Peabody.
 12 What was the last entry on the Nixon Peabody
 13 bill, its date?
 14 A July 2nd.
 15 Q Thank you. Who made the decision to hire Foley
 16 & Lardner to work on the recapitalization of JEA and the
 17 long-term incentive plan?
 18 A I'm not aware.
 19 Q Is Herschel Vinyard now at JEA?
 20 A Yes.
 21 Q Do you know where Herschel Vinyard worked
 22 before coming to JEA?
 23 A It's become known to me.
 24 Q Okay. And where was he?
 25 A Foley & Lardner.
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1 Q I want make sure I go back and remember this
 2 right. You said you've never seen the Nixon Peabody
 3 memorandum?
 4 A I don't recall ever seeing it.
 5 Q Thank you.
 6 MR. POWELL: Which is attached to Number 11;
 7 correct?
 8 MR. RUSSELL: Yes.
 9 MR. POWELL: That's where I lost you earlier.
 10 You never mentioned the memo.
 11 A You never mentioned the memo itself, but I
 12 don't ever --
 13 MR. POWELL: Ever.
 14 A I don't recall ever seeing either a draft or a
 15 final version of that.
 16 (Exhibit No. 13 was marked for identification.)
 17 MR. RUSSELL: 12 is the invoice. And Number
 18 13, Steve, will be the Morgan --
 19 MR. POWELL: Don't direct this to me. Just
 20 indicate what it is.
 21 I'm the only one here with an unnumbered set of
 22 documents.
 23 MR. RUSSELL: He doesn't have numbers either.
 24 MR. POWELL: Don't talk to me. Talk to
 25 Mr. Orfano.
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1 MR. RUSSELL: He's doing fine. The only one
 2 that's confused --
 3 MR. POWELL: Lanny, if you go back in this
 4 record -- let's go off a second. We're going off.
 5 (Discussion off the record.)
 6 MR. POWELL: We can go back on. Number 13 is a
 7 July 23, 2019 letter to Mr. Zahn from somebody.
 8 BY MR. RUSSELL:
 9 Q Are you familiar with this agreement,
 10 Mr. Orfano?
 11 A I was provided with copies of the Morgan
 12 Stanley and JP Morgan engagement letters after they were
 13 executed.
 14 Q Do you know what date the JEA board of
 15 directors authorized the consideration of
 16 recapitalization of JEA?
 17 A I believe it was July 23rd.
 18 Q Do you know how this letter could be prepared
 19 on the same day?
 20 A I don't know how that's conceivable. I -- I
 21 don't know when drafts were exchanged, but --
 22 Q Do you know that drafts were in fact exchanged?
 23 A I believe drafts were exchanged.
 24 Q So those drafts were exchanged -- do you have a
 25 recollection that those drafts were exchanged well
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1 before July 23, 2019?
 2 A I believe so.
 3 Q Do you know if any of those drafts have been
 4 produced in connection with requests to produce?
 5 A I do not know.
 6 Q Were you involved in the negotiation, yourself,
 7 of this letter?
 8 A No.
 9 Q Who was?
 10 A I believe Mr. Zahn and Mr. Wannemacher.
 11 Q Do you know what services Morgan Stanley
 12 provided in connection with JEA's strategic planning?
 13 A They would have had significant input in
 14 preparation of the invitation to negotiate.
 15 Analytical -- the -- both the oversight of analytical
 16 work by the outside consultants, and also analytical --
 17 the preparation of a model themselves, and then
 18 ultimately evaluation of proposal -- of -- of responses
 19 received, and just guidance throughout the whole,
 20 whether it was an ITN or -- there was a specific task
 21 around the initial public offering, what I referred to
 22 earlier as the IPO, initial public offering, and co-op
 23 alternatives.
 24 The engagement was related to basically all the
 25 various options that were on the table at the time, and
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1 they're spelled out in the engagement letter.
 2 Q Do you recall the engagement letter providing a
 3 fee would be paid to Morgan Stanley for opinion fees?
 4 A Yes.
 5 Q Is Morgan Stanley claiming JEA owes it money
 6 for opinion fees?
 7 A To my knowledge, that fairness opinion, I don't
 8 recall a draft ever being provided.
 9 Q Okay. And -- okay. And the document also
 10 provided that fees would be paid in connection --
 11 breakup fees would be paid.
 12 Do you know if Morgan Stanley is claiming from
 13 JEA a breakup fee?
 14 A Not to my knowledge.
 15 MR. RUSSELL: That was 13, the Morgan Stanley
 16 engagement letter.
 17 Steve, the next one, 14.
 18 MR. POWELL: Lanny, talk to Mr. Orfano. He
 19 doesn't have numbers either.
 20 MR. RUSSELL: He's got the document already.
 21 MR. POWELL: I know.
 22 MR. RUSSELL: Steve, I'm just trying to help
 23 you, Bud.
 24 MR. POWELL: I don't need your help. I need
 25 you to be clear with Mr. Orfano, because that's all
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1 I care about. Okay?
 2 MR. RUSSELL: Okay. I won't talk to you
 3 anymore.
 4 MR. POWELL: That's it.
 5 (Exhibit No. 14 was marked for identification.)
 6 Q Do you have the next exhibit in front of you,
 7 sir?
 8 A Yes, sir.
 9 Q This is the JP Morgan engagement letter?
 10 A It is.
 11 Q And it was executed on July 24, 2019. Like the
 12 JP -- the Morgan Stanley agreement, was this document
 13 the subject of negotiation and drafting that occurred
 14 before July 24th?
 15 A I believe so.
 16 Q And were you involved in that?
 17 A No.
 18 Q Who was?
 19 A Mr. Zahn and Mr. Wannemacher.
 20 Q Okay. And like the Morgan Stanley document,
 21 did this document include opinion fees?
 22 A Yes, fairness opinion.
 23 Q Fairness opinion. There was none rendered, so
 24 that's not due.
 25 And did it provide for breakup fees?
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1 A It did.
 2 Q And is JP Morgan making a claim for breakup
 3 fees?
 4 A Not to my knowledge.
 5 Q Since this matter broke up, would a breakup fee
 6 be due?
 7 A No.
 8 Q Why not?
 9 A In -- in the world of mergers and acquisitions
 10 a breakup fee would be due and payable if a definitive
 11 merger agreement were executed and then one party backed
 12 out.
 13 Q Okay. Thank you.
 14 A And again, that's based on my prior knowledge
 15 of mergers and acquisitions in the investor-owned
 16 utilities base.
 17 (Exhibit No. 15 was marked for identification.)
 18 Q What was your involvement in the ITN process?
 19 A There were specific -- well, I reviewed the
 20 whole document, but there were specific sections that
 21 dealt with JEA, just information regarding JEA that we
 22 were fact checking and ensuring that the document was as
 23 accurate as possible.
 24 Q So you actually participated in drafting some
 25 of this document?
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1 A I input into certain sections.
 2 MR. POWELL: Sorry. So our record is clear, is
 3 this now Number 15 that you're asking him about?
 4 Honestly. Because you talk about this document,
 5 Lanny. You haven't identified the invitation to
 6 negotiate that he's got in front of him and he's
 7 looking at.
 8 Its's your record, man. I'm just trying to
 9 help you out now.
 10 So is this Number -- what?
 11 MR. RUSSELL: Do you want me to talk to you
 12 now, Steve?
 13 MR. POWELL: Is this Number 15?
 14 THE WITNESS: 15.
 15 MR. POWELL: I asked you a question. Is this
 16 Number 15, the ITN?
 17 MR. RUSSELL: Correct. This comes after 14.
 18 MR. POWELL: You know, dude, you can't just
 19 move from document to document, ask the guy about
 20 documents, not identify the document by title or
 21 number and then expect your record to be clear.
 22 Lanny, I don't understand what you're missing
 23 here.
 24 MR. RUSSELL: I haven't asked him about the
 25 document yet. He picked it up.
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1 MR. POWELL: He was looking at it.
 2 MR. RUSSELL: I didn't tell him to. I haven't
 3 asked him a question about the document.
 4 MR. POWELL: This is not an inquisition.
 5 MR. RUSSELL: It isn't. He started looking at
 6 it. I just asked him what --
 7 MR. POWELL: Mr. Orfano, you've been referring
 8 to what's now document Number 15 in the course of
 9 your last few answers; correct?
 10 THE WITNESS: Correct.
 11 MR. POWELL: Okay. And now that's clear, isn't
 12 it? Yes?
 13 THE WITNESS: Very.
 14 MR. POWELL: All right. Number 15.
 15 BY MR. RUSSELL:
 16 Q I asked you what involvement you had in the
 17 preparation of the document.
 18 A I would call it review, because we oversee the
 19 preparation of an annual rating agency presentation. We
 20 make -- pulling facts and figures from the rating agency
 21 presentation.
 22 I also oversee the preparation of our annual
 23 disclosure reports, or ADR's, for each system. So we
 24 wanted to ensure that the information contained in this
 25 document was consistent with what we've disclosed to the
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1 public.
 2 Q Okay. This document Number 15, I'm going to
 3 ask a specific question about the document. Did it
 4 explain in this document -- was there in this document a
 5 prohibition against bidders speaking to people at JEA
 6 who were not designated to be spoken to by bidders?
 7 A That's my under- -- yeah, that's my knowledge.
 8 Q Are you aware of any bidders who violated that
 9 prohibition?
 10 A No.
 11 Q Okay. Were you involved in the evaluation of
 12 the bids that came out of Exhibit 15?
 13 A Yes.
 14 Q And what was your role there?
 15 A I was one of the evaluators.
 16 Q Were you one -- in connection with the ITN
 17 actual process itself, were you one of the subject
 18 matter experts who appeared and spoke to the bidders?
 19 A No.
 20 Q Do you recall in the invitation to negotiate,
 21 Exhibit 15 --
 22 A 15.
 23 Q -- if the satisfaction of the plant vogle
 24 liability was a condition of a bid?
 25 A I don't recall.

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1 Q As an evaluator --
 2 MR. RUSSELL: I think we're done with 15.
 3 (Exhibit No. 16 was marked for identification.)
 4 Q Next document you have is an evaluator score
 5 sheet, Exhibit 16. And let me just make sure I have all
 6 the evaluators.
 7 Julie Crawford as an evaluator?
 8 A Correct.
 9 Q I'll mess up his name. Sean Eads --
 10 A Eads.
 11 Q -- was an evaluator?
 12 A That's correct.
 13 Q Jim -- Jon Kendrick was an evaluator?
 14 A That's correct.
 15 Q And you were an evaluator?
 16 A That's correct.
 17 Q And then I think also Jordan Pope was an
 18 evaluator?
 19 A That's correct.
 20 Q Okay. In connection with doing the evaluations
 21 that were done in this document, what instructions were
 22 you given?
 23 A We were instructed to -- well, we were given --
 24 we were given this matrix, and to evaluate the proposals
 25 based on this specific matrix.
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1 Q But were you given any directions on how to
 2 actually do the scoring in the document, how you would
 3 write the bid issue, whatever it would be?
 4 A I believe that there was a separate scoring
 5 guide. I do recall seeing another document that we used
 6 as a basis for evaluating the proposals.
 7 Q How were you selected to become an evaluator?
 8 A It really wasn't delineated.
 9 Q Do you recall the amount of time you spent
 10 completing your evaluation of these bidders,
 11 approximately?
 12 A Approximately two and-a-half days.
 13 Q In connection with doing the evaluation were
 14 you permitted to talk to other evaluators?
 15 A No.
 16 MR. RUSSELL: Give Exhibit 16 to the court
 17 reporter.
 18 (Exhibit No. 17 was marked for identification.)
 19 Q And 17 is a table of bidder code names, and in
 20 looking at those names, Mr. Orfano, I see that Reply 13
 21 doesn't have a name. It says Respondent A.
 22 Do you know why that was?
 23 A My recollection is that they had not provided
 24 the authorization to release their name.
 25 (Exhibit No. 18 was marked for identification.)
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1 Q And the next document, which will be 18, is the
2 average bidder score sheet?
3 A Yes, sir.
4 Q And Respondent A, if I'm reading this right,
5 shows that it was ranked -- its score was number one?
6 A I'm sorry. I'm not following.
7 Q Look at Reply 13, next to it says Respondent A.
8 A 13. Okay.
9 Q If you go across you'll see its rank in terms
10 of bidding is number one.
11 Was the name of that bidder subsequently
12 authorized to be released?
13 A That's a good question. I'm not certain it was
14 ever -- they ever authorized that.
15 Q Do you know if that entity identified here as
16 Respondent A, after being ranked number one in the
17 initial screening, did it continue with the process and
18 make a bid?
19 A I -- I don't recall.
20 Q Okay.
21 A And I'm under confidentiality as to Respondent
22 A.
23 Q Okay.
24 A And I believe I'm still bound by that
25 confidentiality.

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1 MR. RUSSELL: That's all I have on 18.
2 (Exhibit No. 19 was marked for identification.)
3 Q The next document, which will be Exhibit 19, is
4 an ADP letter of intent.
5 Are you familiar with this letter, Mr. Orfano?
6 A No, I'm not.
7 Q Were you aware of any effort by JEA to begin in
8 October of 2019 outsourcing its payroll?
9 A I was in an initial meeting.
10 Q What was the purpose of JEA outsourcing its
11 executive -- actually let me be precise -- the payroll
12 for appointed employees?
13 A My understanding at the time was that it could
14 be outsourced more economically than processing
15 appointed payroll internally.
16 Q Do you know if the ADP outsourcing had anything
17 to do with the performance unit plan?
18 A Not specifically.
19 Q Well, then generally.
20 A Generally I understand that they could have
21 accommodated the processing of the performance units.
22 Q And did there come a point in time when JEA
23 stopped pursuing outsourcing of appointed employees
24 payroll?
25 A Yes.

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1 Q Okay. Do you recall when that was?
2 A November 2019, approximately.
3 Q And was that after the PUP had been postponed?
4 A I can't recall specifically.
5 Q And the PUP, after being postponed, without
6 recalling specifically, it was subsequently terminated?
7 A It was.
8 MR. RUSSELL: The next document is a Nelson
9 Mullins report, and I don't have any questions for
10 that, so we're not going to mark it, and you can
11 remove it from your package.
12 MR. POWELL: Okay.
13 MR. RUSSELL: I'll put it over here.
14 THE WITNESS: Thank you.
15 (Exhibit No. 20 was marked for identification.)
16 Q And the next document should be a single-page
17 e-mail authored by you, Mr. Orfano?
18 A Yes.
19 Q And it's to Alyssa B. Petersen.
20 Who is Alyssa Petersen?
21 A At the time she was a financial associate.
22 Q Okay. And the date of this e-mail is
23 August 15, and you're quoting, I guess, or relaying what
24 Mr. Zahn had told you about what would happen with the
25 money received from the privatization or sale of JEA?

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1 A Yes. Generally familiar with the e-mail.
2 Q When it says that "CEO Aaron Zahn says", was
3 this something he said to you particularly, or to a
4 group?
5 A I think after the point in time that this was
6 written the mayor's comment became clear to me, and --
7 but -- but I believe this is generally correct, that the
8 City would be able to eliminate both their general
9 enterprise and better Jax. They had about 2.2 billion
10 of debt outstanding, which would -- which would free up
11 that money in annual debt service payments.
12 So I believe I took that quote right from a
13 news story. I don't recall specifically why I would
14 have sent this e-mail.
15 Q That was my next question. What motivated you
16 at this point in time?
17 A I don't know.
18 Q Okay. And the quote now that I think you just
19 recognized, I didn't see it until now, was actually the
20 mayor's quote.
21 Was Aaron Zahn repeating what Mayor Curry had
22 said, or did you see the article?
23 A I saw the article, but I don't remember Aaron
24 talking specifically about it.
25 Q Okay. And you don't have a recollection of

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1 what motivated you to say it in this memo at this time?
 2 A Apologies. I don't recall why I would have.
 3 MR. POWELL: Let me ask this so I'm clear,
 4 Mr. Orfano. Is -- is the entire -- is -- is -- is
 5 all of the text of the e-mail a lift from a
 6 newspaper article?
 7 THE WITNESS: I believe so, but it's -- it's --
 8 I believe that I would have been able to
 9 substantiate this -- well, I have to believe this
 10 was all media driven. I wouldn't have quoted Mayor
 11 Curry without seeing something specifically about
 12 it.
 13 In fact, I do recall going and looking at -- I
 14 forget what. It could have been -- it was a media
 15 story, because the mayor was talking specifically
 16 about debt reduction.
 17 MR. POWELL: Well, I just -- I just want to
 18 give -- make sure it's clear so there's no confusion
 19 down the road, because somebody picking this up
 20 and -- and reading it without asking --
 21 THE WITNESS: I don't.
 22 MR. POWELL: Hold on, Mr. Orfano.
 23 THE WITNESS: Sorry.
 24 MR. POWELL: Somebody picking up your e-mail,
 25 Number 20, and reading it could read this that CEO
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1 Aaron Zahn said to you.
 2 And so my question is, is this -- is all of the
 3 text of this essentially a lift from a newspaper
 4 article that you, for reasons that you can't now
 5 recall, sent on to Alyssa Petersen without any
 6 comment?
 7 THE WITNESS: The 3 billion dollars, to be -- I
 8 have -- the 3 billion dollars was a minimum
 9 requirement of the ITN. So that was one of the
 10 minimum requirements. So that's a fact. That's
 11 right in the ITN document.
 12 But then how the City would utilize that
 13 3 billion dollars was pulled from -- from media
 14 reports.
 15 MR. POWELL: Oh.
 16 THE WITNESS: Does that --
 17 MR. POWELL: That helps explain it to me.
 18 THE WITNESS: But the 3 billion was a minimum
 19 requirement of the ITN, and we evaluated that as
 20 part of the process.
 21 Q Okay. That 3 billion cash payment, I think I
 22 may have asked this before, but does that mean that they
 23 could -- the bidder could pay 3 billion dollars and left
 24 the city with plant vogtle liabilities?
 25 A Are you asking an opinion?
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1 Q No. If you don't know, just tell me you don't
 2 know.
 3 A Yeah, I don't know.
 4 Q So when they -- well, I think you answered the
 5 question.
 6 A What I do know -- I'll tell you what I do know.
 7 Q Okay.
 8 A Because I think it's more pertinent
 9 information, is that the bidders could have proposed
 10 taking on that liability, assuming that liability, or
 11 bidding as if the City was going to take that on.
 12 Q And those two choices would have affected the
 13 relative ranking of those bids. It makes a lot of
 14 difference in terms of the value to the City.
 15 A Absolutely.
 16 Q And did one of the bidders, do you recall,
 17 decline to accept the plant vogtle liability?
 18 A At what point in time? As part of the initial
 19 evaluation?
 20 Q No. I think it was part of the final bid.
 21 A I don't recall. Not being involved in that
 22 negotiation process, I don't know.
 23 (Exhibit No. 21 was marked for identification.)
 24 Q Look at, please -- this will be Exhibit 21. It
 25 says Project Freebird.
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1 Are you familiar with this document?
 2 A I recall having seen it.
 3 Q Do you recall the circumstances? Did you see
 4 it at perhaps the meeting at Club Continental?
 5 A I can't specifically remember, but it was
 6 produced in July, so...
 7 Q And I have a very limited question on this
 8 document. If you will look at page 9 of the document --
 9 I'm sorry -- page 7.
 10 A 7.
 11 Q All right.
 12 A These numbers are just --
 13 Q Sorry. It's the best copy I could get.
 14 A Let me do this. Okay. I'm with you.
 15 Q And the question I wanted to ask: In
 16 connection with this document when it was prepared the
 17 last event that was going to occur in March of 2020 was
 18 the board's approval of a transaction.
 19 Do you see that on the chart?
 20 A I do.
 21 Q And was that date moved up to a different date?
 22 A Only based on what I've read in media reports.
 23 Q Okay. Do you know who moved the date?
 24 A I don't.
 25 Q Thank you.
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1 MR. RUSSELL: I don't have any questions for
2 the last exhibit. We will go off the record.
3 (The examination concluded at 4:45 p.m.)

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1 REPORTER'S DEPOSITION CERTIFICATE

2
3 STATE OF FLORIDA)
4 COUNTY OF DUVAL)

5 I, Terry T. Hurley, Registered Professional
6 Reporter, certify that I was authorized to and did
7 stenographically report the deposition of JOSEPH ORFANO;
8 that a review of the transcript was requested; and that
9 the transcript is a true and complete record of my
10 stenographic notes.

11 I further certify that I am not a relative,
12 employee, attorney, or counsel of any of the parties,
13 nor am I a relative or employee of any of the parties'
14 attorney or counsel connected with the action, nor am I
15 financially interested in the action.

16 DATED this 20th day of May 2020.
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25

Terry T. Hurley, RPR

Hedquist & Associates Reporters, Inc.

1 CERTIFICATE OF OATH

2
3
4
5 STATE OF FLORIDA)
6)
7 COUNTY OF DUVAL)

8
9
10 I, the undersigned authority, certify that
11 JOSEPH E. ORFANO personally appeared before me and was
12 duly sworn.

13
14 WITNESS my hand and official seal this 21st day
15 of May 2020.
16
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Terry T. Hurley, RPR

Hedquist & Associates Reporters, Inc.

1 ERRATA SHEET

2 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

3 In re: Jacksonville City Council/Special Investigatory
4 Committee on JEA Matter
Date of deposition: May 19, 2020

5 PAGE NO. LINE NO. CHANGE REASON

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21
22 Under penalties of perjury, I declare that I have read
23 my deposition and that it is true and correct, subject
to any changes in form or substance entered here.

24 DATE _____ JOSEPH ORFANO
25 (th)

Hedquist & Associates Reporters, Inc.