

1 (Case Caption Continued)

2 THE PUBLIC SERVICE COMMISSION
3 OF SOUTH CAROLINA
4 DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E

5 IN RE: Friends of the Earth and Sierra Club,
6 Complainant/Petitioner vs. South Carolina
7 Electric & Gas Company,
8 Defendant/Respondent

9 IN RE: Request of the South Carolina Office of
10 Regulatory Staff for Rate Relief to SCE&G
11 Rates Pursuant to S.C. Code Ann. § 58-27-920

12 IN RE: Joint Application and Petition of South
13 Carolina Electric & Gas Company and
14 Dominion Energy, Incorporated for Review
15 and Approval of a Proposed Business
16 Combination between SCANA Corporation and
17 Dominion Energy, Incorporated, as May Be
18 Required, and for a Prudency Determination
19 Regarding the Abandonment of the V.C. Summer
20 Units 2 & 3 Project and Associated Customer
21 Benefits and Cost Recovery Plans
22
23
24
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1 MONDAY, OCTOBER 29, 2018, GREENVILLE, SOUTH CAROLINA

2 P R O C E E D I N G S

3 -oOo-

4 VIDEOGRAPHER: Good morning. Today's date
5 is October 29th, 2018, and the time is 9:08 a.m.
6 The witness is Kevin Marsh.

7 Would the counsel please identify
8 themselves and whom they represent. Then the
9 witness will be sworn in by the court reporter,
10 after which we may proceed.

11 MR. COX: Jim Cox appearing on behalf of
12 the South Carolina Office of Regulatory Staff in
13 the consolidated PSC proceedings and the State
14 Court litigation.

15 MR. GALVIN: Greg Galvin. I represent the
16 plaintiff ratepayers.

17 MR. BELL: Edward Bell representing the
18 plaintiff ratepayers.

19 MS. SULPIZIO: Gabrielle Sulpizio
20 representing the plaintiff ratepayers.

21 MR. SOLOMONS: Gibson Solomons for the
22 customer class.

23 MR. ELLERBE: Frank Ellerbe for Central
24 Electric Cooperative and the Electric
25 Cooperatives of South Carolina in the

1 consolidated PSC proceedings.

2 MS. MOODY: Leah Moody, SCANA and SCE&G.

3 MS. HODGES: Bryony Hodges, in-house
4 counsel for SCANA.

5 MR. CHALLY: I'm Jon Chally with King &
6 Spalding, also representing SCE&G and SCANA.

7 MR. WATKINS: Jon Watkins with Cadwalader
8 on behalf of the witness Kevin Marsh.

9 MR. HAIR: Brady Hair on behalf of Kevin
10 Marsh.

11 MS. TOMPKINS: Anne Tompkins with
12 Cadwalader on behalf of the witness, Kevin
13 Marsh.

14 MR. HUBBARD: William Hubbard on behalf of
15 Santee Cooper.

16 MR. COX: Telephone appearances?

17 MS. KING: Ariail King from Lewis Babcock
18 for the plaintiff ratepayers.

19 MR. SMITH: Emory Smith for the State of
20 South Carolina in the Lightsey case and for the
21 State, Alan Wilson, Attorney General, in the PSC
22 proceedings.

23 And John Williams will be substituting for
24 me for part of the coverage of the deposition.

25 MR. SCHMALZBACH: Brian Schmalzbach,

1 S-c-h-m-a-l-z-b-a-c-h, of McGuire Woods, LLP,
2 representing Dominion Energy, Incorporated, in
3 the PSC proceedings.

4 MR. HALTIWANGER: Dan Haltiwanger of the
5 Richardson Patrick Westbrook and Brickman Law
6 Firm for the plaintiff class.

7 KEVIN MARSH

8 being first duly sworn, testified as follows:

9 MR. COX: Was there another appearance on
10 the phone?

11 MR. SMITH: This is Emory Smith. I was
12 just going to tell the court reporter that I do
13 not need a deposition copy or video copy.

14 MR. COX: Duly noted.

15 EXAMINATION

16 BY MR. COX:

17 Q. Good morning, Mr. Marsh.

18 A. Good morning.

19 Q. Mr. Marsh, can you go ahead and spell your
20 name again for the record, spelling out your last
21 name?

22 A. My name is Kevin Marsh, M-a-r-s-h.

23 Q. Mr. Marsh, my name is Jim Cox. We met
24 just before your deposition began. I am an attorney
25 that represents the South Carolina Office of

1 Regulatory Staff in a couple different proceedings.

2 One set of proceedings is a consolidated
3 proceeding in front of the South Carolina Public
4 Service Commission that is set to go to a hearing on
5 Thursday of this week, November 1st. The second
6 proceeding in which I represent the ORS is a State
7 Court litigation brought by customers of SCE&G and
8 Santee Cooper against the companies, those companies.

9 And now is the time set for your
10 deposition in these actions, which has been noticed
11 in both of those actions.

12 I wanted to start just by providing you a
13 little background on how a deposition works. Have
14 you ever had your deposition taken before?

15 A. I have done one. It's been a number of
16 years ago; but, yes, I've done deposition before.

17 Q. Was -- that deposition that you had
18 before, was that related to your professional career?

19 A. It was. It was related to a matter that
20 SCE&G was involved in at the time.

21 Q. And what was the nature of SCE&G's
22 involvement in that litigation?

23 A. From what I recall, it regarded some of --
24 I guess it was actually SCANA's activities, not
25 SCE&G's, some of our telecommunications subsidiaries'

1 activities. And I was called to give testimony as
2 the company's chief financial officer.

3 Q. Do you remember about what year that
4 testimony you provided occurred?

5 A. I don't recall. It's been a number of
6 years ago.

7 Q. Okay. It was before you became the CEO of
8 SCANA and SCE&G, correct?

9 A. Yes, it was.

10 Q. And what year did you become the CEO of
11 SCANA and SCE&G?

12 A. Late 2011. I believe it was December of
13 2011.

14 Q. That litigation in which you gave a
15 deposition, was SCANA a defendant in the lawsuit?

16 A. I don't know if a lawsuit had been filed
17 at that point. I believe it had. I don't recall the
18 details of the situation.

19 Q. Do you know how that proceeding was
20 resolved?

21 A. I don't recall.

22 Q. Okay. Just to go back over how a
23 deposition works since it's been a while since that
24 deposition -- and just to be clear, that was the only
25 deposition you've had before today?

1 A. That's the only one I can recall, yes.

2 Q. And you've given sworn testimony before
3 the South Carolina Public Service Commission on
4 several occasions; is that right?

5 A. Yes, I have.

6 Q. Have you given testimony, sworn testimony,
7 before any other bodies besides the South Carolina
8 Public Service Commission?

9 A. I have testified before the Federal Energy
10 Regulatory Commission. I believe that was in 1986.

11 And I've also testified before the members
12 of the House committee and Senate committees related
13 to the abandonment of the nuclear plant.

14 Q. Other than that testimony before the House
15 and Senate regarding abandonment, have you ever
16 testified before the South Carolina House or Senate
17 on any other occasions?

18 MR. WATKINS: Objection to form.

19 THE WITNESS: I don't recall testifying
20 before them on any other occasions. I don't
21 recall doing that.

22 BY MR. COX:

23 Q. Was that testimony that you gave regarding
24 abandonment, was that to the South Carolina House or
25 to the Senate, or do you know?

1 MR. WATKINS: Objection to form. It's
2 compound.

3 THE WITNESS: Yeah. Both the House and
4 the Senate had formed special committees to do
5 an investigation of the circumstances around the
6 abandonment of the nuclear project. So both --
7 both groups held hearings, and I testified one
8 time before each group.

9 BY MR. COX:

10 Q. So is that a total of two occasions that
11 you testified?

12 A. Yes. Two occasions including both groups,
13 not two to each group.

14 Q. So just to be clear, you testified once to
15 the House group and once to the Senate group; is that
16 correct?

17 A. That's correct.

18 Q. I'll be asking you questions today, and
19 other attorneys will as well.

20 You understand that the oath that you just
21 took from the court reporter is the same oath that
22 you would take in a courtroom and carries the same
23 penalty of perjury? Do you understand that?

24 A. I understand that.

25 Q. If at any point in time you don't

1 understand a question that I ask, if it's confusing
2 in some respect -- for example, if it -- you're not
3 sure of the time period I'm talking about or whether
4 I'm asking about your personal knowledge or what the
5 company knew -- you are certainly free to let me know
6 that you do not understand the question, and I can
7 try to improve that question.

8 I won't realize that you don't understand
9 a question, though, if you don't tell me that. So if
10 you don't understand a question I ask, will you let
11 me know?

12 MR. WATKINS: Objection to the form of the
13 question.

14 THE WITNESS: I will certainly do my best
15 to do that.

16 BY MR. COX:

17 Q. If you need a break at any point in time
18 today, we can take a break. I'll just ask that you
19 answer the question that I have pending to you.

20 But again, I won't know that you need a
21 break unless you let me know. Will you let me know
22 if you need a break?

23 A. Yes, I will.

24 Q. You're free at any time to go back and
25 correct any testimony that you provide today if you

1 realize that an answer you gave might have been
2 incomplete or incorrect.

3 Do you understand that?

4 MR. WATKINS: Objection to form.

5 THE WITNESS: Yes, I do.

6 BY MR. COX:

7 Q. I don't want to know about any
8 conversations you had with your attorneys. But other
9 than that, I would like to know what steps you took
10 to prepare for your deposition today.

11 MR. WATKINS: And, Kevin, when answering
12 this question, of course don't divulge the
13 substance of any communications with your
14 lawyers.

15 THE WITNESS: Okay. I had a series of
16 meetings with my lawyers. We reviewed a number
17 of documents to attempt to refresh my memory.

18 BY MR. COX:

19 Q. Anything else that you did?

20 A. Other than reviewing documents and having
21 discussions with my attorneys, no.

22 Q. Did you talk to anyone other than your
23 attorneys to prepare for your deposition today?

24 A. I have not.

25 Q. Did you meet with the attorneys for SCE&G

1 to prepare for your deposition?

2 A. I had two meetings with an attorney from
3 SCE&G in preparation for the deposition.

4 Q. What documents did you review to prepare
5 for your deposition?

6 (Instruction not to answer.)

7 MR. WATKINS: I'm going to instruct the
8 witness not to answer that question.

9 If -- your attorney selected documents, so
10 I instruct the witness not to answer. It
11 reflects our work product, of course.

12 BY MR. COX:

13 Q. Did those documents that you reviewed
14 refresh your recollection about events that occurred
15 when you were the CEO and -- the CEO of SCANA and
16 SCE&G?

17 MR. WATKINS: I'm going to object to the
18 form of the question.

19 If there's a particular document you'd
20 like to ask whether it refreshed, that's fine.
21 But to ask all documents, whether they
22 refreshed, I don't think that's a fair question.

23 I object to the form of that question.

24 BY MR. COX:

25 Q. Did any document that you reviewed refresh

1 your recollection about the events that occurred when
2 you were the CEO of SCANA and SCE&G?

3 A. I don't remember a particular document.
4 We reviewed a number of documents. I don't recall a
5 particular document.

6 If there's a particular document you have
7 you'd like for me to look at, I'd be glad to do that,
8 but I don't have any particular memories about
9 specific documents.

10 Q. Did you look at any document and, upon
11 review of that document, you realized that it
12 refreshed your recollection about events that
13 occurred in respect to the V.C. Summer Unit 2 and
14 Unit 3 project?

15 MR. WATKINS: Objection to the form of the
16 question.

17 THE WITNESS: I don't. Not necessarily,
18 no.

19 BY MR. COX:

20 Q. So is it fair to say that all the
21 documents you reviewed, when you looked at them, that
22 you had already recalled everything that was in those
23 documents before you looked at them?

24 MR. WATKINS: Objection to form of the
25 question. It mischaracterizes the witness's

1 testimony.

2 THE WITNESS: Some of the documents I was
3 familiar with already during -- that I had seen
4 during other preparations. Other documents that
5 were presented to me, I had no recollection of
6 seeing those before.

7 BY MR. COX:

8 Q. And that's fair enough. Was there any
9 document that you looked at and, upon reading it, you
10 realized that there was a fact in that document that
11 you had forgotten had occurred during the course of
12 the V.C. Summer Unit 2 and Unit 3 project?

13 MR. WATKINS: Objection to the form. It's
14 vague. It's ambiguous. It's been asked and
15 answered.

16 MR. CHALLY: Object to form.

17 THE WITNESS: I don't know of a particular
18 document or statement in the document. I'd have
19 to see what document and what statements.

20 BY MR. COX:

21 Q. Did your attorneys bring the documents to
22 this preparation session that you reviewed?

23 A. I'm assuming they did. They presented to
24 me -- presented them to me in the session. I
25 didn't -- I didn't bring the documents.

1 Q. Fair enough.

2 A. Yeah.

3 Q. I'll be referring at times to the
4 construction of the V.C. Summer Unit 2 and Unit 3
5 reactors, and instead of referring to that project by
6 that entire title, I will be referring just to "the
7 project."

8 If I refer to "the project," will you
9 understand that I'm referring to the V.C. Summer
10 Unit 2 and Unit 3 construction project?

11 MR. WATKINS: Objection to form.

12 THE WITNESS: I believe I understand that.

13 BY MR. COX:

14 Q. And if I refer to "the Commission" during
15 your testimony, can we reach an agreement that when I
16 use that term, you'll understand that I'm referring
17 to the South Carolina Public Service Commission?

18 A. Yes.

19 Q. And you understand that "the ORS" stands
20 for the South Carolina Office of Regulatory Staff,
21 correct?

22 A. I do.

23 Q. Did you read any deposition transcripts of
24 witnesses who have had their deposition taken in this
25 action, to prepare for this deposition?

1 MR. WATKINS: Kevin, I'll caution you on
2 that. You may answer that yes or no, but not
3 divulge the nature of any transcript selected,
4 if any, selected by your counsel for you to
5 review in preparation.

6 THE WITNESS: I have not reviewed any
7 transcripts given by others in depositions.

8 BY MR. COX:

9 Q. Did you review your prior testimony to the
10 Commission in preparation for your deposition today?

11 MR. WATKINS: Objection to form. Vague
12 and ambiguous.

13 THE WITNESS: I don't know specifically
14 which testimony you're referring to. I've given
15 quite a bit of testimony to the Commission.

16 BY MR. COX:

17 Q. And I'm referring to any of it. Did you
18 review any of that testimony to the Commission in
19 preparation for your deposition?

20 A. I've reviewed some of the testimony I gave
21 in connection with the project.

22 Q. And that was testimony to the Commission,
23 correct?

24 A. That was testimony to the Commission.

25 Q. Did you review the testimony you gave in

1 the docket in which SCE&G requested approval from the
2 Commission to construct the project?

3 MR. WATKINS: Objection to form.

4 THE WITNESS: I don't recall viewing that
5 testimony specifically. I may have reviewed
6 portions of the testimony. I don't -- I don't
7 recall reading all of it.

8 BY MR. COX:

9 Q. Did you review testimony that you provided
10 to the Commission in 2015 in connection with the
11 project?

12 A. Yes, I did.

13 Q. Did you review testimony that you provided
14 to the Commission in 2016 in connection with the
15 project?

16 A. Yes, I did.

17 Q. What is your current employment,
18 Mr. Marsh?

19 A. I am not currently employed.

20 Q. What was your last job?

21 A. My last job was as the CEO of SCANA
22 Corporation.

23 Q. Were you also the CEO of South Carolina
24 Electric & Gas as well?

25 A. Yes. The way the corporate structure is

1 done -- was done at that time was, if you were CEO of
2 SCANA, you were also CEO of all the operating
3 subsidiaries.

4 Q. And what were the operating subsidiaries
5 that you were also CEO of?

6 A. The principal ones would have been South
7 Carolina Electric & Gas Company, SCANA Energy, Public
8 Service -- PSNC Energy.

9 There were some smaller ones that I don't
10 recall specific names for, but those were the primary
11 operating companies of SCANA Corporation.

12 Q. SCANA itself is a holding company; is that
13 correct?

14 A. Yes, it is.

15 Q. You became CEO of SCANA, I think you said,
16 in 2011; is that correct?

17 A. I believe I said December of 2011.

18 Q. Did you also become CEO of all of those
19 holding companies at the same time?

20 MR. WATKINS: Objection to form.

21 THE WITNESS: Yeah. The other companies
22 were not holding companies. They were -- they
23 were operating companies.

24 To my knowledge, that all took place at
25 the same time.

1 BY MR. COX:

2 Q. How were you selected to become CEO, to
3 your knowledge?

4 A. That -- that determination is made by the
5 board of directors.

6 Q. The board of directors of SCANA, correct?

7 A. That's correct.

8 Q. And who notified you that you were
9 selected as CEO?

10 A. I don't -- I don't recall specifically who
11 told me at the time.

12 Q. Who was the chairman of the board at the
13 time that you became CEO of SCANA?

14 A. Well, Bill Timmerman, the previous CEO,
15 was also chairman of the board of SCANA. So until he
16 was -- he was fully retired and I took over, he would
17 technically still be the chairman of the board, so I
18 took over when he stepped down.

19 Q. Do you know if Mr. Timmerman had a role in
20 your selection as CEO of SCANA?

21 A. I'm confident he had conversations with
22 the board about my -- my responsibilities and
23 capabilities.

24 Q. Were you involved in any exit agreement
25 that Mr. Timmerman had with SCANA when he retired as

1 CEO of SCANA?

2 MR. WATKINS: Objection to form.

3 MR. CHALLY: Objection.

4 THE WITNESS: Yeah. I was not involved in
5 any agreements regarding Mr. Timmerman's
6 retirement, any special agreements, other than
7 normal contractual agreements that were already
8 in place.

9 BY MR. COX:

10 Q. Can you give an example of what you mean
11 by "normal contractual agreements"?

12 A. I mean he was -- he was a member of the
13 SCANA Corporation Retirement Plan and other benefit
14 plans just as any other employee would be a member
15 of. So to the extent I was involved in making sure
16 those plans were -- or activities related to those
17 plans were handled properly, I could have been
18 involved in some of those, but no special agreements.

19 Q. So you were not involved in the
20 negotiation or execution of any consulting agreement
21 that Mr. Timmerman received after he left his
22 position as CEO of SCANA?

23 MR. CHALLY: Object to form.

24 MR. WATKINS: Objection to form.

25 THE WITNESS: Yeah. I did not negotiate

1 or participate in the development of the
2 agreement.

3 BY MR. COX:

4 Q. Did Mr. Timmerman continue to be the
5 chairman of the board after he retired as CEO of
6 SCANA?

7 A. No, he did not.

8 Q. So he was no longer a member of the board
9 after you became CEO; is that correct?

10 A. Right. When he retired, he was no longer
11 a member of the board nor was he chairman of the
12 board.

13 Q. Who became the chairman of the board after
14 Mr. Timmerman retired?

15 A. I did.

16 Q. How long were you the chairman of the
17 board?

18 A. From December of 2011 until I retired on
19 January 1st, 2018.

20 Q. To your knowledge, how were you selected
21 to become chairman of the board?

22 MR. WATKINS: Objection to form.

23 THE WITNESS: I don't know all of the
24 criteria that the board considered. I did make
25 a presentation to the board regarding my -- my

1 experience in issues related to the company
2 going forward, and they took that into
3 consideration, but I don't know other factors
4 they might have considered.

5 BY MR. COX:

6 Q. To your knowledge, were you selected to
7 become chairman of the board at the same time you
8 were selected to become CEO of the company?

9 A. Yes.

10 Q. In your time at SCANA, has the CEO of
11 SCANA always been the chairman of the board as well?

12 MR. WATKINS: Objection to form.

13 THE WITNESS: To the best of my
14 recollection, I believe that's been the case.

15 BY MR. COX:

16 Q. What position did you hold prior to
17 becoming the CEO of SCANA?

18 A. I was the president of SCANA Corporation.

19 Q. And how long did you hold that position?

20 A. I don't recall specifically. It was
21 announced in early 2011 that Mr. Timmerman was going
22 to retire. And at that point, the board elected me
23 president as an interim step before I became CEO at
24 the end of the year in 2011. But I don't recall a
25 specific date that that took place.

1 Q. To your knowledge, why did the board
2 consider that an interim step, you becoming the
3 president?

4 MR. WATKINS: Objection to form.

5 THE WITNESS: I can't speak to the reasons
6 the board decided to do it that way.

7 BY MR. COX:

8 Q. Why did you describe it as an "interim
9 step"?

10 A. Because it was to cover an interim period
11 between the time I was named president of SCANA and
12 before I became CEO later in the year. That was the
13 interim period I referred to.

14 Q. So is it correct to say that when you were
15 named the interim president, you were aware at that
16 time that you would become the CEO of the company?

17 MR. WATKINS: Objection to form of the
18 question.

19 MR. CHALLY: Same.

20 THE WITNESS: Yes.

21 BY MR. COX:

22 Q. And can you state again, to the best of
23 your recollection, when you were named president of
24 SCANA?

25 A. I don't recall the specific date.

1 Q. Is it early 2011, you said?

2 A. It was --

3 MR. WATKINS: Objection to form. Asked
4 and answered.

5 THE WITNESS: It was in the early part of
6 the year.

7 BY MR. COX:

8 Q. What position did you hold prior to
9 becoming president of SCANA?

10 A. I was the president of South Carolina
11 Electric & Gas Company.

12 Q. During what time period did you hold that
13 position?

14 A. I believe I assumed that position in 2006.
15 I don't recall the specific date, but I believe it
16 was in 2006.

17 Q. And you held that position until early
18 2011?

19 A. Yes.

20 Q. Were you a SCANA employee when you were
21 the president of SCE&G?

22 A. Yes, I was.

23 MR. CHALLY: Object to form.

24 BY MR. COX:

25 Q. When you were president of SCANA in 2011,

1 were you also an employee of SCE&G?

2 MR. CHALLY: Same objection.

3 THE WITNESS: I was an employee of SCANA
4 Corporation all -- to the best of my knowledge,
5 all during that period. But my assigned
6 responsibilities were as president of South
7 Carolina Electric and Gas Company.

8 BY MR. COX:

9 Q. And I'm referring now to the time period
10 in 2011 when you were the president of SCANA on an
11 interim basis, were you also an officer or employee
12 of SCE&G?

13 MR. CHALLY: Object to form.

14 MR. WATKINS: Objection to the form of the
15 question. It's asked and answered. It's
16 compound. And I also object to the extent it
17 calls for a legal conclusion.

18 THE WITNESS: I was -- you know, while I
19 was president of SCANA Corporation, I may also
20 have been president of SCE&G. I don't recall
21 when that title dropped off. I could have
22 held -- I might have held both of those titles
23 at the same time. I just don't recall.

24 But it all -- both of the -- all during
25 that period, I was a SCANA employee.

1 BY MR. COX:

2 Q. So is it correct to say that in 2006, you
3 became the president of SCE&G; and then in 2011, you
4 became the president of SCANA and you might also
5 still have been the president of SCE&G while you were
6 the president of SCANA?

7 MR. WATKINS: Object to the form of the
8 question. It's compound. It's vague and
9 ambiguous.

10 THE WITNESS: That may have been the case.
11 I just don't recall.

12 BY MR. COX:

13 Q. Before you became president of SCE&G, what
14 was your job position?

15 A. I was the chief financial officer for
16 SCANA Corporation.

17 Q. During what time period did you hold that
18 position?

19 A. I believe that was from 1996 until 2006.

20 Q. Were you also the CFO of SCE&G at that
21 time?

22 A. Yes. And at that time, what I recall is
23 if you were CFO of SCANA Corporation, you were also
24 the CFO of all of the operating subsidiaries.

25 Q. Did you hold any other titles with the

1 company during the time period that you were CFO?

2 MR. WATKINS: Objection to form. It's
3 vague and ambiguous.

4 BY MR. COX:

5 Q. Yeah. That question might have been vague
6 when I used the phrase "company" because we're
7 talking about two different companies. Let me go
8 ahead and rephrase that question.

9 Did you hold any other job titles with
10 SCE&G and SCANA during the time period that you were
11 the CFO of SCANA?

12 A. My memory is that while I was CFO of
13 SCANA, I was also a vice president of SCANA. I was
14 senior VP and vice president of SCANA and chief
15 financial officer.

16 During that period -- for about an
17 18-month period starting in 2001 moving into 2002, I
18 also served as president of PSNC Energy, one of our
19 operating subsidiaries. I held both of those titles
20 concurrently.

21 Q. Have you ever provided testimony to the
22 North Carolina Public Service Commission?

23 A. I believe I testified -- I believe I
24 testified at the time SCANA Corporation acquired PSNC
25 Energy. That's my memory.

1 Q. Do you have any estimate for when that
2 time period was?

3 A. I believe that acquisition took place
4 around 1998, so it would be around that time frame.

5 Q. What position did you hold prior to
6 becoming the chief financial officer of SCANA?

7 A. I was the vice president of finance for
8 SCANA Corporation.

9 Q. What time period did you hold that
10 position?

11 A. I don't recall the specific number of
12 years prior to becoming CFO, but that was a title --
13 that was a job title I held before assuming
14 responsibility as CFO.

15 Q. What position did you hold prior to
16 becoming the VP of finance for SCANA?

17 A. I was VP of corporate planning for SCE&G.

18 Q. Do you recall the time period you held
19 that position?

20 A. I recall I was in that role for one to two
21 years, but I don't recall the specific dates.

22 Q. What position did you hold prior to that
23 VP of corporate planning position?

24 A. I was the vice president and controller
25 for SCANA Corporation.

1 Q. What was the time period you held that
2 position?

3 A. I took over that role in the late '80s. I
4 don't recall the specific year.

5 Q. What position did you hold prior to that
6 VP controller position?

7 A. I was the group manager of technical
8 accounting for SCE&G. I take -- that may have been
9 for SCANA Corporation.

10 When I started the role, it was SCE&G
11 because we didn't have the holding company at that
12 time. The holding company was formed the year I
13 became controller, so I was then controller of SCANA
14 Corporation.

15 Q. So SCANA was formed in the late 1980s?

16 A. I need to -- I need to think a minute to
17 get my dates right. I may have misstated that. I
18 joined the company in 1984 as the group manager of
19 technical accounting for SCE&G.

20 SCANA Corporation, as a holding company,
21 was formed at the end of that year. And then later
22 in the '80s, I became vice president and controller
23 of SCANA Corporation.

24 Q. Did you work for any other utility
25 companies prior to joining SCE&G in 1984?

1 A. I did not.

2 Q. What is your educational background?

3 A. I've got a bachelor's in business
4 administration from the University of Georgia,
5 majoring in accounting.

6 Q. Any advanced degrees beyond that one?

7 A. No.

8 Q. Are you a CPA?

9 A. I practiced as a CPA. I'm not currently
10 practicing as a CPA.

11 Q. When did you become a CPA?

12 A. I believe it was in 1979.

13 Q. You're not an engineer, correct?

14 A. I am not an engineer.

15 Q. And is it correct to say that you have no
16 background in nuclear construction?

17 MR. CHALLY: Object to form.

18 MR. WATKINS: Object to the form.

19 THE WITNESS: I have not been trained in
20 nuclear construction. I don't have a degree in
21 construction nor engineering-related degree.

22 BY MR. COX:

23 Q. Did you have any role in overseeing
24 nuclear construction prior to construction of the
25 project?

1 A. No. The company was not building any
2 nuclear plants up until that -- until the project
3 started.

4 Q. Why did you leave the position of CEO of
5 SCANA and SCE&G?

6 MR. WATKINS: Object to the form. It's
7 been asked and answered.

8 THE WITNESS: I chose to retire.

9 BY MR. COX:

10 Q. Why did you do that?

11 A. I believed it was in the best interest of
12 the company in trying to resolve some of the issues
13 related to the nuclear plant abandonment.

14 Q. Why did you believe that would be in the
15 best interest of the company?

16 A. The company attorneys had engaged in a
17 number of settlement discussions.

18 MR. WATKINS: And, Kevin, I'll caution you
19 now not to disclose the substance of any
20 discussions with attorneys in answering this
21 question.

22 And if you need to take a break to discuss
23 the implications of the attorney-client
24 privilege here, we can do that.

25 THE WITNESS: We may need to take a break.

1 MR. CHALLY: Yeah.

2 MR. COX: Okay. Off the record.

3 VIDEOGRAPHER: The time is 9:40 a.m. and
4 we are off the record.

5 (A recess transpired from 9:40 a.m. until
6 9:51 a.m.)

7 VIDEOGRAPHER: The time is 9:51 a.m., and
8 we are back on record.

9 BY MR. COX:

10 Q. So before our break, Mr. Marsh, your
11 attorneys had asked for a recess to discuss an issue
12 of potential privilege.

13 Can you go ahead and continue your answer?

14 MR. CHALLY: I'll just add to the
15 instruction Mr. Marsh's personal attorney
16 advanced.

17 We would instruct Mr. Marsh not to reveal
18 the substance of not only communications that he
19 had with company attorneys, but the company's
20 effort to deal with at the time of his departure
21 was a series of disputes related to the
22 abandonment. So we broke so that we could try
23 to articulate a response to the question.

24 I believe Mr. Marsh is capable of doing
25 that, but I want to make clear on the record

1 that I believe the privilege covers in this
2 context not only specific communications that
3 Mr. Marsh might have had with lawyers, but
4 broader, the company effort to deal with the
5 dispute that was facing the company at this
6 time.

7 MR. COX: And just to be clear, you had
8 the opportunity to discuss that with Mr. Marsh
9 just now off the record?

10 MR. CHALLY: We discussed the scope of the
11 privilege and work product protection associated
12 with the question you asked, yes.

13 MR. WATKINS: Would you mind reasking the
14 question or reading it back? Your preference.

15 BY MR. COX:

16 Q. So, Mr. Marsh, the question was: Why did
17 you believe it would be in the best interest of the
18 company for you to retire?

19 MR. WATKINS: I'll give you the same
20 privilege restriction as before; but with that,
21 please go ahead and answer.

22 THE WITNESS: Based on feedback I had
23 gotten from the company's attorneys on the
24 status of our efforts to resolve the abandonment
25 issues and my own personal situation, I felt it

1 would be in the company's best interest for me
2 to step aside and my personal interest to step
3 aside.

4 BY MR. COX:

5 Q. When you say "personal situation," what do
6 you mean by that?

7 A. I mean I have to consider my personal
8 health and my family's health and the pressures that
9 we were under.

10 This issue had been, you know, quite,
11 quite vocal in the paper for some time. And I'm
12 certainly committed to the company. I am also
13 committed to my family. And I just believed it was
14 in my best personal interest to step aside and
15 retire.

16 Q. Was that a difficult time for you and your
17 family in the post abandonment time period in late
18 2017?

19 MR. WATKINS: Objection to form.

20 THE WITNESS: I saw it as difficult. The
21 company had made a difficult decision.

22 Many people did not agree with it. Many
23 of those opinions were discussed in the paper on
24 many occasions, and I believed it was in my
25 personal interest, my best interest, to step

1 aside and retire.

2 BY MR. COX:

3 Q. Did you personally feel that you could no
4 longer effectively be the CEO of SCANA after the
5 abandonment decision?

6 MR. WATKINS: Objection to form.

7 Mischaracterizes the testimony.

8 THE WITNESS: Could you repeat the
9 question again?

10 BY MR. COX:

11 Q. Did you personally feel that you could no
12 longer effectively be the CEO of SCANA after the
13 abandonment decision?

14 MR. CHALLY: Object to form.

15 MR. WATKINS: Objection to form.

16 THE WITNESS: I believed I was capable of
17 continuing as CEO.

18 BY MR. COX:

19 Q. Did any members of the board tell you that
20 you needed to resign for the best interest of the
21 company?

22 A. They did not.

23 Q. Did anyone other than attorneys for SCANA
24 tell you that it would be in the best interest for
25 you to resign as CEO of the company?

1 MR. CHALLY: Object to form.

2 MR. WATKINS: I'm going to object to the
3 form of the question and also counsel you that
4 to the extent that your answer reveals any
5 communications with counsel or work product or
6 litigation strategy of the company during that
7 time, not to divulge that type of information.

8 And again, if you need to break to discuss
9 that, we can.

10 THE WITNESS: We may need to break. I
11 apologize, but it's complicated.

12 MR. COX: I don't believe a break is
13 called for on that question.

14 MR. CHALLY: What's the question again?

15 MR. COX: Would you read back the
16 question, please?

17 (Whereupon the Court Reporter read the
18 previous question: Did anyone other than
19 attorneys for SCANA tell you that it would
20 be in the best interest for you to resign
21 as CEO of the company?)

22 MR. WATKINS: Yeah. And I stand by that,
23 and I do. So we'll take a break.

24 MR. COX: I object.

25 MR. WATKINS: Okay.

1 MR. COX: Go off the record.

2 VIDEOGRAPHER: Time is 9:57 a.m., and we
3 are off the record.

4 (Brief off-record discussion at 9:57 a.m.)

5 MR. COX: Okay. Let's go back. Go back
6 on the record.

7 VIDEOGRAPHER: Okay. Time is 9:57 a.m.,
8 and we are back on record.

9 MR. COX: I just want to place on the
10 record that I object to Mr. Watkins's request or
11 instruction to take a break with the witness
12 based on attorney-client privilege.

13 I don't believe that the question that was
14 asked could possibly elicit privileged
15 information.

16 MR. WATKINS: And it certainly could. It
17 certainly could.

18 You excluded communications with a lawyer,
19 but a lawyer certainly can give advice and it
20 can be communicated through a nonlawyer. There
21 can be company legal strategy as communicated
22 through a nonlawyer.

23 I've given the witness a limiting
24 instruction, and he's indicated the desire to
25 confer with me to discuss the scope of privilege

1 issues here, if any. And that's what we're
2 going to do.

3 MR. SOLOMONS: And just for the record,
4 Plaintiffs also further object that such a
5 conference may not be provided for in the South
6 Carolina Rules of Civil Procedure. So we want
7 to put that on the record.

8 MR. CHALLY: Hold on. So is it your
9 position that a conference to discuss whether
10 there is -- whether the question requires
11 divulging privileged information is not provided
12 for under South Carolina Rules of Civil
13 Procedure?

14 MR. SOLOMONS: I'm not sure it is. I
15 think it -- so I would -- I would want to flesh
16 out the purpose and the exact question and the
17 exact area that the privilege is being asserted
18 over rather than -- than what we're doing, which
19 is breaking, going back and having
20 off-the-record conversations, and coming back to
21 discuss questions. So that's --

22 MR. CHALLY: Okay. Just to make -- I'm
23 not sure I understand, but -- so is it -- is it
24 you don't believe that the discussions being had
25 relate to whether to assert a privilege, or is

1 it that you don't believe a break can be taken
2 to determine whether a privilege assertion needs
3 to be made?

4 MR. SOLOMONS: I'm unclear as to where
5 that line is between those two, Jon, and I want
6 it on the record.

7 MS. MOODY: Was your question -- your
8 question was: Any attorneys outside -- any
9 attorneys from SCANA? You specifically said
10 "SCANA" in that.

11 So he could have had conversation with
12 another attorney that was not for SCANA, so that
13 is reason to take a break to find out.

14 MR. WATKINS: And I'll make the point that
15 my understanding is that under Rule 30(j)(5),
16 that counsel and witness are permitted to engage
17 in private off-the-record conferences during
18 depositions for the purpose of deciding whether
19 to assert a privilege or to make an objection or
20 to move for a protective order. And that's
21 precisely what we're going to do.

22 MR. COX: Off the record.

23 VIDEOGRAPHER: The time is 10:00 a.m., and
24 we are off the record.

25 (A recess transpired from 10:00 a.m. until

1 10:06 a.m.)

2 VIDEOGRAPHER: The time is 10:06 a.m., and
3 we are back on record.

4 BY MR. COX:

5 Q. Mr. Marsh, before the break, I had asked
6 you a question. Do you need it repeated?

7 A. I would like for you to repeat it, yes.

8 MR. COX: Could you repeat that last
9 question?

10 (Whereupon the Court Reporter read the
11 previous question: Did anyone other than
12 attorneys for SCANA tell you that it would
13 be in the best interest for you to resign
14 as CEO of the company?)

15 MR. WATKINS: Objection to the form.

16 THE WITNESS: First, I want to clarify
17 that no attorneys from SCANA asked me to step
18 down. That was a decision I made on my own.

19 The company had engaged a PR firm to help
20 in working through the process and issues
21 related to abandonment. As part of their
22 discussions, they shared with us situations that
23 had occurred in other large corporations across
24 the nation and that in many of those
25 circumstances, the CEOs had been asked to step

1 down. But they did not ask me to step down.

2 BY MR. COX:

3 Q. What was the name of that PR firm that
4 SCANA retained?

5 A. I don't -- I don't recall the name of the
6 firm.

7 Q. Did you meet with that firm?

8 A. I did meet with them.

9 Q. How many times?

10 A. I don't -- I don't recall specific number
11 of times.

12 Q. Was it more than once?

13 A. Yes, it was more than once.

14 Q. Where did you meet with them?

15 A. At the company's offices.

16 Q. Do you remember the name of anyone from
17 that PR firm that you met with?

18 A. I'm sorry, but I can't recall a specific
19 name.

20 Q. Was it more than one person?

21 A. What I recall is there was one person that
22 was assigned to the engagement. They may have had
23 others that worked with them from time to time, but I
24 just recall one person being -- I guess that would be
25 called the "point person" with us.

1 Q. Was that point person a male or a female?

2 A. I believe it was a female.

3 Q. Do you know where that person was based
4 out of?

5 A. I don't recall.

6 Q. Did they present any presentations to you
7 in providing you information on this subject?

8 MR. WATKINS: Objection to form.

9 MR. CHALLY: Same.

10 THE WITNESS: I don't -- I don't recall
11 them making presentations to me specifically. I
12 know they made presentations to the company,
13 representatives of the company.

14 BY MR. COX:

15 Q. And you were there for that presentation,
16 correct?

17 MR. WATKINS: Objection to form.

18 THE WITNESS: I don't recall if I was
19 there when the presentations were made or if the
20 information of the presentation was shared with
21 me by a member of the company, employee of the
22 company.

23 BY MR. COX:

24 Q. What was the format of this presentation?

25 MR. WATKINS: Objection to form.

1 THE WITNESS: I don't recall the specific
2 format.

3 BY MR. COX:

4 Q. Do you know if you ever received any
5 PowerPoint slides from this company?

6 A. I just don't recall.

7 Q. What examples did the company use, the PR
8 company use, as far as examples of other companies
9 that had encountered a situation like SCANA's?

10 MR. WATKINS: Objection to form.

11 MR. CHALLY: Objection.

12 THE WITNESS: I don't recall specific
13 companies. I don't -- I mean, nobody had a
14 situation exactly like SCANA's situations. Ours
15 was different. I think all those are pretty
16 much stand-alone situations.

17 BY MR. COX:

18 Q. So is it your testimony that no individual
19 asked you to resign as CEO of SCANA?

20 A. No one asked me to resign from SCANA.

21 Q. Did you feel you had the option to
22 continue as CEO of SCANA?

23 A. I did.

24 Q. And it's your testimony that you made the
25 decision to retire; is that correct?

1 A. That is correct.

2 Q. How did you notify the company that you
3 were resigning as CEO?

4 MR. WATKINS: Objection to form.
5 Mischaracterizes the testimony.

6 THE WITNESS: Could you repeat the
7 question?

8 BY MR. COX:

9 Q. Sure. Let me rephrase it.
10 How did you notify the company that you
11 were retiring as CEO?

12 A. My memory is I communicated it to the lead
13 director of the board of directors.

14 Q. Who was that?

15 A. Maybank Hagood.

16 Q. Did you communicate it to him in writing
17 or some other method?

18 A. I recall it was verbal.

19 Q. Where did that conversation occur?

20 A. I believe it took place in my conference
21 room.

22 Q. How long did that meeting last?

23 A. I don't recall the length of the meeting.
24 My memory is it was less than an hour.

25 Q. Was anyone else present for that meeting

1 other than you and Mr. Hagood?

2 A. I don't recall everyone who was in there.
3 I believe Jimmy Addison was in the room, and Keller
4 Kissam may have been in the room. I just don't -- I
5 don't recall specifically everybody that was in
6 there.

7 Q. Was Stephen Byrne present?

8 A. I don't believe so.

9 Q. Do you remember approximately when this
10 meeting occurred?

11 A. I -- it was right around Halloween,
12 October 31st. I don't remember if it was the day
13 before Halloween or Halloween, but it was about that
14 time frame.

15 Q. 2017, correct?

16 A. 2017, that's correct.

17 Q. Did you schedule the meeting, or did
18 Mr. Hagood?

19 MR. WATKINS: Objection to form.

20 THE WITNESS: I don't recall how the
21 meeting got scheduled. I mean, we were -- we
22 were having a discussion.

23 BY MR. COX:

24 Q. Had you already decided to retire prior to
25 that meeting occurring?

1 A. It was something I had certainly
2 contemplated based on events that occurred. But I
3 did not -- I had not decided until we had the
4 discussion in the meeting.

5 Q. And can you describe the discussion that
6 occurred at that meeting?

7 A. I was receiving -- I had received updates
8 from the company's attorneys on the status of matters
9 related to --

10 MR. WATKINS: And, Kevin, don't -- don't
11 disclose the substance of any updates from any
12 attorneys or the substance of any
13 attorney-client communications here.

14 It's fine to say that you talked -- you
15 received a communication from an attorney, but
16 not the substance. Do you understand the
17 limiting instruction there?

18 THE WITNESS: I think I do.

19 MR. WATKINS: Okay.

20 THE WITNESS: I had had discussions with
21 the company's attorneys. I made the
22 determination myself in the meeting, evaluating
23 what I thought would be in the best interest of
24 the company and also me personally. And that's
25 when I decided to inform Mr. Hagood that it was

1 my decision that I thought it was in the best
2 interest of the company for me to retire.

3 BY MR. COX:

4 Q. Did anything occur at that meeting that
5 led to your decision to retire?

6 MR. CHALLY: Object to form.

7 MR. WATKINS: Objection to the form of the
8 question.

9 THE WITNESS: I had conversations with the
10 company's attorneys.

11 BY MR. COX:

12 Q. But I'm just talking about the meeting
13 with Mr. Hagood that you had in your office. And my
14 understanding is, from what you've said, is that at
15 the time you scheduled that meeting, you weren't
16 certain whether you were going to retire or not. You
17 were considering it.

18 And is it true that at that meeting, that
19 is when you decided that you would, in fact, retire
20 as CEO?

21 A. I did decide in that meeting. Yes, I did.

22 Q. What information did you receive at that
23 meeting that led you to make the decision to retire?

24 MR. WATKINS: And again, Kevin, don't
25 disclose any information received from attorneys

1 or the substance of attorney-client
2 communication.

3 There was no attorney in that meeting, was
4 there?

5 THE WITNESS: I don't recall specifically
6 if the attorney was in the meeting.

7 MR. WATKINS: Okay. In any event, don't
8 disclose the substance of any attorney-client
9 communications.

10 THE WITNESS: I was -- I was having a
11 discussion with Mr. Hagood in general about the
12 status of the abandonment issue.

13 BY MR. COX:

14 Q. What was his input to you on that during
15 the meeting?

16 MR. WATKINS: Objection to form.

17 THE WITNESS: I don't remember any
18 specific comments. I just remember there being
19 a discussion about the abandonment issue.

20 BY MR. COX:

21 Q. What did Mr. Hagood say at that meeting?

22 MR. WATKINS: Objection.

23 THE WITNESS: I don't recall specifically
24 what Mr. Hagood said.

25

1 BY MR. COX:

2 Q. Did Mr. Hagood express any views on
3 whether you should retire or not?

4 MR. WATKINS: Objection.

5 THE WITNESS: No, he did not.

6 BY MR. COX:

7 Q. What was the purpose of the meeting?

8 A. I recall the purpose was to just update
9 Mr. Maybank -- I mean, Mr. Hagood on the status of
10 our -- our situation regarding abandonment.

11 Q. So the purpose of the meeting wasn't to
12 decide your future with the company?

13 A. No, it was not.

14 Q. How did -- how did it happen that the
15 meeting was a factor in your decision to retire?

16 MR. WATKINS: Objection to form.

17 THE WITNESS: You know, my decision -- I
18 reached the decision in the meeting just based
19 on the overall discussion of the status of where
20 we were on the abandonment issue and what would
21 be in the best interest of the company.

22 BY MR. COX:

23 Q. What was the status of the abandonment
24 issue?

25 A. Well, we had -- we had announced the

1 abandonment of the project, I believe it was the
2 latter part of July of 2017. Since that time, we had
3 given testimony before the House and the Senate
4 special committees to look into the abandonment
5 issue.

6 There had been a number of discussions
7 internally of, you know, how we might be able to
8 resolve the issue. I know our -- our legal counsel
9 had had discussions --

10 MR. WATKINS: Kevin --

11 THE WITNESS: -- regarding that issue.

12 MR. WATKINS: And again, don't disclose
13 the substance of any communication with legal
14 counsel.

15 THE WITNESS: Okay. I had discussions
16 with legal counsel throughout that period, and
17 based on updating Mr. Hagood in that meeting, I
18 determined it was in the company's best interest
19 for me to step aside. And I made that decision
20 by myself.

21 BY MR. COX:

22 Q. What was the name of the attorneys who you
23 had consulted with during this time period?

24 MR. WATKINS: Objection to form.

25 MR. CHALLY: Same objection.

1 THE WITNESS: I mean, I -- the company's
2 internal regulatory attorney was Chad Burgess.

3 BY MR. COX:

4 Q. Is he the only attorney you discussed --
5 or is he the only attorney you were consulting with
6 during this time period?

7 MR. WATKINS: Same objection.

8 MR. CHALLY: Same.

9 THE WITNESS: I mean, we have general
10 counsel who I talked to from time to time on a
11 regular basis.

12 Also, we have outside regulatory attorneys
13 that I would talk to from time to time about
14 company issues. So there were a number of
15 attorneys that I may have had conversations
16 with.

17 BY MR. COX:

18 Q. I'm talking just about your -- the option
19 of you retiring.

20 A. Oh, I didn't talk --

21 MR. WATKINS: Objection.

22 THE WITNESS: -- to any attorneys about my
23 decision to retire. No one advised me. No one
24 encouraged me. That was a decision I reached on
25 my own with no legal counsel input whatsoever.

1 BY MR. COX:

2 Q. Other -- and the only input you received
3 on that was from this PR advisory firm, is that --

4 A. I didn't get input from them. They were
5 describing situations that had occurred at large
6 corporations around the country, and in some of those
7 cases, the CEO had decided to step aside.

8 Q. The company -- strike that.

9 SCANA retained this PR firm to provide
10 information to SCANA; is that correct?

11 MR. WATKINS: Objection to form.

12 MR. CHALLY: Object to form.

13 THE WITNESS: I don't recall who actually
14 engaged the PR firm. I didn't engage them.
15 They were there to work with our corporate
16 communications group in understanding how best
17 to communicate this issue.

18 BY MR. COX:

19 Q. Do you know if SCANA retained the PR firm?

20 A. Someone within SCANA or SCE&G retained the
21 firm.

22 Q. This meeting that you had with Mr. Hagood
23 around Halloween 2017, is there anything that
24 occurred in that meeting where you realized, "Okay, I
25 need to retire"?

1 MR. WATKINS: Objection to form.

2 THE WITNESS: I don't recall all the
3 specific discussion, and I don't -- I don't
4 believe I can point to one particular incident
5 or discussion item that led to my decision.

6 It was just a collective personal
7 evaluation of where we were on the issue and
8 what would be in the company's best interest
9 going forward.

10 BY MR. COX:

11 Q. Did -- and Mr. Hagood did not express any
12 opinion as to whether he thought you should retire or
13 not, correct?

14 A. He did not.

15 Q. Did Mr. Addison express any opinion on
16 whether you should retire or not?

17 A. He did not.

18 Q. Do you have any knowledge of how
19 Mr. Addison was selected to become the CEO of SCANA?

20 A. I told Mr. Hagood that if I were to
21 retire, that it would be my recommendation that
22 Mr. Addison succeed me.

23 Q. Is that a statement you made to Mr. Hagood
24 at that meeting that occurred around Halloween 2017?

25 A. Yes.

1 Q. What did Mr. Hagood say in response to
2 that statement?

3 MR. WATKINS: Objection to form.

4 MR. CHALLY: Object.

5 THE WITNESS: I don't recall what he said
6 specifically, if he said anything.

7 BY MR. COX:

8 Q. Were you involved in the selection of
9 Mr. Addison as CEO other than that recommendation
10 that you made?

11 A. No.

12 Q. Did you receive any compensation in
13 exchange for retiring as CEO of SCANA?

14 A. I did not.

15 Q. Do you have any current consulting
16 agreements with SCE&G or SCANA?

17 A. I do not.

18 Q. Did you have any consulting agreements
19 with SCE&G or SCANA that have now expired?

20 A. No.

21 Q. Mr. Marsh, you received over \$5 million in
22 total compensation in 2014, didn't you?

23 MR. WATKINS: Objection to the form of the
24 question.

25 THE WITNESS: I don't recall the exact

1 amount of my compensation in 2014.

2 BY MR. COX:

3 Q. Would it refresh your recollection to
4 review SCANA's proxy statement?

5 A. That information is provided in a proxy
6 statement, yes.

7 MR. COX: I'm handing you a proxy
8 statement dated March 24th, 2017. I tabbed a
9 page entitled "Summary Compensation Table."

10 MR. WATKINS: Are you going to mark this
11 as an exhibit?

12 MR. COX: I don't think so.

13 MR. WATKINS: Okay. Do you have another
14 copy of the document?

15 MR. COX: I don't.

16 MS. MOODY: What page of the document --

17 THE WITNESS: 42.

18 MR. COX: I marked page 42 as a page for
19 the witness to review.

20 THE WITNESS: (Reviewing).

21 Subject to check, this does appear to be a
22 copy of SCANA's proxy statement filed on
23 March 24th, 2017.

24 BY MR. COX:

25 Q. And in your experience, does the company's

1 proxy statement reflect the compensation that you
2 would have received as CEO of the company?

3 A. It does reflect that compensation as
4 required to be reported under the reporting
5 guidelines, yes, it does.

6 Q. Is it correct that in calendar year 2014,
7 you received over \$5 million in total compensation?

8 MR. WATKINS: Objection to form.

9 THE WITNESS: 2014? There's a -- the
10 number that appears in the table totals about
11 5.7 million, but there are components of that
12 that are not cash compensation to me.

13 It also includes changes in pension value
14 and other matters. It would not be what I would
15 consider cash compensation to me.

16 BY MR. COX:

17 Q. You would agree, though, that for purposes
18 of the total compensation for reporting on the proxy
19 statement, your compensation that year was over
20 \$5 million?

21 A. As defined by the SEC rules, that's
22 correct.

23 Q. And you would also agree that as defined
24 under SEC rules, your compensation in 2015 was also
25 over \$5 million, correct?

1 A. That's correct.

2 Q. And would you agree that as defined under
3 SEC rules, your compensation in 2016 was over
4 \$6 million?

5 A. Yes. Those numbers appear in the
6 compensation table.

7 Q. Thank you. Mr. Marsh, during the time of
8 construction on the project, you received bonus
9 payments tied to progress on the construction of the
10 project, correct?

11 MR. CHALLY: Object to form.

12 MR. WATKINS: Objection to form.

13 THE WITNESS: I received incentive
14 payments during the period we were constructing
15 the project. Those weren't all specifically
16 related to project-related activities.

17 BY MR. COX:

18 Q. Is it true that some of the incentive
19 payments were specifically related to project-related
20 activities?

21 A. A portion of it would be.

22 Q. Were those incentive payments reported in
23 any format by SCANA?

24 MR. CHALLY: Object to form.

25 THE WITNESS: I mean, the compensation of

1 the officers, including mine, would have been
2 included in the proxy statement that was filed
3 with the SEC.

4 BY MR. COX:

5 Q. Is there any document that would show what
6 compensation you received as an incentive payment
7 that was tied to progress in construction on the
8 project?

9 MR. CHALLY: Object to form.

10 MR. WATKINS: Objection to form.

11 THE WITNESS: I don't -- I don't believe,
12 as it's reported in the proxy, it delineates any
13 specific amounts. I believe it does describe
14 the makeup of the goals of the individual
15 officers, which would describe -- I believe it
16 would describe the makeup of those incentive
17 goals.

18 BY MR. COX:

19 Q. How were incentive payments structured?

20 MR. CHALLY: Object to form.

21 MR. WATKINS: Objection to the form of the
22 question.

23 THE WITNESS: Well, each -- each officer
24 of the company had a salary and incentive
25 compensation level that was set by the board.

1 The board engaged an independent consultant to
2 advise them on what were normal levels of pay
3 and typical levels of incentive opportunities
4 based on responsibilities assigned different
5 positions.

6 So in that regard, the goal, as described
7 to me by the board, was to make sure that our
8 compensation was consistent with jobs that would
9 have similar responsibilities in similar
10 companies with the given responsibilities across
11 the country.

12 I think they had that information provided
13 independently by the consultant. The
14 consultant, based on my knowledge, also advised
15 the compensation committee of the board
16 appropriate ways to separate that into
17 short-term and long-term compensation and the
18 process by which we could set targets or goals
19 which would determine if you would achieve those
20 targets or goals, what level of compensation or
21 what level of incentive, you know, pay you may
22 be entitled to.

23 So that was -- that was determined at the
24 beginning of each year before incentive awards
25 were made known to any of the officers,

1 including myself.

2 BY MR. COX:

3 Q. Were your targets for incentive
4 compensation spelled out in writing?

5 MR. WATKINS: Objection to form.

6 THE WITNESS: No. We -- a presentation
7 was made by the human resources committee -- I
8 mean, by the human resources department to the
9 compensation committee on specific goals that
10 were recommended for consideration by the
11 committee for each -- for each senior officer.

12 BY MR. COX:

13 Q. And would the committee then approve the
14 goals that it determined to put into effect for each
15 officer?

16 A. The committee would make the final
17 decision on which goals would be applicable to each
18 officer, and then that information would go to the
19 full board of directors for approval.

20 Q. And after it was approved by the full
21 board, would that be put in writing, the goals that
22 were set out for incentive compensation for each
23 officer?

24 A. Yes. The goals would be approved, and the
25 individual goals would be communicated to the senior

1 officers.

2 Q. What goals were set for you that related
3 to progress in construction on the project?

4 MR. WATKINS: Objection to form.

5 THE WITNESS: I don't recall any goals
6 being set tied to specific progress on the
7 construction. I remember my goal being set as
8 overall, you know, providing oversight of the
9 construction activities.

10 BY MR. COX:

11 Q. What was the standard for determining
12 whether you achieved that goal?

13 MR. WATKINS: Objection to form.

14 THE WITNESS: That was not a determination
15 that I made. The board, based on its evaluation
16 of my performance during the year related to
17 overall nuclear construction activities, would
18 make its determination.

19 BY MR. COX:

20 Q. Do you remember if there was a
21 quantifiable standard that was established for your
22 goal with respect to oversight of construction on the
23 project?

24 A. I don't recall a specific number of any
25 sort being included in that goal. I can't speak for

1 the board and what they may have considered or what
2 they might have discussed in determining whether or
3 not they believed I had achieved the goal that was
4 put before me.

5 Q. Was one of your goals to have a filing
6 with the Commission regarding revised rates?

7 MR. WATKINS: Objection to form.

8 MR. CHALLY: Same objection.

9 THE WITNESS: I don't recall that being a
10 specific goal.

11 BY MR. COX:

12 Q. Do you recall any of your goals for
13 incentive payments being tied to milestones for
14 construction of the project?

15 MR. WATKINS: Objection to form.

16 THE WITNESS: I don't recall any of my
17 goals being tied to specific milestones.

18 BY MR. COX:

19 Q. So to your recollection, your goal for
20 incentive payments related to the project was just to
21 appropriately oversee the project?

22 MR. WATKINS: Objection to form.

23 MR. CHALLY: Same objection.

24 THE WITNESS: It was to provide oversight
25 to members of my team that had specific

1 responsibilities regarding project activities
2 and what that would entail and the board's
3 determination of whether or not they believed I
4 had done that appropriately to earn the
5 incentive payment.

6 BY MR. COX:

7 Q. And did you earn that incentive payment
8 every year?

9 MR. WATKINS: Objection to form.

10 MR. CHALLY: Same.

11 THE WITNESS: I don't -- I don't recall
12 each individual year, but I did earn -- I did
13 earn that incentive payment, yes.

14 BY MR. COX:

15 Q. Part of your compensation as CEO was
16 allocated to the capital cost of the project, wasn't
17 it?

18 MR. SOLOMONS: Objection to form.

19 MR. CHALLY: Object to form.

20 THE WITNESS: I don't know. I did not do
21 the accounting or the cost allocations of the
22 incentive pay, so I don't know if any of my
23 bonus was assigned to the project.

24 BY MR. COX:

25 Q. Did you have to allocate the time that you

1 spent working on the project versus the time you
2 spent working on nonproject-related activities?

3 MR. CHALLY: Object to form.

4 MR. WATKINS: Same objection.

5 THE WITNESS: And I completed a time sheet
6 for every two-week work period, and I would put
7 the time on that time sheet based on which
8 activities I was involved in and which company
9 they were related to.

10 BY MR. COX:

11 Q. And you don't know, sitting here now, if
12 the time that you spent working on project-related
13 activities, that your compensation for that time
14 period was allocated to the costs of the project?

15 MR. WATKINS: Objection to form.

16 MR. CHALLY: Same.

17 THE WITNESS: Okay. I think I'm -- I
18 understood you were asking about incentive pay.
19 The time -- the allocation of my salary, based
20 on the time sheet that I would complete every
21 two weeks, that cost would be allocated to the
22 project if I had worked on the project during
23 that time period.

24 But that -- I don't know that that was the
25 basis for the allocation of the incentive pay at

1 the end of the year.

2 BY MR. COX:

3 Q. Okay. So -- fair point. Let's talk just
4 about your salary.

5 A. Okay.

6 Q. Is it correct to say that the company
7 would allocate a portion of your salary, based on the
8 time that you spent working on the project, would
9 allocate a portion of your salary to the capital
10 costs of the project?

11 MR. CHALLY: Object to form.

12 THE WITNESS: Yeah. I don't want to get
13 hung up on terms, but I'm an accountant. An
14 allocation means something in accounting
15 different from, I think, what you're saying.

16 My time was assigned directly to the
17 project based on the time sheet I provided if I
18 spent time on the project. If I spent time at
19 PSNC Energy in North Carolina and I put time
20 down for that, part of my base salary would be
21 assigned based on that time. So it was a direct
22 assignment.

23 As an accountant, I don't consider that an
24 allocation. It was directly assigned to where I
25 was doing the work.

1 BY MR. COX:

2 Q. So is it correct to say that a portion of
3 your salary was assigned to the capital costs of the
4 project?

5 MR. CHALLY: Object to form.

6 MR. WATKINS: Objection to form.

7 THE WITNESS: If I had done work on the
8 project and I put time on my time sheet
9 indicating I had worked on the project, a
10 pro rata portion of my salary related to that
11 time, I believe, was charged to the project.
12 That's my understanding.

13 BY MR. COX:

14 Q. And you did assign time on your time
15 sheets to the project during your time as CEO,
16 correct?

17 A. Yes, I did.

18 Q. As CEO of SCANA, you signed a
19 certification that your company's SEC filings did not
20 include any untrue statements of material fact,
21 didn't you?

22 A. I did --

23 MR. CHALLY: Objection.

24 THE WITNESS: -- based on the process as
25 we went through to prepare those statements, and

1 that was a required certification which I did
2 sign.

3 BY MR. COX:

4 Q. And isn't it true that as CEO, you also
5 certified that your company's SEC filings did not
6 omit any material facts necessary to make the
7 statements made not misleading?

8 MR. WATKINS: Objection to the form of the
9 question.

10 THE WITNESS: Yeah. I don't -- I don't
11 recall the specific language in the
12 certification, but I did sign the certification
13 each quarter and at the end of the year when
14 those statements were filed.

15 BY MR. COX:

16 Q. So you signed those certifications for
17 SCANA since 2011, correct?

18 MR. WATKINS: Objection to form.

19 THE WITNESS: As CEO, yes.

20 BY MR. COX:

21 Q. You signed those during an earlier time
22 period as CFO, correct?

23 MR. WATKINS: Objection to form.

24 THE WITNESS: I would have signed those as
25 the CFO during the period I was CFO.

1 BY MR. COX:

2 Q. As an accountant, you are familiar with
3 the principle that omissions of material fact can
4 result in a statement being misleading, aren't you?

5 MR. WATKINS: Objection to the form of the
6 question.

7 MR. CHALLY: Object to form.

8 THE WITNESS: I'm generally aware of, you
9 know, issues regarding what's included in
10 financial statements, yes.

11 BY MR. COX:

12 Q. Do you believe that your certification of
13 SCANA's SCE&G statements were correct?

14 MR. CHALLY: Object to form.

15 MR. WATKINS: Objection to the form of the
16 question.

17 THE WITNESS: I believe what I certified
18 was correct, yes.

19 BY MR. COX:

20 Q. You testified -- you stated earlier that
21 you testified before the Commission on several
22 occasions, correct?

23 A. I did.

24 Q. Was your testimony in those proceedings
25 truthful?

1 MR. CHALLY: Object to form.

2 MR. WATKINS: Objection to the form of the
3 question.

4 THE WITNESS: I believe my testimony was
5 truthful.

6 BY MR. COX:

7 Q. Do you believe that your testimony in
8 those proceedings was not misleading?

9 MR. CHALLY: Object to form.

10 MR. WATKINS: Same.

11 THE WITNESS: In my opinion, I don't
12 believe it was misleading.

13 MR. WATKINS: And I want to make clear
14 that my objection was interposed before that
15 last question.

16 BY MR. COX:

17 Q. It is correct that SCE&G selected the
18 AP1000 technology for the project, correct?

19 A. SCE&G did select that technology. That's
20 correct.

21 Q. And is it true that SCE&G agreed with
22 Westinghouse's proposal to use a consortium for
23 construction of the project?

24 MR. CHALLY: Object to form.

25 THE WITNESS: That was the way that it was

1 presented to us if we wanted to move forward
2 with the project, and we did sign an agreement
3 with the consortium.

4 BY MR. COX:

5 Q. So you ultimately, or your company, SCE&G,
6 ultimately agreed to Westinghouse's proposal that a
7 consortium be used to construct the project; is that
8 correct?

9 MR. WATKINS: Objection to form.

10 MR. CHALLY: Same.

11 THE WITNESS: I mean, we -- SCE&G entered
12 into a contract with the consortium to construct
13 two AP1000s.

14 BY MR. COX:

15 Q. Did SCE&G favor the use of a consortium to
16 construct the project?

17 MR. CHALLY: Object to form.

18 MR. WATKINS: Objection to form.

19 THE WITNESS: I -- you know, I'm not -- I
20 was not responsible for constructing plants.
21 Steve Byrne and the nuclear team were
22 responsible for evaluating, you know, the -- the
23 contract and how that was put together.

24 As I said earlier, at the end of the day,
25 SCE&G did sign a contract with a consortium. At

1 the time, it was Westinghouse and Shaw to build
2 two AP1000s.

3 BY MR. COX:

4 Q. Were you involved in the negotiation of
5 that contract?

6 A. I was involved at the -- at the
7 president's level because I was president of SCE&G at
8 the time. I was not involved in the detailed
9 negotiations of the project. That was primarily
10 members of the nuclear team.

11 Q. Is there any part of the negotiations that
12 you were more involved in than others?

13 MR. WATKINS: Objection to form.

14 THE WITNESS: I was not directly involved
15 in the negotiations on the particulars in the
16 contract.

17 BY MR. COX:

18 Q. How would you describe your role in the
19 negotiations?

20 MR. WATKINS: Objection to form.

21 THE WITNESS: I see my role as the
22 president to understand that there were
23 negotiations going on, understanding that we had
24 a team in place to do those negotiations, and
25 that we were trying to reach an agreement that

1 would support the building of two AP1000s or a
2 nuclear plant at that time.

3 And I -- I was informed by our team of
4 what was going on in negotiations, you know,
5 some of the issues they needed to resolve in
6 negotiations, and issues that came up, but I was
7 not involved in the detail negotiation of the
8 contract.

9 BY MR. COX:

10 Q. Who was -- who were the members of your
11 negotiating team?

12 MR. WATKINS: Objection to form.

13 THE WITNESS: Well, first, it wasn't my
14 negotiating team. It was a group within SCE&G.
15 They were SCE&G employees.

16 Ron Clary, who was our vice president of
17 new nuclear development at the time, was
18 probably the lead negotiator. Steve Byrne,
19 given his responsibilities for all nuclear
20 activities, was involved in negotiations.

21 There were others on the team. I mean,
22 this was a long, complex, detailed contract, so
23 I -- I can't say all of the people that were
24 involved in negotiating each section of the
25 contract, but I would say that Steve Byrne and

1 Ron Clary were the leads in doing that
2 negotiation.

3 BY MR. COX:

4 Q. Did you make any decisions on SCE&G's
5 behalf during the course of the negotiations?

6 MR. CHALLY: Object to form.

7 MR. WATKINS: Objection to form.

8 THE WITNESS: You know, not -- I was not
9 on the negotiating team, so I was not making
10 decisions regarding negotiations.

11 The team would present to me, and also
12 Bill Timmerman, who was the CEO at the time, you
13 know, where we stood on negotiations, but I was
14 not making decisions.

15 BY MR. COX:

16 Q. What was your recollection of the
17 company's position at that time with respect to
18 whether a consortium should be used to construct the
19 project?

20 MR. WATKINS: Objection to form.

21 MR. CHALLY: Same.

22 THE WITNESS: I don't recall anything
23 relative to the position we may have had. That
24 was the form that was presented to us and that
25 was looked at during the negotiations.

1 BY MR. COX:

2 Q. Was there any opinions expressed by any
3 members of the negotiating team that a consortium
4 would not be the best way to pursue construction of
5 the project?

6 MR. WATKINS: Objection to form.

7 MR. CHALLY: Object to form.

8 THE WITNESS: I don't recall any
9 disclosure or issues raised to that issue.

10 BY MR. COX:

11 Q. What was SCE&G's understanding of the
12 completeness of the design of the project during the
13 2008 EPC negotiations?

14 MR. CHALLY: Object to form.

15 MR. WATKINS: Same objection.

16 THE WITNESS: I can't respond. I don't
17 have knowledge of the detail design. That's
18 something that would have been handled by Steve
19 Byrne.

20 I do recall that Westinghouse represented
21 to us that they had an approved design by the
22 NRC. I just remember that -- those terms coming
23 up.

24 BY MR. COX:

25 Q. And other than that, you don't have any

1 more recollection of SCE&G's -- or your understanding
2 of the completeness of the design?

3 MR. WATKINS: Objection to form.

4 THE WITNESS: I'm not an engineer. I
5 don't know how to define "completeness of the
6 design" in terms of responding to your question.

7 BY MR. COX:

8 Q. Was there a point in time where you later
9 formed the opinion that the design of the AP1000 was
10 not as complete as you had initially believed?

11 A. I recall Steve Byrne, I believe, providing
12 testimony that it was not unusual for power plant
13 construction, including nuclear power plant
14 construction, that all of the detail design
15 associated with the construction project was not --
16 typically not completed when the project was started;
17 that it was completed as you went through the
18 construction of the project. I do recall some
19 testimony that Steve gave on that behalf --

20 Q. Is it --

21 A. -- on that issue.

22 Q. -- your recollection -- I'm sorry.

23 A. I'm sorry. I'm through.

24 Q. Is it your recollection that Mr. Byrne's
25 testimony was that he understood that to be the case?

1 MR. WATKINS: Objection to form.

2 THE WITNESS: I don't recall the specifics
3 around his testimony.

4 BY MR. COX:

5 Q. To your recollection, was SCE&G, at any
6 point in time, surprised at the lack of completeness
7 of the design of the AP1000?

8 MR. CHALLY: Object to form.

9 MR. WATKINS: Same objection.

10 THE WITNESS: I can't speak to the design
11 issues. That would have to be to Steve Byrne.
12 I don't have knowledge of all that. I'm not an
13 expert in design, construction design, and don't
14 feel like I can respond to that question.

15 BY MR. COX:

16 Q. And I understand that.

17 So I guess the way I would kind of sum up
18 this issue is: You weren't in a position to ever
19 form an opinion that the design of the project -- or
20 I'm sorry, the design of the reactor turned out to be
21 more or less complete than originally expected?

22 MR. CHALLY: Object to form.

23 MR. WATKINS: Same objection to the form
24 of the question.

25 THE WITNESS: I don't -- I don't recall

1 that being the case. I don't --

2 BY MR. COX:

3 Q. At the time of the 2008 EPC negotiations,
4 did SCE&G consider other technologies to increase
5 base load capacity other than the AP1000?

6 A. We did consider other technologies. We
7 considered coal, natural gas, and renewables.

8 Q. How did SCE&G compare the cost and benefit
9 of those technologies?

10 MR. CHALLY: Object to form.

11 MR. WATKINS: Objection to form.

12 THE WITNESS: In very general terms, coal
13 was not seen to be a feasible option at that
14 point. We had significant coal generation on
15 our system at that time. There were very
16 stringent environmental regulations around
17 emissions from coal-fired facilities. It was
18 clear in our minds, from SCE&G's perspective,
19 that it was likely that environmental
20 restrictions -- you know, rulings that have
21 negative impact on coal would continue to be
22 imposed on coal-fired capacity. So that was not
23 an option that we felt like was feasible for our
24 company.

25 We were trying to define something that

1 was clean, nonemitting, base load generation,
2 and coal did not fit that -- did not fit that
3 picture.

4 Natural gas, while it does not emit as
5 much as coal, it does still emit pollutants to
6 the air that are a concern from an environmental
7 perspective.

8 We were very concerned that if we added
9 all of our base load from a natural gas
10 perspective, we would be way too heavy in our
11 fossil fuel generation capacity, which would be
12 a negative for us in terms of producing clean
13 air under new regulations that might be imposed
14 on the company that we believed were imminent at
15 the time.

16 We looked at renewables. The team --
17 there was a team. A team was put in place -- I
18 didn't do the evaluation. A team was put in
19 place to evaluate the renewable option.

20 Renewables, we believed, had a place on
21 the system. They were still relatively new from
22 a technological perspective in terms of how they
23 could be added to the system.

24 We needed base load generation.

25 Renewables don't have -- you're not able to

1 dispatch that when you need it. If it's -- if
2 it's solar, when the sun is shining, you have
3 solar energy. If it's nighttime or very cold in
4 the morning, solar energy is not available to
5 you to meet the need on the system.

6 So we believed it would be cost
7 prohibitive to, you know, build enough solar,
8 and then it wouldn't be dispatchable and
9 wouldn't meet base load needs. We needed base
10 load generation. That generation, if it's used,
11 is available 60 to 70 percent of the time.

12 So an analysis prepared by the team doing
13 the evaluation is to the impacts of natural gas
14 versus nuclear. And based on that evaluation,
15 the team concluded that the nuclear would be the
16 cheapest option in the long term and provide the
17 greatest benefits in nonemitting energy for the
18 company.

19 BY MR. COX:

20 Q. Who was on that team?

21 MR. WATKINS: Objection to form.

22 THE WITNESS: I don't recall all the
23 members of that team.

24 BY MR. COX:

25 Q. Do you recall who the experts were, if

1 any, that SCE&G retained for that analysis?

2 A. Joe Lynch -- Dr. Joe Lynch, who was a
3 SCE&G -- or may have been a SCANA employee -- led the
4 analysis. I don't know if he engaged others to help
5 him in that analysis or not.

6 Q. During what time period was Mr. Lynch a
7 SCANA employee?

8 MR. CHALLY: Object to form.

9 THE WITNESS: I don't know specifically
10 when he joined the company. I remember Joe
11 being there when I was there, but I don't
12 recall -- I didn't work with Joe when I was an
13 accountant, so I don't -- but I recall when I
14 was president of SCE&G, Joe was an employee of
15 the company. So I can tell you from at least
16 1996 on, he was there.

17 BY MR. COX:

18 Q. He was still an employee when you left the
19 company?

20 A. Yes, he was.

21 Q. Did SCE&G ever update that comparative
22 analysis of nuclear technology versus those other
23 types of technologies that you mentioned after
24 construction on the project began?

25 MR. CHALLY: Object to form.

1 THE WITNESS: My memory is that Joe led a
2 team that did update an analysis for some of the
3 filings we went back to, one of the Base Load
4 Review Act. I believe he updated it in 2012,
5 2015, and 2016. That's my memory.

6 BY MR. COX:

7 Q. Are you aware of any other comparative
8 analysis -- analyses done by SCE&G other than those
9 comparisons done by Joe Lynch?

10 MR. CHALLY: Object to form.

11 THE WITNESS: That's what I recall. I
12 don't recall any others.

13 BY MR. COX:

14 Q. You testified in the Commission docket
15 where SCE&G sought approval for construction of the
16 project, correct?

17 A. I did.

18 Q. You testified -- you promised that SCE&G
19 would keep the Commission informed of the
20 construction process and the price of the project,
21 correct?

22 MR. WATKINS: Objection to form.

23 THE WITNESS: If you've got a copy of that
24 testimony, I'd like to see a copy of that to
25 refresh my memory.

1 MR. COX: Sure.

2 MR. WATKINS: Jim, when you're at a good
3 breaking point, I could use a restroom break.
4 Not right now, but when you're at a good,
5 logical breaking point.

6 MR. COX: Off the record.

7 VIDEOGRAPHER: The time is 10:57 a.m.
8 We're off the record.

9 (A recess transpired from 10:57 a.m. until
10 11:12 a.m.)

11 VIDEOGRAPHER: The time is 11:12 a.m., and
12 we are back on record.

13 (Exhibit 1 was marked for identification.)

14 BY MR. COX:

15 Q. Mr. Marsh, we have had marked and in front
16 of you a document labeled Exhibit 1. Is this a copy
17 of the testimony that you provided to the Commission
18 in the docket in which SCE&G requested approval of
19 the project?

20 A. It does appear to be my testimony.

21 Q. And you understood that you were under
22 oath when you provided this testimony, correct?

23 A. I do.

24 Q. If you could turn to page 211 of
25 Exhibit 1, the numbers are on the top right-hand

1 corner of the page.

2 A. Okay.

3 MR. WATKINS: Do you have another copy of
4 this by any chance?

5 MR. CHALLY: Here you go.

6 MR. WATKINS: Thanks.

7 BY MR. COX:

8 Q. On that page, at lines 21 to 24, can you
9 read what your answer to that question was?

10 A. Yes.

11 "ANSWER: Well, our promise is we will
12 follow the rules of the Commission and the base load
13 review process, keep the Commission informed of the
14 construction process and what the price may be."

15 Q. And, Mr. Marsh, that was a promise you
16 gave to the Commission; is that correct?

17 MR. WATKINS: Objection to form.

18 THE WITNESS: That was my testimony.

19 BY MR. COX:

20 Q. Mr. Marsh, was it your understanding that
21 SCE&G was required to keep the Commission apprised of
22 the estimated cost to complete construction of the
23 project?

24 MR. CHALLY: Object to form.

25 MR. WATKINS: Objection to the form of the

1 question.

2 THE WITNESS: My understanding under the
3 Base Load Review Act was we presented the
4 Commission with our projected schedule and the
5 estimated cost associated with completing the
6 work under that schedule, which was then
7 approved by the Commission.

8 If we believed the cost would exceed that
9 or we had information that would lead us to
10 believe that the cost would exceed that, we were
11 required to come back and update that cost with
12 the Commission in a separate filing -- or if the
13 schedule were to change.

14 We had to update cost and schedule, if it
15 were not included -- if those numbers were
16 outside of the filing that we had. I believe on
17 the -- the schedule side, we had an 18-month
18 cushion for each milestone associated with the
19 project.

20 BY MR. COX:

21 Q. And when you refer to "schedule," you're
22 referring to the schedule to construct the units; is
23 that correct?

24 A. That would have been the -- it would have
25 been the current schedule or the one that was being

1 followed by the company to complete the units -- or
2 followed by Westinghouse and its consortium partner
3 to complete the units.

4 Q. And with respect to costs, that obligation
5 that you believed the company had to update the
6 estimated costs if they were to increase, is it your
7 understanding that that was the -- that that figure
8 was the estimated cost to complete construction?

9 MR. WATKINS: I'll object to the form of
10 the question, first.

11 And second, Mr. Marsh, to the extent it
12 implicates any -- this question implicates any
13 communication with counsel, don't divulge the
14 substance of any advice from counsel with
15 respect to the company's obligations.

16 THE WITNESS: Okay. It --

17 BY MR. COX:

18 Q. Let me just follow up on that because I
19 don't want to know what your understanding is right
20 now. I want to know what your understanding was at
21 the time that you submitted this testimony or made
22 this testimony to the Commission.

23 A. Right.

24 MR. WATKINS: And I'll clarify, my
25 statement encompasses not only advice from your

1 counsel now, like me, but also any advice from
2 counsel back at the time in connection with
3 your -- your work and your testimony at the time
4 this Exhibit 1 testimony was given.

5 THE WITNESS: I mean, at the time I gave
6 this testimony, it was -- it was my
7 understanding that if your schedule were to
8 change beyond 18 months -- well, at the time I
9 gave this testimony, we didn't have the 18-month
10 contingency because that's what was in the order
11 based this testimony.

12 So at the time, if the schedule had
13 changed from what we had presented -- I believe
14 we had offered up a 24-month cushion. That's
15 what we testified to -- or if the cost were to
16 change from what you included in the capital
17 cost schedules, that we would come -- we would
18 come back to the Commission and update the
19 capital cost schedules.

20 BY MR. COX:

21 Q. Mr. Marsh, if you could turn to page 197
22 of Exhibit 1. If you look at the sentence that
23 begins on line 9 and ends on line 13, could you read
24 that sentence?

25 A. It says: "We are putting in place an

1 extensive and experienced group of internal
2 construction management and oversight personnel who
3 will monitor all aspects of the construction and
4 licensing process as it moves forward."

5 Q. Was that a true statement when you made it
6 to the Commission?

7 MR. WATKINS: Objection to the form of the
8 question.

9 THE WITNESS: Yeah. It's true with
10 respect to the company was planning to put in
11 place is what I described here. I didn't put it
12 in place. We had -- that was done by Steve
13 Byrne and the nuclear team.

14 BY MR. COX:

15 Q. Do you know who the members of the
16 extensive and experienced group of internal
17 construction management and oversight personnel were?

18 MR. WATKINS: Objection to form.

19 THE WITNESS: I certainly can't recall all
20 of the names. It was a significant number of
21 people.

22 BY MR. COX:

23 Q. How many?

24 A. It -- the group grew over time. I don't
25 know what it was when we actually started the

1 project. I believe by the time we finished or we
2 made a determination to abandon the project, we were
3 close to 600.

4 Q. How did you know they were experienced?

5 A. I relied on --

6 MR. WATKINS: Objection to form.

7 THE WITNESS: I didn't know they were
8 experienced. I was relying on Steve Byrne and
9 the senior nuclear team to engage experienced
10 personnel.

11 BY MR. COX:

12 Q. So Mr. Byrne told you that the group of
13 personnel who were going to monitor the project were
14 experienced, correct?

15 MR. CHALLY: Object to form.

16 THE WITNESS: I don't recall that he made
17 that exact statement to me, but it was -- it was
18 clearly an understanding with Mr. Byrne that we
19 would engage people who were competent in
20 performing their activities at the nuclear plant
21 as they would any other area of responsibility
22 of the company.

23 BY MR. COX:

24 Q. And I want to focus specifically on
25 experience, not competence.

1 Is it fair to say that you did not vet the
2 members of this group that you're referring to in
3 this sentence for their experience?

4 MR. CHALLY: Object to form.

5 MR. WATKINS: Objection to form.

6 THE WITNESS: I personally did not -- was
7 not engaged in hiring or evaluating the
8 experience of the people that were on the
9 project.

10 BY MR. COX:

11 Q. So is it correct to say that other senior
12 members of your company, including Mr. Byrne, told
13 you that they were going to put in a team of
14 extensive and experienced personnel, and that's why
15 you testified to this statement?

16 MR. WATKINS: Objection to form.

17 MR. CHALLY: Same.

18 THE WITNESS: I don't recall Mr. Byrne's
19 exact words and specific conversation, but it
20 was -- it was my understanding that Mr. Byrne
21 and the senior nuclear team would hire
22 experienced personnel to participate in the
23 project.

24 BY MR. COX:

25 Q. And you don't recall who made that

1 representation to you?

2 MR. WATKINS: Objection to form.

3 THE WITNESS: I don't recall specifically,
4 no.

5 BY MR. COX:

6 Q. The EPC contract with the consortium
7 permitted SCE&G to use an owners' engineer on the
8 project, correct?

9 MR. CHALLY: Object to form.

10 MR. WATKINS: Same objection.

11 THE WITNESS: I don't recall all of those
12 terms, but I believe there was an owners'
13 engineer position that was available for the
14 company.

15 BY MR. COX:

16 Q. SCE&G never utilized an owners' engineer
17 on the project, correct?

18 A. To my knowledge, we did not fill that
19 position.

20 Q. Why is that?

21 A. As Mr. Byrne described to me, he felt like
22 we had competent personnel on the project. It was
23 not an issue that we discussed at length. That
24 certainly wasn't one we discussed at the beginning of
25 the project. He believed, in his opinion, that we

1 had qualified personnel and that was not a position
2 that needed to be filled.

3 Q. Did you ever revisit that issue with
4 Mr. Byrne after construction on the project began?

5 A. We -- we've had a conversation about that
6 after the project began. We did have a conversation
7 about it.

8 Q. And describe that conversation.

9 MR. WATKINS: Objection to form.

10 THE WITNESS: I can't remember the details
11 of the exact -- exact conversation, but I
12 believe it was -- it was at the time -- what I
13 recall, it was at the time we were negotiating
14 an amendment to the contract in 2015, in the
15 September-October time frame. That's what I
16 recall.

17 BY MR. COX:

18 Q. And what was the nature of the
19 conversation about the issue of an owners' engineer?

20 MR. WATKINS: Objection to form.

21 THE WITNESS: What I recall is in our
22 discussions with -- with Westinghouse -- because
23 we were negotiating with Westinghouse at that
24 time to amend the contract -- that we wanted to
25 make sure that that position was -- we weren't

1 going to change that section of the contract in
2 case we -- we decided to do that. Santee Cooper
3 had expressed an interest to make sure we kept
4 that position available.

5 BY MR. COX:

6 Q. And what was Mr. Byrne's position on that?

7 A. He didn't disagree that it's something we
8 needed to leave as an opportunity but did not believe
9 we needed to fill it at the time.

10 Q. Was there any point in time where you told
11 Mr. Byrne that you felt the question of whether an
12 owners' engineer needed to be engaged should be
13 reassessed?

14 A. I don't recall a specific conversation of
15 that nature.

16 Q. Did you ever have a conversation with
17 Lonnie Carter about utilizing an owners' engineer on
18 the project?

19 A. Lonnie had raised the question to me.

20 Q. And how did you respond to that?

21 A. I told Lonnie --

22 MR. CHALLY: Object to form.

23 THE WITNESS: -- that I would return -- I
24 would share that concern with Steve Byrne.

25

1 BY MR. COX:

2 Q. And did you do that?

3 A. I did.

4 Q. And what was Mr. Byrne's response?

5 MR. WATKINS: Objection to form.

6 THE WITNESS: I -- what I recall is
7 Mr. Byrne did not feel we needed to fill that
8 position at the time.

9 BY MR. COX:

10 Q. Did you go back to Mr. Carter about that
11 issue?

12 MR. WATKINS: Objection to form.

13 THE WITNESS: I don't recall exactly how I
14 got back to Mr. Carter. What I recall is I
15 informed him that we would leave that option
16 open; that's something that we would leave as an
17 option for consideration down the road.

18 BY MR. COX:

19 Q. Did he express any dissatisfaction to you
20 about your position on that issue?

21 MR. CHALLY: Object to form.

22 THE WITNESS: I can't -- I can't speak for
23 what Lonnie was thinking. I know he did express
24 to me he wanted us to consider it. And that's
25 what gave rise to the evaluation.

1 BY MR. COX:

2 Q. How many times did he express that
3 interest in considering it to you?

4 A. I don't recall a specific number of times.

5 Q. Was it more than once?

6 A. It may -- may have or may not. I just
7 don't -- I just don't recall.

8 Q. That conversation that you do recall with
9 Mr. Carter about the owners' engineer issue where you
10 went back to Mr. Byrne to discuss, what time period
11 did that communication occur?

12 MR. WATKINS: Objection to the form of the
13 question.

14 THE WITNESS: I don't -- I don't recall
15 the exact time frame. I -- my memory is it was
16 during that time frame we were negotiating the
17 amendment to the EPC contract with Westinghouse,
18 which would have been in that September --
19 September-October time frame of 19 -- excuse me,
20 of 2015.

21 BY MR. COX:

22 Q. Did you feel that 2015 amendment took away
23 any need for SCE&G to retain an owners' engineer?

24 MR. WATKINS: Objection to form.

25 THE WITNESS: From my perspective, based

1 on what Steve and others at the nuclear plant
2 had shared with me, bringing on Fluor as the
3 main subcontractor to Westinghouse, it was
4 assuming the primary contractor duties, was a
5 welcome addition to the -- to the project.

6 We all believed that that was a positive.
7 We -- both organizations had experience with
8 Fluor and believed that they would -- they would
9 do a good role.

10 So from my perspective, it was an issue
11 that, you know, with Duke -- with Fluor coming
12 on board, we needed to watch, see how they
13 performed, and if they -- if they performed
14 well, that may -- that may have eliminated any
15 consideration for the special project
16 engineer -- owners' engineer.

17 BY MR. COX:

18 Q. Was there ever a time where after Fluor
19 came on board that you reassessed the question of
20 whether an owners' engineer was needed?

21 A. I don't remember doing that after they
22 came on board. It may have been done. I don't
23 remember being involved in that process.

24 Q. If you turn to page 175 of Exhibit 1.

25 A. Okay.

1 Q. If you turn to line 9 and 10, is it
2 correct to say that you believe that SCE&G had
3 mitigated price and schedule risks by selecting a
4 nuclear technology that was well-advanced in the NRC
5 licensing process?

6 MR. WATKINS: Object to the form of the
7 question.

8 THE WITNESS: I mean, my -- my testimony
9 was SCE&G has mitigated these price and schedule
10 risks by selecting a nuclear technology that is
11 well advanced in the NRC licensing process.

12 BY MR. COX:

13 Q. And you believed that to be true at the
14 time, correct?

15 A. I did.

16 MR. WATKINS: Objection to form.

17 THE WITNESS: I did based on information
18 that was provided to me by the nuclear team that
19 did the evaluation of the nuclear generation
20 project.

21 BY MR. COX:

22 Q. And sitting here now today, do you believe
23 that SCE&G selected a nuclear technology that was
24 well-advanced in the NRC licensing process?

25 MR. WATKINS: Objection to the form of the

1 question.

2 THE WITNESS: Yeah. Based on what Steve
3 Byrne provided me, we -- the project was
4 advanced. We had -- we had not gotten -- we had
5 not applied for -- I don't remember if we had
6 applied for the license at that point or not.
7 We had not gotten the license approved by the
8 NRC, but we were in the process of doing that.

9 I can't speak to the specific steps
10 involved, but I believe what I testified to here
11 was my knowledge based on what had been reported
12 to me.

13 BY MR. COX:

14 Q. Sitting here now today, do you regret the
15 decision not to retain an owners' engineer on the
16 project?

17 MR. CHALLY: Object to form.

18 MR. WATKINS: Same objection.

19 MR. COX: What's the basis of that
20 objection?

21 MR. WATKINS: I think it's vague and
22 ambiguous.

23 MR. COX: What's the basis for yours?

24 MR. CHALLY: Roughly the same. You're
25 also not clear as to what time.

1 MR. COX: Okay.

2 Go ahead.

3 MR. WATKINS: Are you able to get the date
4 of when -- this testimony, Exhibit 1?

5 MR. COX: I don't know if it's on here.
6 We can certainly identify it at some point. My
7 question didn't relate to Exhibit 1.

8 MR. WATKINS: Okay.

9 BY MR. COX:

10 Q. Do you need the question repeated, Mr.
11 Marsh?

12 A. If you don't mind, yeah.

13 Q. Sitting here today, do you regret the
14 decision not to retain an owners' engineer on the
15 project?

16 MR. WATKINS: Same objection.

17 MR. CHALLY: Same.

18 THE WITNESS: That would require me to
19 speculate, and I don't -- I don't recall all the
20 facts and circumstances that we considered at
21 the time. I don't know that I can -- can
22 formulate a response to that.

23 BY MR. COX:

24 Q. Do you mean you'd have to speculate on
25 whether an owners' engineer could have addressed the

1 issues in construction of the project better than
2 actually occurred?

3 A. I just don't recall all the issues and
4 responsibilities of the owners' engineer and how that
5 may or may not have impacted the project.

6 I mean, I'm -- I'm -- we're sitting here
7 today in 2018. These were decisions that were made
8 back in -- in 2009. I respect our decision. I stand
9 by our decision then.

10 I just -- I don't feel like I'm in a
11 position to speculate about what we would or would
12 not have done.

13 Q. Well, let me just maybe approach it more
14 globally just so you perhaps understand a little
15 better the question.

16 Is it correct that in 2008, SCE&G
17 requested that the Commission approve an application
18 to construct and operate -- to construct and operate
19 the project?

20 A. Yes.

21 Q. And is it correct to say that SCE&G failed
22 in its objective to construct and operate the
23 project?

24 A. SCE&G was not responsible for constructing
25 the project. That was the responsibility of

1 Westinghouse and the consortium member under the EPC
2 contract.

3 Q. You would agree that SCE&G oversaw the
4 construction of the project, correct?

5 MR. WATKINS: Objection to form.

6 THE WITNESS: We provided -- I mean, we
7 served an oversight role, but we were not
8 responsible for day-to-day construction
9 activities.

10 BY MR. COX:

11 Q. Did SCE&G have any responsibility to
12 improve the chances that the project would get
13 constructed?

14 MR. CHALLY: Object to form.

15 MR. WATKINS: Same objection.

16 THE WITNESS: I don't know how to respond
17 to that question.

18 BY MR. COX:

19 Q. Can you describe what you believe SCE&G's
20 oversight responsibilities were in construction of
21 the project?

22 A. I can --

23 MR. WATKINS: Objection to the form.

24 THE WITNESS: I can only respond to what I
25 was responsible for. I believe I was

1 responsible for an oversight. I can't speak to
2 everything Steve Byrne and his team may have
3 done in an oversight role.

4 BY MR. COX:

5 Q. And I'm referring to the company, not you
6 individually --

7 A. Yeah.

8 Q. -- Mr. Marsh. SCE&G's goal in applying to
9 the Commission was to -- was to have the project
10 completed and operating, correct?

11 A. Yes, it was our goal.

12 Q. And that goal was not achieved, correct?

13 A. It was not achieved because Westinghouse
14 declared bankruptcy.

15 Q. Okay. And I -- and is it fair to say that
16 that's the reason you believe the project was not
17 constructed?

18 MR. WATKINS: Objection to form.

19 THE WITNESS: I believe that's the primary
20 reason.

21 BY MR. COX:

22 Q. Are there any other reasons that you
23 believe the project was not constructed other than
24 Westinghouse's bankruptcy?

25 A. Well, at the time the decision was made to

1 abandon construction, that was done after a
2 deliberate process of evaluating the most prudent
3 path forward. That was after Westinghouse had
4 declared bankruptcy.

5 Our partner, Santee Cooper, decided that
6 they were going to withdraw from the project.
7 Without a partner in the project, we didn't believe
8 it was -- it was prudent to go forward because of the
9 cost impact to our customers to build two units or
10 even one unit on our own without a partner.

11 Q. So is it your testimony that you believe
12 Santee Cooper's decision to withdraw from
13 construction was also a reason that the project was
14 not constructed?

15 MR. WATKINS: Objection to form.

16 THE WITNESS: I believe it's why -- it's
17 one of the reasons why we decided not to
18 continue with construction.

19 I mean, the project was not completed at
20 the time we made the decision to abandon the
21 project, so it was a decision made not to
22 continue with construction. Construction could
23 have continued.

24 BY MR. COX:

25 Q. Would SCE&G have continued constructing

1 the project if Santee Cooper had not decided to
2 withdraw from the effort to construct the project?

3 MR. CHALLY: Object to form.

4 THE WITNESS: That was certainly the
5 evaluation we were -- we were going through. We
6 never completed the evaluation because Santee
7 Cooper decided to withdraw.

8 BY MR. COX:

9 Q. And that's really what I'm getting at. Is
10 it correct to say that SCE&G never reached a
11 conclusion on whether it would have abandoned or not
12 with Santee Cooper as a partner?

13 MR. WATKINS: Objection to the form of the
14 question.

15 THE WITNESS: I'm not sure I'm following
16 your question.

17 BY MR. COX:

18 Q. Let me rephrase.

19 You don't know if SCE&G would have
20 continued constructing the project if Santee Cooper
21 had not announced that it would no longer support
22 construction, correct?

23 MR. WATKINS: Objection to the form of the
24 question. It's vague and ambiguous.

25 THE WITNESS: I don't know if we would

1 have continued with construction because we
2 weren't able to complete the analysis under
3 those assumptions.

4 BY MR. COX:

5 Q. Are there any actions that your company,
6 SCE&G, took in constructing the project that you
7 regret?

8 MR. WATKINS: Objection to the form of the
9 question.

10 MR. CHALLY: Same.

11 THE WITNESS: I don't -- I don't really
12 know how to answer that without -- without
13 speculating.

14 We made decisions that we believed were
15 appropriate at the times we made those
16 decisions, based on the information that was
17 available to us. We did that throughout the
18 project.

19 BY MR. COX:

20 Q. Are there any actions that SCE&G took that
21 you feel contributed to the decision to abandon the
22 project?

23 MR. WATKINS: Objection to form.

24 THE WITNESS: No. As I said earlier, I
25 believe the decision to abandon the project was

1 driven by the bankruptcy of Westinghouse. Our
2 evaluation of the cost to complete the project
3 at the time, which we were not able to complete
4 the overall impact of that because Santee Cooper
5 decided to withdraw from the project.

6 And at that point, as I said earlier, we
7 believed the cost to complete the project was
8 not prudent for us to go forward. We could have
9 gone forward, but we didn't believe it was
10 prudent to go forward based on the impact on
11 customers.

12 BY MR. COX:

13 Q. Is it correct to say that there was
14 substantial delays in construction of modules during
15 the course of the project?

16 MR. WATKINS: Objection.

17 THE WITNESS: There were -- there were
18 delays in some of the submodule construction
19 that was the responsibility of the contractor
20 that we identified and disclosed very early in
21 the process and made efforts to have those
22 processes improved.

23 BY MR. COX:

24 Q. And is it correct to say that the
25 contractor continued to not perform, even with those

1 efforts that your company made to try to get them to
2 improve?

3 MR. CHALLY: Object to form.

4 MR. WATKINS: Same objection.

5 THE WITNESS: I don't understand the
6 specificity of the question.

7 BY MR. COX:

8 Q. Is it correct to say that submodule
9 fabrication and delivery was a problem throughout the
10 life of the project?

11 MR. WATKINS: Objection to the form of the
12 question.

13 THE WITNESS: I don't think it's fair it
14 was an issue throughout the life of the project.

15 It was an issue early on, continued to be
16 an issue for a while, which we disclosed at the
17 Commission. I believe it was also included in
18 other filings we made, in our quarterly reports
19 that we were required to file with the Office of
20 Regulatory Staff on the status of the project.
21 That issue was widely known. It certainly
22 wasn't secretive.

23 And we made efforts and worked hard to
24 limit the cost associated with those, that
25 module production so customers wouldn't have to

1 bear the cost of any inefficiencies or continued
2 delays by the consortium in manufacturing those
3 components.

4 BY MR. COX:

5 Q. And did that problem with submodule
6 fabrication delivery get solved?

7 MR. WATKINS: Objection to the form of the
8 question.

9 THE WITNESS: I can't answer specifically
10 from a project perspective. I know there were
11 actions that were taken by our team to encourage
12 Shaw, CB&I, and Westinghouse to take steps to
13 improve the delivery of the submodules.

14 Some of those were actually taken. They
15 located some of the manufacturer of those
16 components to other facilities other than just
17 the original facility that was designed by Shaw
18 to do that, and that did improve the delivery of
19 the submodules.

20 BY MR. COX:

21 Q. Is it correct to say that submodule
22 fabrication delivery was an issue that drove the
23 critical path of the schedule of the project?

24 MR. CHALLY: Object to form.

25 MR. WATKINS: Same objection.

1 THE WITNESS: Yeah. I don't know -- I
2 don't understand all the aspects of critical
3 path. That's a scheduling project issue, and
4 I -- I'm not qualified to address that.

5 BY MR. COX:

6 Q. Okay. What is your understanding of the
7 critical path of a schedule?

8 A. As I've been -- as it's been explained to
9 me by Mr. Byrne, there are certain activities that
10 need to be performed by certain dates in order to
11 stay on your schedule. Some of those key items would
12 be considered critical path items.

13 But how that works in the overall
14 schedule, I'm not sure.

15 Q. When did Mr. Byrne explain this to you?

16 A. I don't recall that discussion. I've
17 heard that from -- from Mr. Byrne as he's explained
18 it to me and explained it to the board of directors
19 when he gave them updates.

20 Q. How early in the project did Mr. Byrne
21 explain critical path to you?

22 A. I -- I don't recall the first time I heard
23 it.

24 Q. Was it before 2015?

25 MR. WATKINS: Objection.

1 THE WITNESS: I just don't recall.

2 BY MR. COX:

3 Q. So it could have been after 2015?

4 MR. WATKINS: Objection.

5 THE WITNESS: It could have been before.

6 It could have been after. I just don't have a

7 clear memory.

8 (Exhibit 2 was marked for identification.)

9 BY MR. COX:

10 Q. Mr. Marsh, I've handed -- or I've had
11 handed to you a document labeled Exhibit 2. It's an
12 e-mail from you to Paula Rowland and yourself dated
13 June 4th, 2013, Bates-labeled SCANA_RP0034698.

14 Who is Paula Rowland?

15 MR. WATKINS: We'd like to take the
16 opportunity --

17 THE WITNESS: Give me a second to read
18 through it.

19 MR. WATKINS: Take an opportunity to take
20 a break to review this document.

21 MR. COX: Sure. Off the record.

22 VIDEOGRAPHER: The time is 11:41 a.m., and
23 we are off the record.

24 (A recess transpired from 11:41 a.m. until
25 11:48 a.m.)

1 VIDEOGRAPHER: The time is 11:48, and
2 we're back on record.

3 BY MR. COX:

4 Q. Mr. Marsh, have you had a chance to review
5 Exhibit 2?

6 A. I have.

7 Q. Who is Paula Rowland?

8 A. Paula Rowland was my executive assistant.

9 Q. And is it correct that you were asking her
10 to forward a message to the board of directors of
11 SCANA?

12 A. That is correct.

13 Q. And is everything that you asked her to
14 forward to the board of directors accurate?

15 MR. WATKINS: Objection to the form of the
16 question.

17 THE WITNESS: I mean, she forwarded to the
18 board what I asked her to send.

19 BY MR. COX:

20 Q. Right. And let me, perhaps, be more
21 specific.

22 Is the message that you asked her to send
23 to the board of directors, was that an accurate
24 statement of the facts as you understood them to be
25 at the time?

1 MR. WATKINS: Objection to the form of the
2 question.

3 THE WITNESS: I mean, I -- I believe I
4 shared information in this communication which
5 included the facts I knew at the time.

6 BY MR. COX:

7 Q. And this information that you shared, you
8 believed it to be true, correct?

9 MR. WATKINS: Objection to the form of the
10 question.

11 THE WITNESS: It was what had been
12 communicated to me.

13 BY MR. COX:

14 Q. If you could, Mr. Marsh, if you could read
15 the third sentence in the message to the board of
16 directors that begins with "We explain"?

17 MR. WATKINS: Objection to form.

18 THE WITNESS: "We explained that Shaw had
19 failed numerous times in providing an accurate
20 schedule."

21 BY MR. COX:

22 Q. That was a true statement, correct?

23 MR. WATKINS: Objection to form.

24 THE WITNESS: We had disclosed that
25 submodules had been an issue on the project. We

1 had had scheduling issues, delivery dates on the
2 submodules.

3 BY MR. COX:

4 Q. It's true to say that Shaw had failed
5 numerous times in providing an accurate module
6 delivery schedule, correct?

7 MR. WATKINS: Objection to the form of the
8 question.

9 THE WITNESS: Yes. And I believe we had
10 disclosed that.

11 BY MR. COX:

12 Q. And you knew that Shaw had failed numerous
13 times in June 2013, correct?

14 MR. WATKINS: Same objection.

15 THE WITNESS: With respect to the module
16 delivery schedules they had provided, they had
17 not delivered on a timely basis.

18 MR. COX: Okay.

19 (Exhibit 3 was marked for identification.)

20 BY MR. COX:

21 Q. Mr. Marsh, you've been handed a document
22 dated August 23rd, 2013, a letter to you from Lonnie
23 Carter. It's been labeled Exhibit 3 to your
24 deposition.

25 Feel free to review that, and I have a few

1 questions to ask you about this document.

2 A. Okay. All right.

3 Q. Did you receive this document at or around
4 August 23rd, 2013?

5 A. I don't specifically recall receiving it,
6 but I accept that Lonnie Carter sent me this letter
7 based on the document here.

8 Q. The letter refers to a meeting on
9 April 9th, 2013, with CB&I executive leadership.
10 Were you at this meeting?

11 MR. WATKINS: Objection to form.

12 THE WITNESS: I -- I just don't recall one
13 way or the other if I were there.

14 BY MR. COX:

15 Q. So you don't recall anything that was
16 discussed at that meeting?

17 MR. WATKINS: Object.

18 THE WITNESS: I don't.

19 MR. WATKINS: Same objection.

20 BY MR. COX:

21 Q. The bottom of the first page refers to a
22 "presidents' meeting" on June 21st, 2013.

23 What is a "presidents' meeting," to your
24 knowledge?

25 A. We would periodically have a presidents'

1 meeting where the executives of Westinghouse, CB&I at
2 the time, SCE&G, and Santee Cooper would meet to
3 discuss issues.

4 Q. Did those meetings occur on a set periodic
5 schedule, or as needed?

6 MR. CHALLY: Object to form.

7 MR. WATKINS: Same objection.

8 THE WITNESS: My memory is they were --
9 they were generally quarterly if we could
10 coordinate getting everybody together, but I --
11 there was no set schedule other than that, that
12 I recall.

13 BY MR. COX:

14 Q. Do you have any recollection of this
15 presidents' meeting on June 21st, 2013, that
16 Mr. Carter refers to in this letter?

17 A. I don't.

18 Q. Do you believe that anything in this
19 letter that Mr. Carter sent to you, Exhibit 3, is
20 inaccurate?

21 MR. CHALLY: Object to form.

22 MR. WATKINS: Objection to form.

23 Obviously, take your time to review the
24 whole document if you need to.

25 THE WITNESS: It's -- it's Mr. Carter's

1 letter. I have not -- I haven't verified the
2 dates. I don't recall receiving the letter. I
3 don't -- I don't -- it wasn't my practice to
4 send someone out to verify dates that came in a
5 letter from Mr. Carter when I received one.

6 BY MR. COX:

7 Q. But in reading it now, is there anything
8 when you read it you realize, "Wait. I don't agree
9 with his statement on that issue"?

10 MR. CHALLY: Object to form.

11 MR. WATKINS: Same objection.

12 THE WITNESS: As I read it, I don't know
13 that I can accept all of Mr. Carter's opinions
14 as he states those in the letter, as I read it
15 here today.

16 I think the issue he's raising is the
17 structural modules and the delays in delivering
18 the structural modules.

19 I don't disagree with the issue he's
20 describing here. We had talked about that issue
21 with the Commission in our public filings and
22 reports to the Commission and the Office of
23 Regulatory Staff. I don't disagree with the
24 issue he's talking about here.

25

1 BY MR. COX:

2 Q. What characterizations of the issue do you
3 agree with?

4 MR. WATKINS: Objection to the form of the
5 question.

6 MR. CHALLY: Same.

7 THE WITNESS: I mean, any -- anything
8 where he has expressed his opinion, I -- I'm
9 going to let him express his opinion. I may or
10 may not agree with it.

11 BY MR. COX:

12 Q. At the bottom of the first page, the first
13 line of the last paragraph on the first page, it
14 says, quote, The consortium's inability to deliver
15 submodules has been a major source of concern and
16 risk for this project for a long time, end quote.

17 Do you agree with that statement?

18 MR. WATKINS: Objection to the form of the
19 question.

20 THE WITNESS: I'd agree that delivery
21 dates on modules had been an issue, and we had
22 raised the concern.

23 We had also raised the risk and identified
24 that for the Commission back in 2008 when we
25 initially presented the project to the

1 Commission for approval and had talked about it
2 in testimony in numerous occasions since then.

3 BY MR. COX:

4 Q. Do you agree with the statement that the
5 inability of the consortium to deliver submodules was
6 a major source of concern and risk for the project
7 for a long time?

8 MR. WATKINS: Objection to form of the
9 question. It's been asked and answered.

10 THE WITNESS: It's an issue that we -- we
11 acknowledged, we accepted, we had informed the
12 Commission, and we had identified as a risk. We
13 had done that. I agree with that.

14 BY MR. COX:

15 Q. Was it a major risk at this time?

16 MR. CHALLY: Object to form.

17 THE WITNESS: I can't interpret what
18 Lonnie's belief of a major source of concern
19 was. It was an issue. I acknowledge it was an
20 issue.

21 MR. WATKINS: Let me make sure that my
22 objection to the form of the previous question
23 is on the record.

24 BY MR. COX:

25 Q. On the second page, Mr. Marsh, the first

1 sentence that begins on the second page says, quote,
2 Our view is that the consortium's inability to
3 fulfill their contractual commitments in a timely
4 manner places the project's future in danger, end
5 quote.

6 Do you agree with Mr. Carter's view on
7 this issue?

8 MR. WATKINS: Objection to the form of the
9 question.

10 MR. CHALLY: Same.

11 THE WITNESS: And I'll acknowledge that
12 this is Mr. Carter's opinion. I don't know that
13 our team on site would have agreed with his
14 conclusion there. I'm not in a position to
15 understand the overall impact of that on the
16 schedule without understanding all the other
17 issues related -- related to that in the
18 scheduling process. And I didn't do that. That
19 wasn't my responsibility.

20 BY MR. COX:

21 Q. So Mr. Carter was the CEO of Santee
22 Cooper, correct?

23 A. Right.

24 Q. He wasn't involved in construction on the
25 project, correct?

1 A. He was not.

2 Q. And this letter reflects his opinion that
3 the consortium's inability to fulfill their
4 contractual commitments in a timely manner places the
5 project's future in danger, correct?

6 MR. WATKINS: Objection to form.

7 THE WITNESS: Mr. Carter stated his views
8 in the letter. I don't know if those were his
9 views directly, if someone on his team that was
10 on site and had more access to detail had given
11 that to Mr. Carter, or that somebody else didn't
12 write this letter for Mr. Carter. I have no way
13 of knowing that.

14 BY MR. COX:

15 Q. But you would agree that this letter sent
16 to you informs you that Mr. Carter has formed the
17 opinion that the consortium's inability to fulfill
18 their contractual commitments is placing the project
19 in jeopardy, correct?

20 MR. WATKINS: Objection to the form of the
21 question.

22 MR. CHALLY: Same.

23 THE WITNESS: What I take away from this
24 letter is he's raising the issue of the
25 submodules and the challenges we've had in

1 keeping a consortium on schedule and delivering
2 those modules on site, which were a source of
3 delay.

4 I mean, that's an issue we were aware of.
5 That's an issue we had disclosed to the
6 Commission. It had been included in our
7 quarterly reports to the Office of the
8 Regulatory Staff and the Commission on the
9 status of the project.

10 I mean, this was not an issue that was
11 unknown. This was widely known. They were
12 having the same issues at the project in
13 Georgia, at Vogtle.

14 BY MR. COX:

15 Q. At the time you received this letter, did
16 you not know enough about the issue to form an
17 opinion as to whether the consortium's inability to
18 fulfill their contractual commitments in a timely
19 manner placed the project's future in danger?

20 MR. WATKINS: Objection to the form of the
21 question.

22 MR. CHALLY: Same.

23 THE WITNESS: I didn't know on my own
24 without communicating with my team, my
25 construction team. I couldn't have concluded

1 that by my -- by myself.

2 BY MR. COX:

3 Q. Did you take any effort to do that after
4 you received this letter?

5 MR. WATKINS: Objection to the form of the
6 question.

7 THE WITNESS: I had had a number of
8 conversations with Mr. Byrne about modules and
9 the status of module deliveries.

10 I knew it was at issue, and if it were an
11 issue, it was something our team was evaluating.
12 They were constantly evaluating issues that came
13 up on the site as construction proceeded.

14 BY MR. COX:

15 Q. Did you ever form an opinion as to whether
16 the consortium's inability to meet its contractual
17 commitments constituted a risk to the project?

18 MR. WATKINS: Objection.

19 THE WITNESS: I -- I based -- my knowledge
20 was based on what I was informed of by the
21 construction team or the oversight team on site,
22 Mr. Byrne and his senior executives.

23 We -- we knew that was an issue. But I
24 didn't -- I didn't understand, and Mr. Byrne
25 would have had to explain to me what other

1 efforts could be taken to offset or mitigate the
2 impacts of potential delays in receiving
3 submodules.

4 I know there were occasions where certain
5 work was altered or the way work was scheduled
6 to proceed, they would alter the way that work
7 was to be done so they could accommodate the
8 delay in the modules' delivery.

9 So just because a module wasn't delivered
10 on time didn't necessarily mean it put the --
11 the completion dates of the project in grave
12 danger.

13 BY MR. COX:

14 Q. After you received this letter, Mr. Marsh,
15 did you say to yourself, Lonnie thinks that this
16 issue is placing the project's future in danger, and
17 I need to figure out if he's right, that it's that
18 big a problem?

19 MR. WATKINS: Objection to the form of the
20 question.

21 MR. CHALLY: Same.

22 THE WITNESS: As I said earlier, I don't
23 recall receiving the letter. The issues that
24 were raised in the letter are something those of
25 us that were associated with the project were

1 aware of. It had been disclosed. We knew they
2 were issues.

3 It doesn't strike me as an unusual letter
4 for Lonnie. You know, Lonnie -- it was kind of
5 Lonnie's custom if he wanted to, you know, raise
6 an issue or make sure, you know, the issue was
7 documented that he -- he would send me a letter.

8 I mean, I wasn't -- I wasn't stunned that
9 I got a letter from Lonnie.

10 And just knowing Lonnie as well as I have
11 over all the years I've known him, I don't want
12 to impugn his character, but he was kind of a
13 glass-half-full kind of guy. He was always
14 looking on the negative side for most things
15 and, you know, I wouldn't just accept what he
16 said as the gospel per se.

17 BY MR. COX:

18 Q. So you mean a glass-half-empty kind of
19 guy?

20 A. Yeah. Glass half empty. I'm sorry. I
21 misspoke.

22 Q. And you viewed him as raising concerns
23 about the project in an exaggerated way; is that
24 true?

25 MR. WATKINS: Objection to form.

1 THE WITNESS: And I can't speak to what he
2 believed. I believe what he said in the letter.
3 I can read what he said in the letter.

4 But the tone of the letter wouldn't have
5 alarmed me, just being around Lonnie for all the
6 years I have known Lonnie.

7 It was an issue. It didn't shock me that
8 this was an issue. I knew it was an issue based
9 on what Steve had told me and what we had told
10 the Commission and the Office of the Regulatory
11 Staff.

12 This was not a new issue. It was widely
13 known.

14 BY MR. COX:

15 Q. So is it correct to say, Mr. Marsh, that
16 you don't recall, after receiving this letter, doing
17 any work to determine whether you agreed with
18 Mr. Carter's opinion that the consortium's problems
19 in this area put the project's future in danger?

20 MR. CHALLY: Object to form.

21 MR. WATKINS: Objection to the form of the
22 request. It misstates witness's testimony, and
23 it's vague and ambiguous.

24 THE WITNESS: You know, my memory is, as I
25 said, this was an issue. Work was underway.

1 There were evaluations taking place. We were
2 working with the consortium to help them
3 identify ways they could mitigate the issue. I
4 mean, I didn't -- I don't believe I needed to
5 engage anybody in this process.

6 I believe that was already taking place.

7 BY MR. COX:

8 Q. But it's correct to say that you had not
9 formed an opinion like Mr. Carter had, according to
10 this letter, that the consortium's issues placed the
11 project's future in danger?

12 MR. WATKINS: Objection to form.

13 MR. CHALLY: Same.

14 THE WITNESS: We had disclosed that we
15 were -- there were delays in the delivery of the
16 submodules and that that could impact the
17 schedule. We had disclosed that.

18 We had disclosed we were working with the
19 consortium to find ways to address the problem,
20 from my memory and testimony at the Commission.
21 And it was -- this was not a new issue.

22 I don't know -- I can't speak for Lonnie.
23 I don't know why he would have decided that, at
24 this point, to send that letter because that was
25 an issue that arose prior to the date on his

1 letter, and it was one of our primary concerns.
2 It was an issue we were paying close attention
3 to and working hard to resolve.

4 BY MR. COX:

5 Q. And if you turn to the first page of the
6 letter, Mr. Marsh, is Mr. Carter's first sentence of
7 this letter correct that for almost two years, SCE&G
8 and Santee Cooper have been working with the
9 consortium, Westinghouse and CB&I, to correct
10 submodule delivery issues from the Lake Charles
11 fabrication facility?

12 MR. WATKINS: Objection to form.

13 THE WITNESS: That's what it says.

14 BY MR. COX:

15 Q. Is that -- was that a true statement?

16 A. My memory is we -- we started identifying
17 the module issues in 2011. I don't remember the
18 specific dates, but that sounds about -- about right.
19 It's an issue we had been working very hard with the
20 consortium on.

21 Q. And if you turn to the second paragraph of
22 the letter, Mr. Marsh, the second sentence of that
23 paragraph says that "CB&I committed to deliver
24 83 submodules by the end of 2013. Several days after
25 the meeting, CB&I provided its submodule delivery

1 schedule, also dated April 9th, 2013, which committed
2 CB&I to only 69 submodules for the remainder of
3 2013."

4 Is that a correct statement?

5 MR. WATKINS: Objection to the form of the
6 question.

7 MR. CHALLY: Same.

8 THE WITNESS: I don't recall specific
9 dates. I vaguely remember the CB&I team
10 providing us with a module delivery schedule.

11 BY MR. COX:

12 Q. You don't know of anything that would
13 suggest that those statements in this letter are
14 untrue, do you?

15 MR. WATKINS: Objection to form of the
16 question.

17 MR. CHALLY: Same.

18 THE WITNESS: I just don't know about the
19 dates.

20 BY MR. COX:

21 Q. The third paragraph -- the third paragraph
22 of the letter, Mr. Marsh, the second sentence of that
23 paragraph states that, quote, This delay was
24 quantified as 9 to 12 months and publicly announced
25 to the financial community by SCE&G at an Analyst Day

1 presentation June 5th, 2013.

2 Is it correct that the CB&I submodule
3 delivery schedule caused a 9-to-12-month delay?

4 MR. WATKINS: Objection --

5 MR. CHALLY: Object to form.

6 MR. WATKINS: -- to the form of the
7 question.

8 THE WITNESS: I acknowledge that the
9 delivery schedule was an issue. I don't know if
10 that alone led to the 9-to-12-month delay that
11 was announced here. I just don't recall the
12 details.

13 BY MR. COX:

14 Q. In the bottom paragraph on the first page,
15 the letter states, quote, At the last presidents'
16 meeting on June 21st, 2013, the Westinghouse and CB&I
17 discussion demonstrated that they do not function
18 well as a team to resolve critical project issues,
19 end quote.

20 Do you agree with Mr. Carter's conclusion
21 that the Westinghouse and CB&I discussion
22 demonstrated that they did not function well as a
23 team?

24 MR. WATKINS: Objection to form of the
25 question.

1 MR. CHALLY: Same.

2 THE WITNESS: I do not know what
3 Mr. Carter is referring to.

4 BY MR. COX:

5 Q. You don't recall that meeting, do you?

6 A. I don't recall it. No, I don't.

7 Q. Did you ever form the opinion that
8 Westinghouse and CB&I did not function well as a
9 team?

10 A. As the project progressed -- I believe it
11 was in 2015 -- we began to become aware that there
12 were issues between Westinghouse and CB&I, commercial
13 issues between the two of them, that concerned us.

14 Q. Can you describe what those issues were?

15 A. They were -- we had -- we had raised
16 questions about cost. I don't remember the specific
17 costs. Some of them, I believe, are related to the
18 submodules because we had fixed a price for those
19 modules back in the amendment that was done in 2012.

20 There were costs associated with
21 completing those, and I believe there was some other
22 issues that we didn't believe it was responsible --
23 that I didn't believe or the team didn't believe it
24 was the responsibility for SCE&G or Santee Cooper to
25 bear that cost.

1 We had informed the consortium that that
2 was our position, and it appeared to us that there
3 was some disagreement between the consortium partners
4 as to who would be responsible for that. I seem to
5 recall Steve providing some testimony on that, but I
6 don't recall specifically, at the Commission. But
7 that -- but we sensed there were issues between the
8 consortium, and their relationship was not as strong
9 as we would like for it to be.

10 Q. And that was in 2015, correct?

11 A. That's my memory. That was in 2015.

12 Q. And that was two years after Mr. Carter's
13 letter to you, Exhibit 3, correct?

14 MR. WATKINS: Objection to form.

15 THE WITNESS: I mean, I recall 2015.

16 He -- the date of this letter is the --
17 August 23rd, 2013. But I don't know what
18 Mr. Carter was referring to when he says they
19 don't function well as a team.

20 BY MR. COX:

21 Q. This letter, Exhibit 3, you did not
22 provide this letter to the Commission, did you?

23 MR. WATKINS: Objection to form.

24 THE WITNESS: I -- I don't recall if we
25 provided it or not.

1 BY MR. COX:

2 Q. And is it true that your company did not
3 provide this letter to ORS?

4 MR. WATKINS: Objection to form.

5 MR. CHALLY: Same.

6 THE WITNESS: I don't know if we provided
7 the letter to the Office of Regulatory Staff,
8 but we -- we clearly on many occasions provided
9 information regarding the issues surrounding
10 submodules.

11 I don't know what conversations may have
12 taken place on site with the ORS personnel who
13 were on site on a daily basis working with the
14 construction team on site. I don't know what
15 conversations may have taken place with them on
16 site, but I'm comfortable we disclosed issues
17 related to the submodules and the delays
18 associated with that.

19 (Exhibit 4 was marked for identification.)

20 BY MR. COX:

21 Q. Mr. Marsh, we have had labeled Exhibit 4
22 an e-mail exchange that involved you and Mr. Carter.

23 If you could read this, I've got a few
24 questions for you about it.

25 MR. ELLERBE: Do you have dates?

1 MR. COX: Exhibit 4 is an e-mail exchange
2 dated September 5th, 2013, Bates-numbered
3 FOE0000018 through -19.

4 THE WITNESS: Okay.

5 BY MR. COX:

6 Q. On the second page of Exhibit 4,
7 Mr. Marsh, is this an e-mail from you to Danny
8 Roderick and Phil Asherman?

9 A. Yes, it is.

10 Q. And they were the CEOs of Westinghouse and
11 CB&I, correct?

12 A. Phil Asherman was the CEO of CB&I. I'm
13 not sure if Danny was CEO or just president. I don't
14 recall -- minor detail, but I don't recall his
15 specific position. It was either president or CEO.

16 Q. Why did you send this e-mail to those two
17 individuals?

18 MR. WATKINS: Objection to form.

19 THE WITNESS: It appears, based on reading
20 my comments, that we've continued to express our
21 concerns about the delivery of modules from the
22 Lake Charles facility.

23 As I said earlier, they're -- they were
24 not doing a good job at that facility in
25 manufacturing or fabricating the submodules for

1 delivery to the site, and that had a potential
2 impact -- you know, of impact on our project.

3 We wanted to continue to meet with them to
4 find out what their plans were and what steps
5 they continued to take or they were going to
6 take to address the issue.

7 BY MR. COX:

8 Q. Are all the statements in your e-mail to
9 them correct, to the best of your knowledge?

10 MR. WATKINS: Objection to the form of the
11 question.

12 MR. CHALLY: Same.

13 THE WITNESS: I stand by what I said in
14 the e-mail. That's what I said in the e-mail.

15 BY MR. COX:

16 Q. And it's correct that the consortium was
17 in its third year of unsuccessful attempts to resolve
18 its manufacturing problems at the facility, which
19 continued to impact the project negatively?

20 A. That is what I said, yes.

21 Q. And is it correct that the consortium's
22 missed deadlines put potentially unrecoverable stress
23 on the milestone schedule approved by the
24 South Carolina Public Service Commission?

25 A. That's what I said.

1 Q. And it's correct that SCE&G had serious
2 concerns about the consortium's ability to deliver
3 modules from the Lake Charles facility?

4 MR. WATKINS: Objection to form.

5 THE WITNESS: We had -- we raised our
6 concerns about the problems at the Lake Charles
7 facility on many occasions. This was just
8 another time that I mentioned that concern that
9 had been expressed to me from Steve Byrne and
10 others on site at the construction project as an
11 ongoing concern.

12 BY MR. COX:

13 Q. And your company's concerns were serious,
14 correct?

15 MR. WATKINS: Objection to form.

16 MR. CHALLY: Same.

17 THE WITNESS: That's what I said: They
18 were serious concerns that we believed needed to
19 be addressed.

20 BY MR. COX:

21 Q. In response, Mr. Carter says to you,
22 quote, Thanks. I believe your letter is clear and
23 expresses the urgency well, end quote.

24 Do you agree that there was urgency
25 attached to your letter?

1 MR. WATKINS: Objection to the form of the
2 question.

3 THE WITNESS: I believe we said it was a
4 serious issue for us, and we had proposed dates
5 indicating that we thought it was important that
6 we meet in the near future.

7 BY MR. COX:

8 Q. Do you agree with Mr. Carter that your
9 request had urgency attached to it?

10 MR. WATKINS: Same objection.

11 THE WITNESS: I don't -- I don't believe I
12 used the word "urgency" in my letter, but I did
13 express the need for us to meet in the very near
14 future.

15 BY MR. COX:

16 Q. And to be clear, Mr. Carter is saying
17 that, and I'm not suggesting you said it. I want to
18 know if you agree with him about this being -- there
19 being urgency attached to this situation.

20 A. That's Mr. Carter's word. It was
21 certainly an issue I wanted the team to address. It
22 had been -- as I had been informed by the nuclear
23 team on site, that was a continuing issue of
24 challenge for us, specifically at the Lake Charles
25 facility. That was -- one of our biggest concerns

1 was the Lake Charles facility was not able to deliver
2 the modules on a timely basis.

3 We had encouraged them to reach out to
4 other facilities to help them as a way to mitigate
5 that schedule impact, and we didn't believe they were
6 responding to us appropriately.

7 Q. Why didn't you reconsider at this point in
8 time the decision on not to use an owners' engineer
9 to help address this situation?

10 MR. WATKINS: Objection to the form of the
11 question.

12 MR. CHALLY: Same.

13 THE WITNESS: Yeah. I can't answer that.
14 That would be in Steve Byrne's and the
15 construction personnel on site's determination.

16 BY MR. COX:

17 Q. So you felt you would have needed
18 Steve Byrne to come to you with a proposal to help
19 address this situation; is that fair to say?

20 MR. WATKINS: Objection to the form of the
21 question.

22 THE WITNESS: I believe Steve and his team
23 on site were capable of providing the oversight
24 needed on the project.

25 I don't know if Steve considered an

1 owners' engineer. I don't know what thoughts
2 went through his mind. But I was confident that
3 the team we had on site was capable of
4 identifying the issues.

5 I don't -- don't know what all an owners'
6 engineer would have done. But we had identified
7 the issue. We didn't need an owners' engineer
8 to identify the issue. We had identified the
9 issue. We had identified opportunities that we
10 believed CB&I -- "we" being the team,
11 construction team on site -- had identified ways
12 they could look at, you know, addressing the
13 issue.

14 We were pointing out the issue. We were
15 giving them suggestions from an oversight
16 perspective as to how they could address those.

17 BY MR. COX:

18 Q. So the reason that you didn't consider --
19 reconsider the question of using an owners' engineer
20 is because Steve Byrne didn't come to you and say,
21 "Hey, Kevin, I think an owners' engineer might help
22 us on this issue"?

23 MR. CHALLY: Object to form.

24 MR. WATKINS: Objection to the form of the
25 question. It's vague and ambiguous, and it

1 mischaracterizes the witness's testimony.

2 THE WITNESS: I don't believe it was --
3 was my role to consider the owners' engineer.
4 The oversight of the contract and the
5 construction was Steve Byrne and the senior
6 leadership's team on site. Had Steve brought
7 that issue to me, I would have considered it
8 along with him based on his input to me, but
9 that was not an issue that I felt like I needed
10 to raise with Steve.

11 BY MR. COX:

12 Q. You said this issue had been identified
13 for a couple of years, but the issue hadn't been
14 solved yet, right, Mr. Marsh?

15 MR. WATKINS: Objection to form.

16 THE WITNESS: I don't know that it had
17 been completely solved. There had -- there had
18 been some improvements, based on my memory, but
19 not enough to keep people from having concerns
20 on delivery dates.

21 BY MR. COX:

22 Q. And not enough to avoid putting
23 potentially unrecoverable stress on the milestone
24 schedule approved by the Commission, correct?

25 MR. WATKINS: Objection to form.

1 THE WITNESS: They -- that's what I said
2 in the letter, yes.

3 BY MR. COX:

4 Q. What proposals did Mr. Byrne ever bring to
5 you to help solve the issue with respect to submodule
6 fabrication and delivery?

7 A. The primary issue or recommendation I
8 remember Mr. Byrne bringing up, he actually brought
9 up in -- it may have been late 2011, 2012 when we
10 first visited the facility and they started having
11 issues was they should consider distributing those
12 responsibilities to other locations where they could
13 be fabricated by people that had more experience in
14 manufacturing -- or fabricating the submodules.

15 Q. And was that recommendation implemented?

16 A. Ultimately, it was. I don't recall when
17 it was actually done, but they ultimately did take
18 Steve's recommendation and find other locations where
19 parts could be fabricated.

20 Q. Was it done prior to this e-mail,
21 Exhibit 4?

22 A. I don't -- I don't recall when they
23 started doing that.

24 Q. Did this meeting that you proposed to
25 Roderick --

1 A. I --

2 Q. I'm sorry.

3 A. I'm going to correct my answer.

4 I believe it was in early 2014, as I sit
5 here and remember. It was -- I think it was early in
6 2014 when they -- when they started doing that.

7 Q. And that was at your company's
8 recommendation?

9 A. Well, Steve had pushed them consistently
10 to consider that. I don't know that others -- it may
11 have been personnel from the Vogtle project that were
12 also pushing because they had the exact same issue.
13 And we worked with them on trying to resolve some of
14 the issues.

15 Q. Do you know whether they used an owners'
16 engineer on the Vogtle project?

17 A. I don't.

18 Q. In Exhibit 4, you request a meeting with
19 Mr. Roderick and Asherman. Do you know if that
20 meeting ever occurred?

21 A. I don't recall.

22 (Exhibit 5 was marked for identification.)

23 BY MR. COX:

24 Q. Mr. Marsh, Exhibit 5 is a letter from you
25 and Mr. Carter dated May 6th, 2014, to Mr. Asherman

1 and Mr. Roderick.

2 Would you like a few minutes to review
3 this letter before I ask you questions about it?

4 A. Yes, please.

5 Q. Sure. And just so you know, one question
6 I'm going to ask you -- the first question I'll ask
7 you about this letter is whether there's anything in
8 it that you believe is inaccurate.

9 MR. WATKINS: I'm trying to make sure I'm
10 clear: Anything in the entire document is
11 inaccurate?

12 MR. COX: Right.

13 THE WITNESS: (Reviewing).

14 MR. WATKINS: Just so I'm clear, I don't
15 believe you provided this to us in advance,
16 right?

17 MR. COX: I don't think I provided any
18 documents to you in advance.

19 MR. WATKINS: Just wanted to make sure.
20 We'll take a break, then, to review this.

21 MR. COX: Let's go off the record.

22 VIDEOGRAPHER: The time is 12:33 p.m., and
23 we are off the record.

24 (A luncheon recess transpired from 12:33
25 until 1:28 p.m.)

1 VIDEOGRAPHER: Time is 1:28 p.m., and we
2 are back on record.

3 BY MR. COX:

4 Q. Mr. Marsh, we're back on the record after
5 lunch, and you have in front of you Exhibit 5. Did
6 you get a chance to review that document?

7 A. I have reviewed it.

8 Q. Is that your signature on the last page of
9 the document?

10 A. Yes, it is.

11 Q. Is this a letter that you and Mr. Carter
12 sent to Mr. Asherman and Roderick on or about
13 May 6th, 2014?

14 A. Yes. That's correct.

15 Q. Is there anything that you believe to be
16 inaccurate in the letter that you sent?

17 A. I don't -- I don't have a reason to
18 believe there's anything in here that is inaccurate.

19 I will say that I didn't draft the letter.
20 It was drafted for me or for us. I believe someone
21 from Santee Cooper may have drafted the initial
22 draft, and then it was -- was fact-checked by the
23 legal team and the nuclear team on site because there
24 is some detail in here, and I accepted that it had
25 been checked and signed it.

1 Q. And to the best of your knowledge, at the
2 time you signed this letter, the facts stated in this
3 letter were accurate; is that correct?

4 A. To the best of my knowledge.

5 MR. WATKINS: Objection to the form of the
6 question.

7 BY MR. COX:

8 Q. Why did you and Mr. Carter send this
9 letter to Mr. Asherman and Roderick?

10 MR. CHALLY: Object to form.

11 MR. WATKINS: Same objection.

12 THE WITNESS: I don't recall what
13 initially generated the thought to send the
14 letter.

15 It's a continuing push on our part to
16 address the submodule issue and their inability
17 to meet the schedules that they have -- that
18 they have put out, trying to make sure they've
19 gotten our attention up.

20 I saw this as kind of a get-your-attention
21 letter. We wanted to make sure, you know, we're
22 serious here.

23 We had -- we had scheduled a trip to -- to
24 Toshiba to address some of these issues with
25 Toshiba, the parent company of Westinghouse, and

1 I don't -- I don't recall exactly when that trip
2 was scheduled, but it was in the latter May time
3 frame, from what I recall.

4 BY MR. COX:

5 Q. Is it correct to say that the module
6 production and delivery issues had not been solved at
7 the time that you sent this letter to Mr. Asherman
8 and Roderick?

9 A. Yeah.

10 MR. WATKINS: Objection to form.

11 THE WITNESS: You know, at the time we
12 sent the letter, as we've documented, we were
13 continuing with issues on the fabrication of the
14 submodules and their ability to hit schedules
15 that they had provided us, that they could
16 deliver the -- the modules, submodules.

17 BY MR. COX:

18 Q. If you could turn to page 4 of the
19 document.

20 A. Okay.

21 Q. Under Roman numeral II at the top of the
22 page, can you read the second sentence in that
23 paragraph that starts with "Despite"?

24 A. "Despite the poor progress, you assured us
25 that you had resolved the module production

1 problems."

2 Q. And you're referring there in this letter
3 to an assurance that Westinghouse and CB&I made to
4 SCE&G and SCANA in 2000 -- or SCE&G and Santee Cooper
5 in 2012, correct?

6 A. That's what it says, yes.

7 Q. Then on the following page, page 5, can
8 you read the first sentence under Roman numeral III?

9 A. "Despite the consortium's assurances,
10 module production did not improve after the 2012
11 agreement."

12 Q. That's a true statement, correct?

13 A. Based on our experience at the time we
14 wrote this letter, they -- they were -- had not
15 improved as we anticipated they would when we signed
16 the 2012 agreement.

17 Q. And despite the assurances that they had
18 made that they would solve that issue, correct?

19 MR. WATKINS: Objection.

20 THE WITNESS: I -- that's what it says,
21 yes.

22 BY MR. COX:

23 Q. At the bottom of page 6, if you could turn
24 to that page, can you read the last sentence in that
25 page that starts with "Westinghouse"?

1 A. "Westinghouse did not attend the meeting,
2 but CB&I was there, and it promised that the
3 consortium would deliver four modules in the second
4 quarter of 2013, 40 modules in the third quarter and
5 39 models -- modules in the fourth quarter."

6 Q. That's a promise that CB&I made to SCE&G
7 and Santee Cooper, correct?

8 A. That's correct.

9 MR. WATKINS: Objection to form.

10 BY MR. COX:

11 Q. Can you read the first sentence on -- I'm
12 sorry, under subsection E on page 7, the first
13 sentence?

14 A. "We saw no improvement over the next
15 several months. By July 18, 2013, the consortium had
16 delivered only 44 of the 72 CA20 submodules. This
17 means that it had delivered only 3 modules in the
18 preceding 11 weeks."

19 Q. That was a true statement, correct?

20 MR. WATKINS: Objection to form.

21 THE WITNESS: That -- that's what we
22 documented in the letter.

23 BY MR. COX:

24 Q. If you could turn to page 13 of the
25 letter, could you read the first paragraph under

1 subsection D?

2 A. "As a result of these events, our
3 frustration continues to mount. You have made
4 promise after promise but fulfilled few of them."

5 Q. That was a true statement at the time that
6 you made it in this letter, correct?

7 MR. WATKINS: Objection --

8 MR. CHALLY: Object to form.

9 MR. WATKINS: Objection to the form of the
10 question.

11 THE WITNESS: Can you repeat the question?

12 BY MR. COX:

13 Q. Sure. That was a true statement at the
14 time that you made it in this letter, correct?

15 MR. WATKINS: Same objection.

16 MR. CHALLY: Same.

17 THE WITNESS: That's what we stated in the
18 letter.

19 BY MR. COX:

20 Q. And you believed it to be true, correct?

21 MR. WATKINS: Same objection.

22 THE WITNESS: Based on information
23 provided to me by our nuclear team, yes.

24 BY MR. COX:

25 Q. The promises that you're referring to that

1 were not fulfilled by the consortium were promises
2 regarding the schedule for delivery of submodules,
3 correct?

4 MR. WATKINS: Objection.

5 THE WITNESS: It was their -- it was their
6 lack of following up or lack of delivering
7 submodules, based on a variety of schedules they
8 had provided us.

9 BY MR. COX:

10 Q. SCE&G did not provide a copy of this
11 letter to the Commission, did it?

12 A. I don't know if we did or did not.

13 Q. SCE&G did not provide a copy of this
14 letter to ORS, did it?

15 A. I don't know.

16 MR. CHALLY: Object to form.

17 (Exhibit 6 was marked for identification.)

18 BY MR. COX:

19 Q. Mr. Marsh, Exhibit 6 is an e-mail exchange
20 between you and Mr. Carter dated September 3rd
21 through September 8th, 2014, Bates-numbered
22 ORS_00002009 through 2011.

23 You can go ahead and review this document.
24 The first question I would have for you is whether
25 the statements in the initial e-mail you sent to

1 Mr. Carter on September 3rd were all accurate, to the
2 best of your knowledge, at the time that you made
3 them.

4 A. Okay.

5 Q. So, Mr. Marsh, your e-mail to Mr. Carter
6 on September 3rd, was that e-mail accurate, the
7 information in it, to the best of your knowledge?

8 MR. WATKINS: Objection to form.

9 THE WITNESS: Based on what I said in
10 September 3rd, 2014, yes.

11 BY MR. COX:

12 Q. Your e-mail to Mr. Carter starts with the
13 fact that you met with your team. Who are the
14 members of your team that you're referring to?

15 A. I don't recall all the members who would
16 have been in there. I'm fairly confident that Steve
17 Byrne was in there, but I don't recall who else might
18 have attended that meeting.

19 Q. Did you take any notes at that meeting?

20 A. I don't recall.

21 Q. Do you typically take notes at meetings
22 you attend?

23 MR. WATKINS: Objection to form.

24 THE WITNESS: Sometimes I do, and
25 sometimes I don't. Sometimes I'm primarily

1 listening. It just depends on the source of the
2 meeting and whether or not something leaves an
3 impression that makes me want to write it down.

4 BY MR. COX:

5 Q. Did you have a standard practice for
6 filing notes from the meetings at which you took
7 notes?

8 A. No, I didn't.

9 Q. Would you typically discard those notes,
10 or was it pretty random about what you would do with
11 notes after a meeting?

12 MR. WATKINS: Objection to form.

13 THE WITNESS: I mean, I would -- I have
14 a -- I would generally keep my notes in a spiral
15 notebook. And when that notebook was filled for
16 me -- I keep notes of a lot of matters in there,
17 not just nuclear matters -- and typically, when
18 that notebook was filled, I would discard it.

19 BY MR. COX:

20 Q. Do you know if any of the notebooks that
21 you took notes in regarding nuclear matters were
22 still existing at the time that you left your
23 position as CEO?

24 A. I provided everything I had in my office
25 related to nuclear matters to SCANA legal counsel

1 before I left.

2 Q. Did you recall seeing any notebooks with
3 your notes from meetings among those papers that you
4 gave to SCANA legal?

5 A. There could have been. There was a large
6 stack of information that I had accumulated over the
7 years on the project.

8 Q. When you say "SCANA legal," who did you
9 give it to?

10 A. SCANA general counsel.

11 Q. Who was that?

12 A. Jim Stuckey.

13 Q. In your bullet point number 1 to
14 Mr. Carter in Exhibit 6, it's true that you referred
15 to the estimate given by the consortium for delay
16 costs as being a very preliminary number, isn't it?

17 A. That's correct. My memory is we had -- we
18 had just received that in late August from the
19 consortium.

20 Q. And under bullet point number 2, you refer
21 to a team that was put together to review that
22 information.

23 Do you recall who was on that team?

24 A. I don't recall specifically. When we
25 received an update -- if we received an update from

1 the consortium at a level that would require us to
2 update the Commission because it was going to have an
3 impact on cost and schedule, if it were -- if it were
4 accurate, Steve Byrne would normally assign a team of
5 people at the site to go through it, review it, and
6 try to understand what was in it.

7 Q. And is it true that the company would
8 assign people that it felt were the best qualified to
9 analyze that information?

10 MR. WATKINS: Object --

11 MR. CHALLY: Object to form.

12 MR. WATKINS: Same objection.

13 THE WITNESS: My memory is it was people
14 who were on site who were familiar with
15 construction activities, primarily from the
16 finance and administration department, along
17 with appropriate personnel from construction.

18 BY MR. COX:

19 Q. Is it true that the Commission would --
20 I'm sorry.

21 Is it true that the company would identify
22 people who it felt would be best qualified to review
23 that information?

24 MR. CHALLY: Object to form.

25 MR. WATKINS: Same objection.

1 THE WITNESS: Well, the goal was to put
2 together a team that would have people that
3 would either be qualified to look at it or they
4 could reach out to other experts, as they felt
5 necessary, around the organization to help with
6 the review.

7 BY MR. COX:

8 Q. And isn't it true that SCE&G wanted to put
9 the best quality of analysis on the -- that cost
10 information?

11 MR. CHALLY: Object to form.

12 MR. WATKINS: Same.

13 THE WITNESS: I mean, we -- we used team
14 members from the site whom we believed were
15 qualified to look at it. That was our
16 objective, is to have qualified people from the
17 site examine the information and review it.

18 BY MR. COX:

19 Q. On bullet point number 3 here, you refer
20 to -- actually, could you read the first sentence of
21 that bullet point?

22 A. "We are ready to move forward with
23 hiring/engaging an additional resource with
24 significant construction expertise to assist us with
25 evaluating the construction schedule and project

1 status."

2 Q. That was a true statement at the time you
3 made it, right, Mr. Marsh?

4 MR. WATKINS: Objection to form.

5 THE WITNESS: That was the statement I
6 made at the date of this e-mail.

7 BY MR. COX:

8 Q. And is it true that ultimately your
9 company authorized the retention of the Bechtel
10 Corporation to conduct this assessment?

11 MR. CHALLY: Object to form.

12 MR. WATKINS: Same objection.

13 THE WITNESS: No, that's not correct.

14 BY MR. COX:

15 Q. Tell me how that's incorrect.

16 MR. WATKINS: Objection to the form.

17 There's no question pending.

18 THE WITNESS: I mean, this was not in any
19 way referring to Bechtel.

20 BY MR. COX:

21 Q. Bechtel did an assessment of the project
22 in 2015, correct?

23 MR. WATKINS: Objection to form.

24 MR. CHALLY: Same objection.

25 THE WITNESS: Our outside legal counsel

1 and construction expert engaged Bechtel to do a
2 project assessment in 2015.

3 BY MR. COX:

4 Q. Did Bechtel assess the project in 2015?

5 MR. WATKINS: Same objection.

6 THE WITNESS: They performed the
7 procedures that George Wenick and the Bechtel
8 team agreed to.

9 BY MR. COX:

10 Q. And you were aware that that assessment
11 was occurring at the time that it was conducted,
12 correct?

13 A. I was aware that George Wenick had engaged
14 them to do a review and that they were on site doing
15 that, yes.

16 Q. And your company authorized Mr. Wenick to
17 enter into that contract with Bechtel Corporation to
18 conduct that assessment, correct?

19 MR. WATKINS: Objection to the form of the
20 question.

21 THE WITNESS: Mr. Wenick --

22 MR. COX: What's the objection there?

23 MR. WATKINS: "Your company" is vague and
24 ambiguous. I'm not even sure what "your
25 company" means. Mr. Kevin Marsh does not own

1 this company.

2 I'm not even sure what the time frame is
3 here. But it's vague and ambiguous, and it
4 mischaracterizes testimony.

5 BY MR. COX:

6 Q. Go ahead.

7 A. Mr. Wenick, who was construction counsel
8 that had been engaged by SCE&G and Santee Cooper,
9 recommended and believed it would be a good idea to
10 engage Bechtel to do an assessment in anticipation of
11 potential litigation.

12 He suggested that, and we -- and the
13 leadership team believed he should pursue it.

14 Q. So it's correct that SCE&G authorized
15 Mr. Wenick to engage Bechtel to conduct that
16 assessment?

17 A. We accepted his counsel as an outside
18 construction expert that that would be a step that
19 would potentially prove useful in anticipation of
20 litigation, based on his advice.

21 Q. And your testimony is that that assessment
22 conducted by Bechtel is not an assessment that you're
23 referring to here in Exhibit Number 6; is that
24 correct?

25 MR. WATKINS: Objection to the form.

1 THE WITNESS: No. And I don't think in
2 any way it's connected to this. This letter of
3 communication that I sent to Mr. Carter was
4 September of 2014, and the Bechtel assessment,
5 based on my knowledge, wasn't even considered
6 until 2015.

7 BY MR. COX:

8 Q. The need that you're referring to here, as
9 far as hiring/engaging an additional resource, is
10 that the same need that you ultimately agreed to have
11 Bechtel fulfill in 2015?

12 MR. CHALLY: Object to form.

13 MR. WATKINS: Objection.

14 THE WITNESS: I don't believe in any way
15 they're connected. The additional resource
16 here, in my understanding from my recollection,
17 addresses an individual that we were considering
18 adding to our team to work with our team in
19 evaluating ongoing schedule-related activities.

20 BY MR. COX:

21 Q. And can you describe what ultimately --
22 what individual was ultimately retained to fill that
23 role?

24 A. I don't recall if anyone was retained. We
25 recommended that Jeff Archie and Mike Crosby help

1 identify potential candidates for this role. I don't
2 recall if they ever identified anyone for the role.

3 Q. It's true that at this time you believed
4 it would be beneficial for SCE&G to hire/engage an
5 additional resource with significant construction
6 expertise to assist SCE&G with evaluating the
7 construction schedule and project status, correct?

8 MR. WATKINS: Objection to form.

9 MR. CHALLY: Same.

10 THE WITNESS: Lonnie and I had talked
11 about that. I agreed that it would be
12 worthwhile pursuing that, and I turned that over
13 to the construction team to make a final
14 determination.

15 BY MR. COX:

16 Q. And it's true that you agreed that that
17 would be a beneficial step for the project?

18 MR. WATKINS: Same objection.

19 MR. CHALLY: Object to form.

20 THE WITNESS: I'll stand by what I said.

21 I agreed we were ready to move forward with
22 hiring an additional resource because Lonnie had
23 indicated he thought that could be helpful.

24 When Lonnie and I discussed it, I said, I don't
25 think that would hurt.

1 I turned it over to the construction team
2 to make the final determination. I wasn't in a
3 position to make a final decision about whether
4 or not we needed a construction person. I
5 agreed that an additional resource, you know,
6 could assist us, and I turned it over to the
7 construction team to make a final determination.

8 BY MR. COX:

9 Q. What resources are you aware of that SCE&G
10 ultimately hired or engaged to perform this work?

11 MR. WATKINS: Objection.

12 THE WITNESS: Well, I want to be clear.
13 When I'm talking about resources here, I'm
14 talking about one person. It says "an
15 additional resource." I'm talking about an
16 individual. I don't know if we hired someone as
17 a result of this discussion.

18 We hired people all along the way to add
19 to -- "we," Steve Byrne, the construction
20 team -- as necessary would add expertise to
21 their team and hire the levels of expertise they
22 believed was necessary.

23 I was not engaged nor was I qualified to
24 determine the exact type of people we needed on
25 the project.

1 BY MR. COX:

2 Q. If you could turn to Mr. Carter's response
3 to you dated September 8th, bullet point number 2 on
4 the response, Mr. Carter says, quote, My sense is
5 that neither the owners nor the consortium have any
6 real confidence that the proposed rollout schedule
7 that the consortium shared with the owners on
8 August 1st is achievable, end quote.

9 At this point in time, did you have
10 confidence that the schedule, the proposed schedule
11 that Westinghouse had rolled out, was achievable?

12 A. I had no basis of make -- excuse me,
13 making that determination one way or the other.

14 The information was very preliminary. To
15 my knowledge, it had not been reviewed or analyzed by
16 the team that Steve Byrne put in place on the site.
17 I didn't have an opinion. It was a preliminary
18 schedule at that point and related cost.

19 Q. And when you refer to "schedule," you're
20 referring to the schedule, the timeline schedule for
21 construction, or the cost estimate?

22 MR. WATKINS: Objection to form.

23 THE WITNESS: I don't know exactly what
24 Lonnie's referring to here, when you're talking
25 about a "new project schedule."

1 To the extent a project schedule changes,
2 it wouldn't be unexpected that cost would change
3 with that. But it's not clear here what he's
4 referring to.

5 BY MR. COX:

6 Q. Is it fair to say that you don't feel that
7 you were in a position to be able to assess whether
8 the schedule was achievable?

9 MR. WATKINS: Objection to form.

10 MR. CHALLY: Same objection.

11 THE WITNESS: Yeah. I personally was not
12 in a position to evaluate that. That was --
13 that's not my skill set.

14 BY MR. COX:

15 Q. When you received this e-mail from
16 Mr. Carter, did it concern you that Mr. Carter was
17 expressing the opinion that he did not believe that
18 the schedule that Westinghouse was -- proposed was
19 achievable?

20 MR. WATKINS: Same objection.

21 THE WITNESS: All I knew was he had
22 expressed his concerns. I knew that a -- a team
23 would go through and evaluate the results, and
24 once we had completed an evaluation would be in
25 a position -- the company would be in a position

1 based on input from the nuclear team to form an
2 opinion as to the schedule.

3 BY MR. COX:

4 Q. So you felt that the concern expressed by
5 Mr. Carter was being addressed internally by SCE&G?

6 MR. WATKINS: Objection.

7 THE WITNESS: I knew that the schedule
8 would be reviewed by SCE&G personnel and also
9 Santee Cooper personnel who were on site. They
10 normally participated in that process with us.

11 BY MR. COX:

12 Q. Did you ever respond to Mr. Carter and
13 say, "Why do you feel that the schedule that the
14 consortium's given -- giving us isn't achievable"?

15 A. I don't recall responding to him.

16 Q. Did it concern you that Mr. Carter had
17 these opinions and you felt that the concern was
18 being addressed by the -- the owners' team, or did it
19 not concern you at all that he expressed these
20 opinions?

21 MR. WATKINS: Objection to the form of the
22 question.

23 THE WITNESS: Given that Santee Cooper was
24 a 45 percent owner in the project, I never
25 ignored Lonnie's concerns.

1 The fact that he had raised that concern
2 wasn't a surprise. We had gotten a new schedule
3 after we had been through a protracted period
4 where we had concerns about submodule
5 deliveries. They had delivered us a new
6 schedule.

7 We had -- we had a right to understand and
8 be concerned about what was in the schedule and
9 did we believe they could achieve what they had
10 provided to us.

11 BY MR. COX:

12 Q. What did -- what did SCE&G's review of the
13 schedule reveal, to your recollection?

14 MR. WATKINS: Objection.

15 MR. CHALLY: Same objection.

16 THE WITNESS: What I recall from the
17 results of the review was that, based on the
18 information provided, that we had reviewed it
19 with personnel on site. They had looked at
20 the -- the team on site had looked at the basis
21 for scheduling changes as well as cost
22 associated with those schedules. They had --
23 they had verified amounts associated with that.

24 They had looked at the basis for the
25 staffing and other issues related to the cost

1 increases and concluded that that was the best
2 information we had available based on the
3 assumptions they had made in the schedule.

4 In the review, that schedule was the best
5 information we had available and the cost
6 associated with it that the contractor under
7 their responsibilities under the EPC contract
8 had given us.

9 BY MR. COX:

10 Q. Did you go back and tell Mr. Carter about
11 this result from the review?

12 A. I don't think it required me to go back
13 and tell Lonnie Carter. He had people on site that
14 were close to the review and the evaluation. I'm
15 confident he would have known what the team
16 concluded.

17 Q. Did you ever find out whether that review
18 addressed his concern that the schedule that the
19 consortium had proposed was not achievable?

20 MR. WATKINS: Objection.

21 MR. CHALLY: Same objection.

22 THE WITNESS: I can't speak for
23 Mr. Carter's thoughts. I know, in accepting the
24 information from the consortium that they
25 provided to us, that we ultimately took the

1 Public Service Commission as a partner. They
2 had to concur in what was provided in order for
3 us to update the Commission. We wouldn't have
4 updated them if we hadn't concurred that the
5 information provided was the best available
6 information we had.

7 BY MR. COX:

8 Q. So Santee Cooper had to provide approval
9 to any submissions that the SCE&G made to the
10 Commission?

11 A. They didn't have to provide -- they didn't
12 have to provide approval of the submissions, but the
13 information we would have included at this time in --
14 I guess that would have been the 2015 update to the
15 Commission, we had to negotiate a number of change
16 orders and agree to certain changes.

17 I don't know if they were just -- if they
18 were amendments to the contract or they were just
19 change orders that impacted cost.

20 Anything over a million dollars, they had
21 to sign off on. So they were clearly in agreement
22 with what we had agreed to with the consortium at
23 that time. They may have still had concerns, but
24 they agreed to what we had, and that was the
25 information we presented to the Commission.

1 Q. So it's your testimony that in 2015, SCE&G
2 presented to Santee Cooper the information that SCE&G
3 planned to present to the Commission regarding
4 schedule and cost, and Santee Cooper agreed that --
5 that that was an appropriate submission to the
6 Commission?

7 A. I don't know that --

8 MR. WATKINS: Objection to the form of the
9 question.

10 MR. CHALLY: Objection.

11 THE WITNESS: I don't know that -- I don't
12 know that we presented the -- gave them a
13 presentation or gave them all the details of our
14 filing to review, but they were certainly aware
15 of what we had agreed to with the consortium or
16 what we had accepted in terms of the schedule as
17 being the best information available.

18 There were still disputes at that time
19 regarding who was responsible for paying for the
20 cost, but in terms of the schedule and whether
21 or not the cost would be spent and if that
22 represented an accurate update of the best
23 information available at the time, I believe we
24 agreed to that.

25

1 BY MR. COX:

2 Q. It's true that SCE&G presented the
3 consortium's cost estimate to the Commission in the
4 2015 update docket, correct?

5 A. We presented what the consortium provided
6 to us as one of their obligations under the contract.

7 And we reviewed that, evaluated it, and
8 concluded that that was the best information
9 available to reflect the actual work to be done, the
10 time frame that it was expected to be done, and the
11 cost associated with it. We did present that to the
12 Commission.

13 Q. And it's your testimony that Santee Cooper
14 agreed with SCE&G regarding that being the best
15 information prior to SCE&G submitting that
16 information to the Commission?

17 MR. WATKINS: Objection.

18 THE WITNESS: It's my belief they were
19 aware of it. They were aware of the schedule.
20 They were aware of the change orders that they
21 had signed off on as part of that.

22 And I -- I suspect -- I don't have access
23 to all of their documents, but I suspect those
24 were the same disclosures they provided at the
25 time we were presenting that to the Commission.

1 (Exhibit 7 was marked for identification.)

2 BY MR. COX:

3 Q. Mr. Marsh, we've had a -- labeled
4 Exhibit 7 to your deposition a presentation labeled
5 "EAC review team preliminary update, preparation for
6 10-13-14 executive meeting," Bates-labeled
7 SCANA_RP024674 through -686.

8 Have you ever seen this document before?

9 A. I have seen it in preparation for this
10 deposition.

11 Q. The individuals that are named on the
12 front page of this document, were these the
13 individuals that were part of SCE&G's review team of
14 the consortium's cost estimates in 2014?

15 MR. CHALLY: Object to form.

16 THE WITNESS: Again, I didn't put the team
17 in place. I do recognize the names of these
18 individuals who were part of the finance and
19 administration and construction team on site.
20 Their names appear here. I don't know if there
21 were others involved, but they are certainly
22 identified on the cover sheet.

23 BY MR. COX:

24 Q. You're not aware of any other teams that
25 reviewed the consortium's cost estimates in 2014

1 other than this team, correct?

2 MR. WATKINS: Objection. Form.

3 THE WITNESS: Again, I don't know who all
4 was on the team. I know Steve Byrne put a team
5 in place to review it. I just don't recall who
6 all was on that team. This may be all of it; it
7 may not be all of it. I just don't know.

8 BY MR. COX:

9 Q. To your knowledge, was it only one team
10 that was put together for analyzing cost?

11 A. I'm not aware of another team. That --
12 the one team may have brought in expertise to assist
13 them, but I'm only aware of one team.

14 Q. Did you receive this presentation in
15 October 2014?

16 A. I -- I don't recall receiving this
17 presentation.

18 Q. There's a reference to an executive
19 meeting on the first page.

20 What is an "executive meeting"?

21 MR. WATKINS: Objection to form.

22 THE WITNESS: I don't know specifically.
23 Certainly, a meeting that includes executives of
24 the company. I don't know if that means SCE&G,
25 Santee, or it means SCE&G and Santee and

1 Westinghouse. I don't know what executives
2 they're referring to.

3 BY MR. COX:

4 Q. If you can turn to the third page of the
5 document, the bottom right corner is -- last three
6 numbers are 676.

7 The third bullet point says, quote, EAC
8 team anticipates a to-go PF closer to 1.40 and
9 recalculated the cost, resulting in an additional
10 increase of approximately 101 million. This is the
11 cost impact of the to-go PF of 1.40 versus 1.15 and
12 is not included in the consortium EAC.

13 Did I read that correctly?

14 A. Yes, you read that correctly.

15 Q. What is a "PF," to your knowledge?

16 A. I believe they're referring to performance
17 factor.

18 Q. And to your knowledge, what does that
19 measure?

20 MR. WATKINS: Objection to form.

21 THE WITNESS: I'm not a construction
22 expert, again, but as described by Steve Byrne
23 and other members on site at the project, it's a
24 way to measure the efficiency of the work being
25 performed, the actual time spent doing a task

1 compared to what you would expect to spend doing
2 that task or what you had forecast you would
3 spend doing that task.

4 BY MR. COX:

5 Q. Do you recall the consortium having
6 trouble meeting its goals on PF during the course of
7 the project?

8 A. I don't recall specific, you know, PFs
9 throughout the project. I know we had addressed PF,
10 performance factors, with the consortium. I know we
11 disclosed it and risks associated with it in our
12 testimony before the Commission.

13 Q. Do you recall it being an area of concern?

14 A. It was an area that we were watching on
15 the project. We had identified that as a risk that
16 could impact cost and schedule, and we disclosed that
17 to the Commission.

18 Q. Were you aware prior to the 2015
19 Commission filing that the SCE&G EAC team had
20 anticipated a worse PF than the consortium had
21 estimated in its cost analysis?

22 MR. CHALLY: Object to form.

23 MR. WATKINS: Same objection.

24 THE WITNESS: Could you restate that?

25

1 BY MR. COX:

2 Q. Sure. Were you aware prior to the SCE&G's
3 2014 Commission filing that the SCE&G EAC team had
4 estimated a going-forward PF factor that was worse
5 than the factor that the consortium had estimated in
6 its cost analysis?

7 MR. CHALLY: Object to form.

8 MR. WATKINS: Same objection.

9 THE WITNESS: I don't recall all the
10 details of the work of the EAC, but I recall
11 they had done a mathematical calculation that
12 said if they don't improve on the performance
13 factor, here's a potential impact.

14 I don't know -- it was not my
15 understanding that was a complete study because
16 I know in the -- in the estimate that was given
17 to us by the consortium, they had increased
18 productivity factors across the board from what
19 was initially in the contract when we signed it
20 in 2008. And they had offered different steps
21 of mitigation they planned to take and actions
22 they planned to take to achieve that.

23 I mean, they were -- they were responsible
24 for the contract. It was their responsibility
25 to build the plants. They had all the -- the

1 details and knowledge of the construction effort
2 it would take to complete the plants, and we
3 believed they were in the best position to say
4 what they thought they could achieve as a
5 performance factor.

6 That was an estimate. Anything outside of
7 that, in my mind, was speculative.

8 I think what the -- what the team had done
9 here was just a mathematical calculation. I
10 don't know that they concluded that was the
11 right number. This was -- it says here that
12 this is a preliminary update back in 2014.

13 I mean, we filed with the Commission in
14 2015, so we had a lot of time expired between
15 the time this team started doing its work and we
16 concluded what we believed the appropriate
17 schedule was to file with the Commission.

18 BY MR. COX:

19 Q. Isn't it true, though, that the SCE&G EAC
20 team estimated that the PF going forward would be
21 1.40?

22 MR. CHALLY: Object to form.

23 MR. WATKINS: Objection.

24 THE WITNESS: Again, my understanding is
25 they made a mathematical calculation assuming

1 nothing changed in the performance factor as a
2 way to assess risk that was associated with the
3 numbers that were given to us by the consortium.

4 BY MR. COX:

5 Q. So is it your testimony that you
6 understood the EAC team to not be giving its best
7 prediction on what the PF would be; that it was just
8 using the historical number?

9 MR. WATKINS: Objection to form.

10 THE WITNESS: I can't speak to exactly
11 what they did.

12 My understanding was it was a mathematical
13 extension assuming there were no changes in the
14 PF. It was a financial calculation done by
15 capable accountants at the site, but they were
16 not the construction experts. They didn't have
17 access to all the details. They were not the
18 ones that were contractually obligated to
19 complete the plant.

20 We had information from the consortium
21 about the PF. We had identified the PF as a
22 risk that we disclosed to the Commission. We
23 identified that they had increased the PF across
24 the board in their estimate, the new estimate
25 they had given us, with respect to cost and

1 schedule. And we identified that clearly in
2 Steve Byrne's testimony before the Commission in
3 2015, the basis for that number and the risk
4 associated with it.

5 We believed that would be a challenge, but
6 that was the best -- we concluded -- the nuclear
7 construction team concluded that was the best
8 information we had available because the
9 consortium had access to all the details and had
10 the best ability to project what they could
11 produce based on the revised schedule.

12 BY MR. COX:

13 Q. Your company, SCE&G, did not reveal to the
14 Commission in 2015 that SCE&G anticipated that the
15 going-forward PF would be 1.40, did it?

16 MR. CHALLY: Object to form.

17 MR. WATKINS: Same --

18 THE WITNESS: I don't --

19 MR. WATKINS: Same objection.

20 THE WITNESS: I don't believe that SCE&G
21 construction team concluded that. This -- this
22 is a preliminary update, which is -- well, we
23 got the estimate from Westinghouse in August.
24 And so this is one month after that, and they
25 were saying "anticipates closer to 1.4."

1 And my memory is that was a mathematical
2 extension just based on what had occurred to
3 date. It was no more complicated than that. It
4 wasn't a study. It wasn't with access to all
5 the additional information.

6 And that -- this is what the team stated
7 here. I don't believe -- I don't conclude that
8 that's SCE&G's position when it went to the
9 Commission. When we went to the Commission, it
10 was clearly our belief that the schedule we
11 provided, based on the updates from the
12 consortium, was the best available information
13 with the details and information we had
14 available at the time that this team reviewed
15 and did their best to validate.

16 And Steve Byrne gave testimony. I believe
17 Ron Jones gave testimony. Carlette Walker gave
18 testimony -- all officers of the company -- that
19 they believed that was the best available
20 information.

21 BY MR. COX:

22 Q. So it's your understanding that the EAC
23 team that SCE&G commissioned agreed that the
24 consortium's cost estimate was the best information
25 regarding anticipated cost to complete the project?

1 MR. WATKINS: Objection.

2 MR. CHALLY: Same objection.

3 THE WITNESS: Their goal, from my
4 understanding, was to validate the information
5 that was given to us and raise any areas of
6 concern for us to validate because, at the same
7 time, this was not a schedule we had accepted.

8 We weren't saying, "That's the exact
9 number, and we agree to pay all that."

10 We were in a dispute as to who was
11 supposed to pay what. And one of the disputes
12 we had was over the performance factor.

13 So that would have been an area of concern
14 for us as we went through that review in how we
15 tried to identify who was going to pay for what.

16 So the fact that they appear to have
17 talked about the performance factor in this
18 preliminary assessment is not a surprise to me.

19 BY MR. COX:

20 Q. Is it your understanding that the EAC
21 team, the SCE&G EAC team, validated the consortium's
22 numbers and agreed that it was the best estimate of
23 anticipated costs?

24 MR. CHALLY: Object to form.

25 MR. WATKINS: Same objection.

1 THE WITNESS: I don't know how they
2 finally presented their information, but I know
3 their information was considered by the
4 construction team on site as whole and with the
5 company's legal counsel and what was required to
6 be filed with the Commission.

7 And that was the best available
8 information we had at the time. And it did not
9 include any speculative costs that were clearly
10 not allowed under the Commission's rules and
11 guidelines.

12 BY MR. COX:

13 Q. Were you aware in 2015 that SCE&G -- the
14 EAC team had concluded that the likely cost to
15 complete the project would be greater than the
16 consortium's estimate?

17 MR. CHALLY: Object to form.

18 MR. WATKINS: Objection to the form.

19 THE WITNESS: I'm not aware that they
20 concluded that.

21 They may have done some analyses that
22 indicated some risks that could lead to higher
23 costs, but I don't recall them concluding that
24 based on the testimony we gave at the
25 Commission.

1 BY MR. COX:

2 Q. Do you recall any employees at SCE&G
3 expressing the opinion that the cost figure in the
4 2015 filing should have been greater than the
5 consortium's number?

6 A. I don't recall an individual saying the
7 number should be greater. I do recall when we were
8 preparing testimony for the Commission, Ms. Carlette
9 Walker was our accounting witness because she was a
10 financial person on site. She did raise a question
11 as to whether or not we should include an estimate of
12 cost that could be -- an estimate of increases in
13 cost based on no change in productivity factor.

14 We had a discussion in a large room that
15 included a lot of people from the construction team,
16 primarily led by outside regulatory counsel. And at
17 the end of that discussion, we concluded it would not
18 be appropriate to include any additional schedules as
19 part of Carlette Walker's testimony.

20 But it was appropriate that we identify
21 the issue related to productivity as a factor, a risk
22 factor, that could have an impact on the schedule and
23 the cost associated with the project.

24 Q. Who made that decision not to include in
25 the Commission filing the estimate of cost that would

1 exist if there was no improvement in productivity?

2 A. I don't recall who specifically made a
3 decision that issues related to testimony are
4 discussed openly in that process, the way we go about
5 reviewing and preparing testimony.

6 I recall the discussion being led by legal
7 counsel in the room -- that we ultimately concluded
8 in the room based on legal -- legal's participation
9 that the appropriate schedule was the one that had
10 been provided by the consortium, but that we identify
11 risks associated with that number based on our
12 knowledge of the impact that could have on overall
13 completion dates and cost.

14 Q. What legal counsel were present in that
15 discussion?

16 A. I recall Belton Ziegler being in the room.
17 Mitch Willoughby, who was also one of our outside
18 regulatory attorneys, may have been there. I don't
19 specifically recall. Chad Burgess, who was an inside
20 regulatory counsel. And Matt Gissendanner.

21 That was the legal team that worked with
22 us on preparing testimony and making decisions
23 regarding filings with the Commission.

24 I don't recall if all of those were in the
25 room. I do remember Belton being in the room. I

1 can't say specifically. Others may or may not have
2 been there, but that's what I remember possibly were
3 there.

4 Q. Which one of those attorneys expressed the
5 opinion that the increased cost estimate did not need
6 to be provided to the Commission?

7 A. The --

8 MR. CHALLY: So hold on here.

9 The -- I'm going to object to the form of
10 the question first.

11 So this is, as you know, an issue related
12 to -- an issue related to a dispute that we had
13 previously in depositions related to this
14 particular -- or to meetings of this sort.

15 Rather than require that we get Judge
16 Hayes on the line again, if we can reach the
17 same agreement that we reached previously --
18 which was that we are allowing questions on this
19 topic to proceed on the basis of his ruling
20 previously and that you-all don't consider us
21 allowing Mr. Marsh to answer questions on the
22 substance of this meeting as a waiver of our
23 right to invoke privileges to anything else --
24 we can allow Mr. Marsh to continue -- or we can
25 allow Mr. Marsh to answer questions along those

1 lines.

2 MR. COX: I will agree that your
3 willingness to allow the witness to answer
4 questions about this meeting does not in itself
5 constitute a waiver of any privilege.

6 I am concerned that -- based on the
7 information that I've learned in depositions,
8 that the company is waiving the privilege for
9 other reasons and to the extent that it's
10 relying on the advice of counsel in support of
11 this decision.

12 MR. CHALLY: I understand. We can have
13 that fight at some other point.

14 Does anyone else in the room have an issue
15 with that general agreement that we've reached
16 with the ORS?

17 Hearing none, have at it.

18 MR. WATKINS: Okay. So I'll object to the
19 form of the question.

20 I also -- we weren't here for any of these
21 previous agreements, so we might need to inform
22 the witness about what conversation with counsel
23 he is and is not free to speak about -- is
24 probably not.

25 MR. CHALLY: He's free to testify as to

1 the substance of the meetings that he is
2 referring to, meetings -- meetings where
3 testimony associated with the 2015 PSC filings
4 were discussed.

5 MR. WATKINS: Does that make sense to you?

6 THE WITNESS: I believe so.

7 MR. WATKINS: Okay.

8 BY MR. COX:

9 Q. So maybe I should repeat the question?

10 A. You may need to ask me the question again.

11 Q. Which attorneys that were present at that
12 meeting expressed the opinion that SCE&G did not need
13 to reveal to the Commission an estimate of cost that
14 would -- would exist if the productivity did not
15 improve?

16 MR. CHALLY: Object to the form of the
17 question.

18 MR. WATKINS: Same objection as to form.

19 THE WITNESS: I don't recall any
20 particular attorney coming to that conclusion.

21 I recall the attorneys that were
22 present -- principally Belton Ziegler -- leading
23 that discussion. And at the end of the
24 discussion, we concluded that -- the team led by
25 legal counsel concluded that it would not be

1 appropriate to include any additional schedules
2 in Carlette's testimony.

3 BY MR. COX:

4 Q. And did they explain why they did not
5 believe it would be appropriate to do so?

6 A. They may have. I just don't recall all
7 the details of that discussion.

8 MR. WATKINS: I object to the form of that
9 question.

10 BY MR. COX:

11 Q. Do you recall any discussion about it
12 creating a contingency cost that the Commission could
13 not approve?

14 A. Not specifically, no.

15 Q. Did anyone at the meeting voice any
16 disagreement with the advice that counsel provided?

17 MR. WATKINS: Objection to form.

18 MR. CHALLY: Same objection.

19 THE WITNESS: My memory of the meeting was
20 once the discussion was held, we agreed -- the
21 team in the room, again, led by legal counsel,
22 concluded that nothing else additional needed to
23 be added to the testimony.

24 And there was -- there was nothing added
25 to Ms. Walker's testimony, and she presented it

1 as evidence in the -- in the hearing.

2 BY MR. COX:

3 Q. So is it fair to say that at this meeting,
4 she raised a concern about the issue, the attorneys
5 explained why they were doing, what the -- what they
6 were planning to do, and that basically resolved the
7 concern?

8 MR. CHALLY: Object to form.

9 MR. WATKINS: Yeah. I object to the form
10 of that question.

11 THE WITNESS: This was a very open process
12 where we reviewed testimony. Generally, there
13 were a number of people -- a large group of
14 people involved around the company in drafting
15 testimony. It typically included all of the
16 witnesses that were involved in the process and
17 people that would support their testimony.

18 It was not unusual for anybody to raise a
19 question about something that was in testimony,
20 or should we add something? Is that not
21 accurate? Do we need to change it?

22 I mean, this was a very open process, and
23 our goal was to make sure the testimony was true
24 and accurate.

25 So the fact that Carlette had raised this

1 issue didn't stand out to me as something that,
2 you know, I locked away in my memory other than
3 we had a discussion about it led by the
4 attorneys that were in the room -- as I said,
5 what I recall is Belton Ziegler -- and at the
6 end of that discussion, a decision was reached
7 that we would not include an additional
8 schedule.

9 In my mind, the issue was resolved at that
10 point. I don't -- I don't recall that people
11 left the room upset or felt like that wasn't the
12 right decision. I mean, it was like any other
13 testimony meeting. We raised questions, we
14 edited testimony, and we did our best to make
15 sure that the documents were true and accurate.

16 BY MR. COX:

17 Q. Do you know who made the initial decision
18 to draft up the filing with the Commission -- I'm
19 sorry, the consortium's cost numbers included prior
20 to that meeting?

21 MR. WATKINS: Objection.

22 THE WITNESS: I don't recall. I mean, I
23 just don't recall the process whereby that was
24 determined.

25

1 BY MR. COX:

2 Q. It wasn't you, correct?

3 A. I don't recall being in a meeting to
4 discuss it.

5 The testimony -- not the testimony -- but
6 someone would typically update me on the filing
7 before it was made. As the CEO, I wanted to know
8 when we made a filing with the Commission, you know,
9 generally what was in it.

10 This was a Base Load Review Act update. I
11 wanted to make sure I understood what was in there in
12 case I was asked about it publicly, even though we
13 were doing a -- we did a press release every time we
14 made one of those filings.

15 But I don't recall being in the decision
16 process to include the numbers from the consortium.
17 I just recall from going through the testimony
18 preparation that that -- that we concluded that was
19 the best information available.

20 Q. Do you recall any other times where that
21 question was made -- was raised about what cost
22 number to include in the 2015 PSC filing other than
23 that meeting with the attorneys and Ms. Walker?

24 A. That's the only instance I can recall
25 where someone raised a question as to what would be

1 appropriate.

2 Q. Other than the attorneys you mentioned,
3 yourself, and Ms. Walker, who else was present in
4 that meeting?

5 A. I'll do my best to remember. I could
6 leave somebody out. If I had more time to think
7 about it, I might think about more. And I -- and I
8 have to go based on my history who was typically in
9 those meetings.

10 The people providing testimony were me,
11 Steve Byrne, Carlette Walker, Ron Jones, and, I
12 believe, Joe Lynch. Joe Lynch may or may not have
13 been in there.

14 Byron Henson from the Regulatory
15 Department. Someone from the site. Kevin Kochems,
16 who worked for Carlette Walker at the time, may have
17 been there. We may have had someone from corporate
18 communications.

19 Chad Burgess. I'm drawing a blank on
20 his -- his assistant now. I'm sitting here looking
21 at him, and I can't recall his name. I gave it to
22 you a minute ago. His assistant was in there.

23 Belton Ziegler. Mitch Willoughby.
24 Al Bynum might have been in there, who is from our
25 legal department.

1 Those were the people that were typically
2 in those meetings, and they may have had supporting
3 personnel from their areas of expertise around the
4 company as we were going through particular aspects
5 of the testimony. But it was a large room, not
6 unlike this room, with a lot of people around the
7 table reading the testimony line by line.

8 If something caught our attention, we
9 would stop and have a discussion, make edits as we
10 considered necessary. This was a very iterative
11 process. We went through that at least two or three
12 times before testimony was filed.

13 Q. Do you know who Kenneth Browne is?

14 A. I know Kenneth. He used to work for
15 Santee Cooper. When he retired from Santee Cooper,
16 he came to work for us on site at the nuclear plant.
17 I know Ken. I've known him for a number of years.

18 Q. Did you know at the time you worked with
19 him that he was an engineer?

20 A. I don't recall knowing that.

21 Q. Was he present at that meeting in which
22 Ms. Walker raised the question about which cost
23 figure to include?

24 A. He may or he may not have been in the
25 meeting. I don't remember him being there.

1 Q. Did that meeting get heated in any way,
2 voices raised or yelling?

3 MR. WATKINS: Objection to form.

4 THE WITNESS: I don't recall anybody in
5 the meeting yelling. I don't recall.

6 I mean, you have to understand the process
7 we go through. We were a very open and frank
8 group, and people would state their opinions.
9 Sometimes it was more emphatically than others,
10 and we would have a robust discussion about, you
11 know, what we thought was appropriate.

12 I don't remember this one rising to a
13 level above what I was accustomed to seeing when
14 we debated issues or tried to delve into issues
15 to understand what was the most accurate
16 information to include in testimony.

17 BY MR. COX:

18 Q. Do you recall anyone pounding any tables
19 at that meeting?

20 A. I do not.

21 Q. Once the attorneys explained that they
22 felt that the consortium's numbers were the right
23 numbers to include in the PSC filing, do you recall
24 how Ms. Walker responded to that information?

25 MR. CHALLY: Object to the form.

1 MR. WATKINS: Objection to the form of the
2 question.

3 THE WITNESS: I don't recall any specific
4 response from Ms. Walker.

5 BY MR. COX:

6 Q. Did each of the individuals who were
7 submitting prefiled testimony with the Commission
8 have additional meetings with counsel outside of the
9 joint meeting?

10 MR. CHALLY: Object to form.

11 MR. WATKINS: Objection to the form of the
12 question.

13 THE WITNESS: I -- I don't know.

14 Typically -- well, there were attorneys
15 assigned to different witnesses for testimony
16 preparation. To the extent they met outside of
17 that meeting room, I wouldn't have been aware of
18 that.

19 I know Belton Ziegler worked on my
20 testimony. And generally, I recall for this
21 case, he came to my office and we talked about
22 testimony he drafted. And then we all provided
23 input in the meeting.

24 I don't recall any meetings outside of
25 that to prepare the testimony.

1 BY MR. COX:

2 Q. That meeting you had with Belton Ziegler
3 regarding your 2015 testimony, was it just you two,
4 or was anyone else present?

5 A. It was just the two of us.

6 Q. Would you have a meeting with him
7 before -- before submitting prefiled testimony as
8 well as testifying at a hearing?

9 A. Well, let me be clear about the process.

10 When we started drafting testimony,
11 Mr. Ziegler would meet with me to get my thoughts and
12 ideas or concerns or issues that I thought should be
13 included in my testimony before he drafted it.

14 He would then prepare an initial draft
15 that would be made available to the whole team to
16 review it in the room I talked about earlier. We
17 call it the "situation room" where we would all sit
18 around a table and review each other's testimony.

19 Once the testimony was filed, before the
20 case was actually heard, we would again gather in
21 that room -- the people that were going to provide,
22 you know, direct testimony for the case and others to
23 the extent they supported information that was in the
24 testimony -- and talk about our -- our prefiled
25 testimony and the process of going through the

1 hearing.

2 Q. Who drafted your prefile testimony?

3 MR. WATKINS: Objection.

4 MR. CHALLY: Same objection.

5 THE WITNESS: In 2015, for the hearing we
6 filed to update the schedule, that was done by
7 Belton Ziegler.

8 BY MR. COX:

9 Q. So he would draft the testimony, and you
10 would review it before it was filed; is that correct?

11 MR. CHALLY: Object to the form.

12 MR. WATKINS: Same objection.

13 THE WITNESS: Let me try again. I thought
14 I described that earlier.

15 He would draft the testimony. It would
16 then be reviewed in the large room with the
17 large conference table with the variety of
18 individuals around that table.

19 Everybody would review it, not just me.
20 Certainly I was in there, and I would review it.
21 And everybody had the ability to make edits, to
22 challenge what I said, to make sure I had said
23 it correctly, as I would have that opportunity
24 with others' testimony based on knowledge I
25 might have.

1 You would go through that process two or
2 three times depending on what was in the
3 testimony and how lengthy it was and the issues
4 that needed to be discussed.

5 Once it was completed, I would take my
6 testimony, sit down, read it myself to make sure
7 it was consistent with what I believed to be
8 accurate information based on what I knew at the
9 time, and I would give my -- my final sign-off
10 on the testimony before it was filed.

11 BY MR. COX:

12 Q. Did you ever propose any changes to your
13 testimony prior to it being filed?

14 MR. WATKINS: Objection to form.

15 THE WITNESS: Certainly. Sometimes they
16 were minor edits, grammatical errors. Sometimes
17 it was to clarify information that may have been
18 included in the testimony or I thought we needed
19 to add something to make it clearer.

20 But it was a very iterative process.

21 BY MR. COX:

22 Q. Were you ever told that you couldn't make
23 changes to your testimony?

24 MR. CHALLY: Object to form.

25 THE WITNESS: No, I was never told that.

1 (Exhibit 8 was marked for identification.)

2 BY MR. COX:

3 Q. This is Number 8. Mr. Marsh, I've handed
4 to you --

5 THE WITNESS: Take a break?

6 MR. COX: Yeah. We can.

7 Go off the record.

8 VIDEOGRAPHER: The time is 2:33 p.m., and
9 we are off the record.

10 (A recess transpired from 2:33 p.m. until
11 2:45 p.m.)

12 VIDEOGRAPHER: The time is 2:45 p.m., and
13 we're back on record.

14 BY MR. COX:

15 Q. Mr. Marsh, we're back on the record. And
16 before the break, I had labeled Exhibit 8 to your
17 deposition.

18 Is this a copy of the testimony that you
19 provided to the Commission in the 2015 update docket?

20 A. It appears to be my testimony, yes.

21 Q. And, again, you knew at the time that you
22 were giving this testimony under oath, correct?

23 A. I'm not clear -- what did you ask me?

24 Q. You knew that at the time you were
25 testifying that you were providing this testimony

1 under oath?

2 A. Yes, I did.

3 Q. On page 50 of your testimony --

4 A. Is that 50 of my numbered pages or 50 of
5 your numbered pages?

6 Q. 50 at the top.

7 A. Okay. All right.

8 Q. On line 21, there's a sentence that
9 starts, "We deal."

10 Can you read that sentence for the record?

11 A. "We deal with the issues that arise with
12 Westinghouse aggressively and at the highest levels."

13 Q. And if you could turn to page 94, again
14 using the top number.

15 A. All right.

16 Q. Could you read the sentence that starts on
17 line 17?

18 A. "The current schedules reflect the best
19 information available about the anticipated cost and
20 construction timetables for completing the project."

21 Q. Could you turn to page 96?

22 A. All right.

23 Q. Could you read the sentence that starts on
24 line 9?

25 A. "SCE&G has, quote, approved, close quote,

1 the updated schedules in the sense that it recognizes
2 them to be the most accurate and dependable
3 statements available of the anticipated construction
4 schedule for completing the units and the anticipated
5 schedule of capital costs for completing the units."

6 Q. Could you turn to the next page, 97?

7 A. All right.

8 Q. Could you read the sentence that starts on
9 line 10?

10 A. "However, for purposes of the EPC
11 contract, we are concerned that WEC/CB&I" -- "WEC"
12 meaning Westinghouse -- "may seek to take the
13 term, quote, approved, close quote, as applied to
14 these schedules to mean that SCE&G has approved
15 substituting these schedules for the schedules
16 previously approved in the EPC contract, thereby
17 excusing WEC/CB&I from contractual obligations,
18 penalties, claims, and possible damages from failing
19 to meet those schedules."

20 Q. Can you explain what you meant by this
21 sentence?

22 MR. WATKINS: Objection to the form of the
23 question.

24 THE WITNESS: Well, first of all, I think
25 you'd have to look at my testimony in its

1 entirety to address what I was talking about
2 with respect to the schedule.

3 What I recall I was talking to here --
4 talking about here was we presented a schedule
5 to the Commission that, in our opinion, was the
6 best available data as to completion dates, the
7 construction schedule, and the associated cost
8 with completing the projects based on the
9 information provided to us by the consortium and
10 reviewed by our nuclear team on site. We
11 believed that to be the best available
12 information.

13 My understanding at the time is that's
14 what was required under the BLRA rules and
15 regulations. If we believe we had a change, we
16 would provide that to the Commission. And
17 that's what we're doing here.

18 We had not approved the schedule to
19 Westinghouse in the sense that we were going to
20 pay all of the costs. We recognized it as the
21 best available schedule and associated costs.

22 So in our mind, in our evaluation, we
23 believed that the schedule was the most accurate
24 information we had available, that the cost was
25 the most accurate cost associated with

1 completing that schedule, and that would be the
2 cost it took to complete the units. And that's
3 what we included in our filing with the
4 Commission.

5 What we're saying here is we wanted to
6 make sure the consortium, WEC and CB&I, didn't
7 assume we had approved the schedule from the
8 sense that we were going to pay all of those
9 costs.

10 There were disputes related to those costs
11 which we described to the Commission in
12 testimony given by me, Steve Byrne, Carlette
13 Walker, and others that may have testified to it
14 in front of the Commission.

15 So we didn't want to send a message to
16 Westinghouse, "Just assume you're going to get
17 all these costs, if they're approved." That's
18 why we put it in quotes: "by the Commission."

19 BY MR. COX:

20 Q. If SCE&G had presented the Commission with
21 a higher number of cost based on a less optimistic
22 productivity factor that -- SCE&G still could have
23 said, "We're not going to pay these additional costs
24 above the productivity factor that Westinghouse says
25 it can meet."

1 MR. CHALLY: Object to form.

2 MR. WATKINS: Objection to the form of the
3 question.

4 THE WITNESS: It was our obligation to
5 present project costs and related project
6 schedule to the Commission based on the best
7 information we had available at the time.

8 We believed that the information provided
9 to us by the consortium that had been reviewed
10 by our nuclear team on site was the best
11 available information.

12 We -- we provided that. However, we
13 identified the risk -- very clearly -- that
14 productivity factors were an issue.

15 We identified that, in coming up with its
16 estimate, Westinghouse had not only raised its
17 productivity factor, which was included in the
18 estimate, but also that we determined that that
19 was still a risk to the project, a serious risk
20 that we highlighted to the Commission, and said
21 if they don't address this issue, it could have
22 an impact on cost and schedule.

23 I believe Mr. Byrne testified in
24 cross-examination that we didn't believe it was
25 appropriate to, you know, let the consortium off

1 the hook and encourage them to continue to seek
2 ways to stay on the project schedule by just
3 telling them, you know, "Oh, we're going to give
4 you a higher productivity factor. Don't worry
5 about that."

6 We wanted them to worry about that. They
7 were contractually obligated to deliver these
8 plants on the dates they committed to delivering
9 those plants.

10 And those dates they gave us in the update
11 of August of '14 were the latest available dates
12 based on their evaluation of the schedule that
13 they had available.

14 And that's what we presented to the
15 Commission, was their schedule.

16 BY MR. COX:

17 Q. I want to follow up on your comment there
18 about not letting the consortium off the hook with
19 respect to the productivity factor issue.

20 If SCE&G in this filing is telling the
21 Commission, "We don't think we have to pay all the
22 anticipated costs that are included in this cost
23 filing," then how would it be letting the consortium
24 off the hook to say -- to tell the Commission, "Hey,
25 we think the costs are going to be even greater than

1 what the consortium expects, but we don't think we
2 should have to pay for any of those extra costs as
3 well"?

4 MR. WATKINS: Objection to form.

5 THE WITNESS: The cost we presented to the
6 Commission was what the consortium expected to
7 spend. That was -- that was their estimate that
8 had been reviewed by our construction team on
9 site.

10 We knew there were risks associated with
11 that schedule; talked -- I mentioned earlier,
12 productivity factor. We highlighted that risk.
13 We also highlighted to the Commission that there
14 were disputes, and we defined for the Commission
15 how we included dollars in our filing where we
16 thought disputes could be resolved in our favor,
17 based on our interpretation of the contract.
18 And that's what we included in the filing.

19 We didn't know the resolution of those
20 disputes, whether they were going to be resolved
21 through negotiations or we would potentially
22 have to go to litigation.

23 BY MR. COX:

24 Q. Is it correct to say, though, that SCE&G
25 was telling the Commission in this filing, "We don't

1 think we have to pay the consortium for all of the
2 anticipated costs to complete this project that we're
3 presenting in this docket"?

4 MR. WATKINS: Objection to the form of the
5 question.

6 THE WITNESS: My memory and understanding
7 of the filing is that we didn't include costs in
8 the filing that we believed were -- under the
9 contract, we could exclude from payment at that
10 time.

11 BY MR. COX:

12 Q. Let's turn to page 141 of your testimony.

13 So you're asked a question on line 3 to
14 line 7. I'll read that:

15 "Now, Mr. Marsh, as you relayed in your
16 testimony, the company is currently in a dispute with
17 the consortium, the Westinghouse consortium, with
18 regard to who bears the cost for a number of elements
19 in the capital cost of the proposed Unit 2 and Unit 3
20 reactors, correct?"

21 And can you go ahead and read, Mr. Marsh,
22 the answer on lines 8 to 13?

23 A. "That's right. The numbers that we
24 presented in the filing before the Commission today
25 represent the best estimate of the cost to complete

1 the plant at this time, but do reflect -- we have
2 noted in my testimony, and others -- that there are
3 disputes related to certain costs included in those
4 amounts."

5 Q. So, Mr. Marsh, isn't it correct to say
6 that SCE&G was saying in this filing that even though
7 there's a certain best estimate of the cost to
8 complete the plants, SCE&G is not responsible for
9 paying all of those costs?

10 MR. WATKINS: Objection to the form of the
11 question.

12 THE WITNESS: I think what I had said here
13 that we had outlined that there are disputes
14 related to certain costs included in those
15 amounts. And I believe description of those
16 disputes and what was included in the filing
17 were put on the record by Mr. Byrne and Carlette
18 Walker, Steve Byrne and Carlette Walker, in
19 their direct testimony in this hearing.

20 BY MR. COX:

21 Q. So let's turn to page 60 of your
22 testimony. So we'll go back to page 60.

23 MR. WATKINS: 60 at the top?

24 MR. COX: Correct.
25

1 BY MR. COX:

2 Q. This is Chart A labeled "Summary of cost
3 adjustments." And in the right hand column, there's
4 a column labeled "Total cost." And there's a row
5 halfway down labeled "Total EPC cost adjustment."

6 If you -- do you see that row, Mr. Marsh?

7 A. Yes, I do.

8 Q. And if you take that to the far right, the
9 total Cost -- EPC cost adjustment is \$453.1 million,
10 correct?

11 A. That's correct.

12 Q. And that was the figure that the SCE&G
13 presented to the Commission in this filing as the
14 cost adjustment for the EPC cost, correct?

15 A. Yes.

16 Q. And then the rows below "Total EPC cost
17 adjustment" includes a row labeled "Total owners'
18 cost adjustment."

19 Do you see that row?

20 A. I do.

21 Q. And the total owners' cost adjustment
22 projected by SCE&G was 245.1 million; is that right?

23 MR. WATKINS: Objection to form.

24 THE WITNESS: That's the number that
25 appears in the schedule. That's correct.

1 BY MR. COX:

2 Q. And then the "Total adjustment with
3 liquidated damages" is \$698.2 million; is that
4 correct?

5 A. That is correct. That's included in the
6 schedule.

7 Q. Was it SCE&G's position that it was
8 responsible to pay all of these costs?

9 MR. WATKINS: Objection to form.

10 THE WITNESS: That was the cost we had
11 determined based on the updated schedule
12 provided by the consortium as to what it would
13 take to complete the project and the costs
14 associated with that.

15 The total EPC cost would be the cost
16 associated with the consortium's completion of
17 the project.

18 The additional of the owners' cost would
19 be cost that would be incurred by the owners --
20 in this case, SCE&G in this filing -- as a
21 result of the delays in the delivery dates of
22 the two new units.

23 So that's what comprised the total
24 adjustment. We believed that was our best
25 estimate of cost based on what they had provided

1 to us.

2 Now, we had disputes related to some of
3 that cost that we outlined in our testimony to
4 the Commission.

5 So in that 698 million, that did include
6 dollars that were subject to dispute that had
7 not yet been resolved.

8 BY MR. COX:

9 Q. And SCE&G's position in that dispute was
10 that it shouldn't have to pay the consortium for
11 those dollars?

12 MR. WATKINS: Objection.

13 BY MR. COX:

14 Q. Or shouldn't pay the consortium those
15 dollars, correct?

16 A. Well, there were issues -- I'm not an
17 attorney, so I can't define all of the issues related
18 in the disputes.

19 But there were dollars that we disputed
20 that we should not be responsible for paying.

21 Q. Within those 698.2 million, correct?

22 A. Within that 698 million that were not
23 resolved, that we described to the Commission and
24 explained what gave rise to those costs, and that
25 they were disputed dollars that we expected to be

1 resolved in the future.

2 Q. So SCE&G was telling the Commission that
3 it's not letting the consortium off the hook for
4 those costs, correct?

5 MR. WATKINS: Objection.

6 THE WITNESS: Well, let me try this again.

7 We believed they were legitimate costs of
8 completing the project. The dispute arose as to
9 who was responsible for paying the cost.

10 And we had not agreed to let Westinghouse
11 "off the hook" as you -- as you stated, for
12 those costs without going through the process of
13 negotiating that.

14 BY MR. COX:

15 Q. So my question for you is: There was no
16 reason that SCE&G was barred from telling the
17 Commission that it anticipated the likely EPC cost to
18 be greater than Westinghouse estimated, but that
19 SCE&G wasn't going to pay for those higher costs?

20 MR. CHALLY: Object to form.

21 MR. WATKINS: Objection to the form of the
22 question.

23 THE WITNESS: I think you're mixing apples
24 and oranges.

25 I mean, the cost included in the

1 698 million were known and measurable based on
2 the estimate that had been provided to us by the
3 consortium on what they believed it would take
4 to complete the project.

5 There were no other projections based on,
6 you know, known and measurable information that,
7 you know, could have been included in that
8 number.

9 (Exhibit 9 was marked for identification.)

10 BY MR. COX:

11 Q. Mr. Marsh, I've handed you -- or had
12 handed to you a document labeled Exhibit 9 to your
13 deposition.

14 This is a spreadsheet that was produced by
15 Carlette Walker in response to a subpoena from ORS in
16 this action. It's not Bates-numbered.

17 And it includes a block -- feel free to
18 review this document.

19 There's a block on the chart in the bottom
20 left-hand corner called "February 2015 PSC update
21 filing SCE&G cost '07 dollars, millions."

22 Do you see that block?

23 A. I do see that block.

24 Q. At the time that the company -- that SCE&G
25 was preparing its 2015 PSC filing, had you reviewed

1 this spreadsheet?

2 A. I don't --

3 MR. WATKINS: Objection to the form of the
4 question.

5 THE WITNESS: I don't recall reviewing
6 this spreadsheet or seeing it.

7 BY MR. COX:

8 Q. Did SCE&G file an update filing in
9 February 2015, to your knowledge?

10 A. We filed an update in 2015. My memory
11 tells me it was filed in March. I don't remember the
12 exact date, but my memory tells me it was in March,
13 not February.

14 Q. That's my understanding as well.

15 The bottom left-hand corner includes a
16 block labeled "Total EPC target and T&M increase
17 request."

18 Do you see that row?

19 A. I'm not sure where you're looking.

20 Q. The bottom row of the chart on the bottom
21 left corner?

22 A. Okay.

23 Q. What is the dollar figure in that row?

24 A. The dollar figure says 900 -- it must be
25 million -- 372,000.

1 Q. And that's represented here in this chart
2 as a -- the total EPC target and T&M increase
3 request, correct?

4 MR. WATKINS: Objection to form.

5 THE WITNESS: Yeah. I can -- I can tell
6 you that that's what's in this block.

7 I don't believe that's the number we
8 included in the increase request. I don't --
9 I'm not familiar with this schedule. I don't
10 know who prepared it or on what basis it was
11 prepared.

12 I can confirm to you that's what that
13 block says, but I -- I don't know who prepared
14 this and what was done with it.

15 BY MR. COX:

16 Q. And that's my understanding, too, that
17 it's not the figure that was included in SCE&G's
18 2015 PSC filing.

19 If you turn back to Exhibit 8, page 60,
20 I'd like to compare the numbers in this chart.

21 On Exhibit 8, page 60, the total EPC cost
22 adjustment in SCE&G's filing with the Commission was
23 453.1 million, correct?

24 A. That's correct.

25 Q. So you would -- would you agree that the

1 total EPC target and T&M increase request number on
2 Exhibit 9 is about \$500 million more than the total
3 EPC cost adjustment on Exhibit 8, page 60?

4 MR. WATKINS: Objection --

5 MR. CHALLY: Object to form.

6 MR. WATKINS: -- to the form of the
7 question.

8 MR. CHALLY: Just to make sure the
9 record's clear, are we just asking him to
10 compare this number on Exhibit 9 to what's on
11 page 60 of your testimony?

12 BY MR. COX:

13 Q. Did you understand the question,
14 Mr. Marsh?

15 A. I believe I understood what you were
16 asking. I can tell you, mathematically, there's a
17 difference between those two numbers.

18 Q. And what's the difference in those two
19 numbers?

20 A. Let's see. 952 less 453. If I've done my
21 math right, it's a little less than 500 million.

22 I don't -- I don't know that those numbers
23 are apples-to-apples. As I said earlier, I'm not
24 familiar with this analysis. I don't know who
25 prepared it or what -- what was done with it.

1 I can agree that there's a mathematical
2 difference between those numbers, but I can't draw
3 any correlation between those numbers and to say
4 they're related.

5 Q. Okay. And if you go to the top of page
6 Exhibit 9, the top of the chart, there's some rows on
7 the far left. The top row is labeled --

8 MR. WATKINS: I think he's referring to
9 Exhibit 9, which is --

10 THE WITNESS: Oh, this one. I'm sorry.
11 I'm looking at the wrong exhibit.

12 BY MR. COX:

13 Q. The very top of the document says:
14 "Potential target cost remaining as of
15 February 2015."

16 Do you see that, Mr. Marsh?

17 A. Yes, I do.

18 Q. And then it says: "Revision 1.0 prepared
19 by KJB/WMC/KRK February 24th, 2012."

20 Do you see that?

21 A. I do see those initials.

22 Q. Do you know whether KJB are the initials
23 of Kenneth Browne?

24 MR. CHALLY: Object to form.

25 THE WITNESS: I don't know that

1 definitively. I can tell you that K and B match
2 up with Kenneth and Browne, but I don't know
3 that definitively.

4 BY MR. COX:

5 Q. Okay. And "KRK," the initials match up
6 with Mr. Kochems, correct?

7 A. Yes, they do.

8 MR. CHALLY: Object to form.

9 BY MR. COX:

10 Q. And "WMC" matches with William Cherry --
11 Marion Cherry, correct?

12 MR. CHALLY: Object to form.

13 THE WITNESS: They could. I mean, I
14 accept that the initials match, beginning and
15 ending numbers. I don't know about the middle.

16 BY MR. COX:

17 Q. Okay. Fair enough.

18 Below that, there's a row labeled "Craft
19 labor costs," and then below that is a row labeled
20 "Direct craft labor."

21 Do you see that?

22 A. I do see that.

23 Q. And then if you go to the right there,
24 there's a column with the number 13,106,633.

25 Do you see that?

1 A. I do see that.

2 Q. And if you go to the row below that,
3 there's a number in yellow labeled 1.55.

4 Do you see that?

5 A. I do see that.

6 Q. And then to the right, it says:
7 "Performance factor, current ITD PF, recent PFs
8 closer to 2.0."

9 Do you see that?

10 A. I do see that.

11 Q. Were you aware at the time that you
12 provided testimony to the Commission in 2015 that
13 members of the SCE&G EAC team had calculated the cost
14 to complete the project with a higher PF factor than
15 the consortium was providing to SCE&G?

16 MR. CHALLY: Object to form.

17 MR. WATKINS: Objection to form.

18 THE WITNESS: What I recall is what I told
19 you earlier, that I knew the EAC team, as part
20 of their review of the information provided to
21 us by the consortium, made a mathematical
22 calculation of the potential impact if
23 performance factors did not change, based on
24 what had been represented to us, that consortium
25 believed it could achieve as part of its

1 construction plan.

2 BY MR. COX:

3 Q. And were you made aware of what the
4 financial calculation they reached, based on that
5 estimate, was?

6 A. I don't recall a particular number
7 associated with the calculation.

8 Q. So you don't recall if you were ever
9 informed what their calculation was of their cost to
10 complete the project based on that PF that they used?

11 MR. WATKINS: Objection. Form.

12 THE WITNESS: I don't recall.

13 BY MR. COX:

14 Q. Were you present at the meeting where the
15 consortium informed SCE&G, in 2014, what it believed
16 the anticipated cost to complete the project were?

17 MR. WATKINS: Objection to form.

18 THE WITNESS: I don't recall how that
19 information was communicated to us. I know they
20 shared that information with us, but I don't
21 recall the fashion in which we received it.

22 BY MR. COX:

23 Q. Were you aware in 2014 that the consortium
24 had informed SCE&G that it would get its monthly PT
25 factor to 1.15 within six months of August of 2014?

1 MR. WATKINS: Objection to form.

2 THE WITNESS: I was made aware by Steve
3 Byrne as part of his review of the information
4 that that was their -- their goal that was
5 included in the estimated update.

6 BY MR. COX:

7 Q. And did you become aware of whether the
8 consortium had met that goal?

9 A. I was not responsible for monitoring the
10 performance factor, so I don't -- I don't recall any
11 specific amounts at a certain -- or a specific number
12 as of a specific date.

13 Q. So it's possible that you never became
14 aware of whether the consortium had met its promise
15 to the -- SCE&G that it would get its PF factor to
16 1.15 in six months?

17 A. I don't recall a specific discussion. I
18 do recall including the fact that the consortium had
19 not met its performance factors to date was included
20 in Steve Byrne's testimony, I don't remember any
21 details other than -- other than that.

22 Q. SCE&G's testimony to the Commission in
23 2015 did not reveal that the consortium had informed
24 SCE&G that it would get its PF factor to 1.15 six
25 months after August 2014, did it?

1 MR. WATKINS: Object to form.

2 MR. CHALLY: Objection.

3 THE WITNESS: I don't recall if that was
4 included in specific testimony.

5 I do recall that the issue around
6 performance factor was clearly addressed, and I
7 believe Steve Byrne addressed the risk around
8 performance factor and the potential impact that
9 could have on cost and schedule.

10 BY MR. COX:

11 Q. Your testimony to the Commission in 2015
12 did not reveal that the consortium had informed SCE&G
13 that it would get its PF factor to 1.15 within six
14 months after August 2014, did it?

15 MR. WATKINS: Objection.

16 MR. CHALLY: Object to form.

17 THE WITNESS: I don't think my testimony
18 included any specific numbers to that effect.

19 The purpose of my testimony was to
20 introduce the case before the Commission and
21 identify for the Commission the witnesses that
22 would be addressing the detail project
23 information with respect to performance
24 factor -- that was done, I believe, by Steve
25 Byrne, Carlette Walker, and maybe Ron Jones

1 also, as part of their direct testimony.

2 But that was not -- the intent of my
3 testimony was to specifically address that
4 issue.

5 BY MR. COX:

6 Q. Do you believe SCE&G's testimony should
7 have revealed to the Commission that the consortium
8 had told SCE&G that it would get its PF factor to
9 1.15 within six months after August 2014?

10 MR. CHALLY: Object to form.

11 MR. WATKINS: I object to the form of that
12 question.

13 THE WITNESS: Based on what we knew at the
14 time, I felt it was important and appropriate
15 for us to identify the issue around performance
16 factor. And we clearly did that in the
17 testimony we provided the Commission.

18 BY MR. COX:

19 Q. Is there a reason that SCE&G did not
20 reveal in its testimony to the Commission in 2015
21 that the consortium had told SCE&G that it would get
22 its performance factor to 1.5 [sic] within six months
23 of August of 2014?

24 MR. CHALLY: Object to form.

25 MR. WATKINS: Objection to the form of the

1 question.

2 THE WITNESS: I wasn't responsible for the
3 testimony on performance factor.

4 For my role as CEO, as Mr. Byrne and the
5 team had described to me, the risk associated
6 with not achieving the performance factor, they
7 had indicated was something we -- an issue we
8 clearly needed to disclose to the Commission and
9 the risks associated with that issue, potential
10 risks or impact on cost and schedule, and we did
11 that.

12 MR. WATKINS: I'm sorry. Somebody's
13 dialed in and not on mute. If you could mute
14 your phone.

15 BY MR. COX:

16 Q. Do you believe that SCE&G's testimony to
17 the Commission in 2015 was misleading?

18 A. I believe the testimony we provided in
19 whole, including direct testimony and
20 cross-examination associated with that, was truthful.

21 (Exhibit 10 was marked for identification.)

22 BY MR. COX:

23 Q. Mr. Marsh, you've been handed a document
24 labeled Exhibit 10 to your deposition. It's a
25 seven-page document Bates-labeled FOIA-RP_00015652

1 through -15658. It's entitled "V.C. Summer Units 2
2 and 3 2014 EAC analysis and discussion of cost
3 changes."

4 MR. CHALLY: I'm not sure that his Bates
5 label was the same as yours.

6 THE WITNESS: My Bates label is different
7 than yours.

8 MR. CHALLY: But let's --

9 THE WITNESS: The title is the same.

10 MR. CHALLY: Let's break --

11 MR. COX: Let me get the --

12 MR. WATKINS: It could be the wrong
13 document.

14 MR. COX: -- the marked number on the
15 record.

16 So the marked version of the document is
17 SCANA_RP0021577 through -1583.

18 And we'll go off the record.

19 MR. CHALLY: Let's take a break. Thank
20 you.

21 VIDEOGRAPHER: The time is 3:18 p.m., and
22 we're off the record.

23 (A recess transpired from 3:18 p.m. until
24 3:32 p.m.)

25 VIDEOGRAPHER: The time is 3:32 p.m., and

1 we're back on record.

2 BY MR. COX:

3 Q. Mr. Marsh, we've had labeled Exhibit 10 to
4 your deposition, this seven-page document.

5 Have you ever seen this document before?

6 A. I don't recall seeing this document. I
7 may have seen it in a deposition preparation, but
8 I -- I don't recall seeing it before then.

9 Q. Okay. At the top of the document, it
10 says: "Report prepared by owners' EAC review and
11 validation team." And it has five names of
12 individuals below that.

13 Do you know if that is -- if that was the
14 members of the SCE&G EAC review team in 2014?

15 MR. CHALLY: Object to form.

16 THE WITNESS: As I testified to earlier, I
17 didn't put that team together, so I can't
18 confirm that that's all of the members of the
19 team.

20 BY MR. COX:

21 Q. In the paragraph below those names,
22 there's a sentence that says, quote, Subsequent to
23 the consortium presentation, the owners' EAC review
24 team convened and conducted a detailed review of the
25 data as presented and as provided at later dates as

1 requested to support the original presentation, end
2 quote.

3 Do you have any reason to doubt that the
4 owners' EAC review team conducted a detailed review
5 of the data that was presented to them?

6 MR. WATKINS: Objection to form.

7 THE WITNESS: I don't have a reason not to
8 believe that. My understanding is that's what
9 they were assigned to do.

10 BY MR. COX:

11 Q. Page 2 of this document, the very bottom
12 of page 2, there's a sentence at the bottom of page 2
13 that begins, quote, In the four subsequent months
14 since receipt of the EAC, the ITD PF has increased
15 steadily from 1.45 to the current value due to
16 monthly values of 1.97 for August, 1.95 for
17 September, 1.91 for October, and 2.48 for November,
18 end quote.

19 Were you aware of that fact prior to your
20 testimony to the Commission in 2015?

21 MR. CHALLY: Object to form.

22 MR. WATKINS: Objection to form.

23 THE WITNESS: As I stated earlier, I don't
24 recall receiving this document.

25 I also don't recall being informed by the

1 nuclear team or leadership that these were the
2 PF numbers for those months.

3 BY MR. COX:

4 Q. Did you ask the nuclear leadership team
5 what the PF factor was since the consortium's EAC
6 estimate in August 2014?

7 MR. WATKINS: Objection to form.

8 THE WITNESS: I don't believe I did. I
9 don't recall asking them that.

10 BY MR. COX:

11 Q. The next sentence at the top of page 3
12 says, quote, In its EAC, the consortium assumed that
13 the project would reach a goal PF of 1.15 within six
14 months. This does not appear to be achievable, end
15 quote.

16 Were you aware at the time that you
17 testified before the Commission in 2015 that the
18 owners' EAC team had concluded that the consortium's
19 estimate of PF did not appear to be achievable?

20 MR. WATKINS: Objection to form.

21 MR. CHALLY: Object to form.

22 THE WITNESS: Again, I don't recall
23 receiving this document.

24 I do remember in discussions that I
25 alluded to earlier in preparation of testimony

1 that the performance factor continued to be a
2 risk based on our knowledge of the project.

3 BY MR. COX:

4 Q. Wouldn't you agree, Mr. Marsh, that
5 there's a difference between something being a
6 challenge or a risk and something not being
7 achievable?

8 MR. CHALLY: Objection to form.

9 MR. WATKINS: Objection to the form of the
10 question.

11 THE WITNESS: I mean, certainly, those are
12 different terms.

13 BY MR. COX:

14 Q. If you had known that the owners' EAC team
15 had concluded that the consortium's estimated PF was
16 not achievable prior to your Commission testimony in
17 2015, would you have had the company, SCE&G, disclose
18 that to the Commission?

19 MR. CHALLY: Object to form.

20 MR. WATKINS: Objection to the form of the
21 question.

22 THE WITNESS: From my perspective, it was
23 critical that we disclosed performance factor as
24 an issue and as a risk and its potential impact
25 on the schedule and cost, which we did in our

1 testimony.

2 Again, I don't recall receiving this
3 document. I don't know what discussions may or
4 may not have taken place once this was presented
5 to whoever it may have been presented to.

6 I don't -- I don't know the date this was
7 presented. I just -- I don't know enough
8 information about this or recall having seen it
9 to reach any conclusions other than the fact
10 that performance factor was an issue, and we
11 disclosed that.

12 BY MR. COX:

13 Q. I'll represent to you that this document
14 was attached to an e-mail that was dated May 5th,
15 2015, which was prior to your Commission testimony
16 that's -- was labeled as an exhibit to your
17 deposition.

18 And I'd like for you to assume for
19 purposes of my question that the EAC owners' team had
20 concluded in May 2015 that the consortium's PF
21 estimate was not achievable.

22 Given that assumption, do you believe that
23 the -- if that assumption was true, that the owners'
24 team had reached that conclusion in May 2015, that
25 SCE&G should have disclosed that fact to the

1 Commission?

2 MR. CHALLY: Object to form.

3 MR. WATKINS: Objection to form of the
4 request. That's --

5 THE WITNESS: I think you're --

6 MR. WATKINS: That's a hypothetical. And
7 I object to the extent it calls for a legal
8 conclusion as well.

9 THE WITNESS: Your question includes
10 speculation -- would require me to speculate as
11 to what I think the company might have done.

12 I -- I don't know. I believe the issue
13 with performance factor was very well disclosed
14 and the risks associated were very well
15 disclosed.

16 I don't -- as I said earlier, this is a
17 document that states it was from the EAC team.
18 I don't know what discussions came after this.

19 But I do know, you know, based on the
20 company's evaluation of information we knew at
21 the time, what was included in the filing. And
22 we believe that to be accurate and pertinent
23 information relative to the project.

24 MR. CHALLY: Can we take a break?

25 MR. COX: Go off the record.

1 VIDEOGRAPHER: Off the record at 3:39 p.m.
2 (A recess transpired from 3:39 p.m. until
3 3:41 p.m.)

4 VIDEOGRAPHER: The time is 3:41 p.m., and
5 we are back on the record.

6 BY MR. COX:

7 Q. Mr. Marsh, it's correct that SCE&G did not
8 reveal to the Commission in 2015 -- strike that.

9 It's correct, Mr. Marsh, that in its 2015
10 filing with the Commission, SCE&G did not state that
11 it believed that the PF factor estimated by the
12 consortium was not achievable?

13 MR. WATKINS: Objection to form.

14 MR. CHALLY: I'm sorry. Can you please
15 give me one second?

16 MR. COX: Yeah.

17 MR. CHALLY: Okay. Go ahead.

18 THE WITNESS: I don't recall that the
19 company had concluded that.

20 And in preparation of the testimony, we
21 provided what we believed was the most accurate
22 information available at the time and the risks
23 associated, specifically with the performance
24 factor, in our testimony.

25

1 BY MR. COX:

2 Q. And I appreciate that, Mr. Marsh. And I
3 think sometimes it's natural for a witness to kind of
4 cut to the chase and get to what the witness feels is
5 the question.

6 I'm not sure that really answered my
7 question. So I just want to go back to it.

8 I'm not asking you what the company
9 concluded with respect to whether the -- whether it
10 believed that the consortium's PF factor was
11 achievable or not.

12 In fact, just to follow up on that,
13 sitting here today, you're not aware of whether
14 SCE&G's EAC team concluded that the consortium's PF
15 estimate was achievable or not, correct?

16 MR. CHALLY: Object to form.

17 THE WITNESS: I don't recall, based on
18 this document or other documents you have shown
19 me, that they concluded that.

20 BY MR. COX:

21 Q. Is that something you would have wanted to
22 know as the CEO of SCE&G prior to the 2015 testimony,
23 if that had been concluded?

24 MR. CHALLY: Object to form.

25 MR. WATKINS: Objection.

1 THE WITNESS: In my role as CEO, I wanted
2 to make sure that our testimony before the
3 Commission included appropriate information to
4 update relative to cost and schedule and
5 identify risks associated with any assumptions
6 that were made in achieving those dates or those
7 costs.

8 BY MR. COX:

9 Q. And if the owners' EAC team had included
10 that the consortium's PF estimate was not achievable,
11 is that a fact that you would have liked to have
12 known?

13 MR. CHALLY: Object to form.

14 THE WITNESS: Just because the EAC team
15 had an opinion, you know, I don't know that
16 senior management would have concluded that that
17 was the right opinion.

18 I can't speculate as to what was done.
19 All I know is what was presented in the filing
20 based on information, you know, I heard
21 discussed in preparation of the testimony and I
22 recall.

23 I don't -- I don't recall this document.

24 I don't recall this discussion.

25 As I have reviewed it, it appears to me

1 that the EAC team or the team that's presenting
2 this is identifying areas for which we had
3 disputes with the consortium as to whether or
4 not we should or should not pay for costs
5 associated with completing the project.

6 They also say -- and this is their
7 quote -- "The owner believes that CB&I should
8 only be entitled to recovery of a reasonable PF
9 like the one assumed in the EAC."

10 So, I mean, it sounds like, to me, they
11 believe that's an appropriate number that we
12 should hold them accountable to, which is
13 exactly what we did.

14 They went to the Commission and said,
15 "This is the number they've given us. They've
16 talked about what they expect to do to mitigate
17 the current PF and improve it, but it's a risk."

18 And that was covered in Steve Byrne's
19 testimony --

20 BY MR. COX:

21 Q. And I'm --

22 A. -- at length.

23 Q. And, Mr. Marsh, I'm not asking you about
24 any of those --

25 MR. WATKINS: Mr. Marsh, did you complete

1 your answer there? I just want to make sure we
2 got that down.

3 Were you still talking?

4 THE WITNESS: I was through.

5 MR. WATKINS: Okay.

6 BY MR. COX:

7 Q. Mr. Marsh, I'm not asking you about the
8 disputes with the consortium about who is going to
9 pay for costs. That's not the thrust of my question.

10 I think you said that senior management
11 could disagree with the EAC team about whether the
12 consortium's PF estimate was achievable or not,
13 correct?

14 MR. WATKINS: Objection.

15 THE WITNESS: They are certainly entitled
16 to their opinion.

17 You know, the filing before the Commission
18 is a -- it's a legal filing. I don't -- I don't
19 recall all of the legal ramifications for what
20 could or could not be included in a filing. I
21 just think there are a number of issues that
22 would have to be considered before you would
23 have changed what we filed with the Commission.

24 BY MR. COX:

25 Q. It's correct, Mr. Marsh, that in its 2015

1 filing with the Commission, SCE&G did not state that
2 it believed that the PF factor estimated by the
3 consortium was not achievable?

4 A. I don't recall all the specific testimony.

5 I know Mr. Byrne testified that it was a
6 significant risk for the project. It could have an
7 impact on schedule and cost.

8 Q. It's correct that your testimony to the
9 Commission did not reveal or did not state that SCE&G
10 had concluded that the PF factor that the consortium
11 had estimated was not achievable?

12 MR. WATKINS: Objection to form.

13 THE WITNESS: My understanding is that was
14 not the purpose of my testimony. It was to talk
15 in detail about the project and specific
16 project-related matters.

17 That was to be included in Mr. Byrne's
18 testimony, and that's what he addressed in his
19 testimony before the Commission.

20 MR. COX: Could you read the question
21 back?

22 (Whereupon the Court Reporter read the
23 previous question.)

24 BY MR. COX:

25 Q. Can you answer that question?

1 MR. WATKINS: Objection to the form of the
2 question.

3 In addition to the previous objection,
4 it's now been asked and answered.

5 THE WITNESS: I -- as I said, I don't
6 believe my testimony was intended to cover the
7 detail aspects of the construction project. And
8 I don't -- I don't recall including any detailed
9 information regarding performance factor in my
10 testimony.

11 BY MR. COX:

12 Q. And that would include any discussion
13 about whether SCE&G had concluded that the PF factor
14 estimated by the consortium was not achievable,
15 correct?

16 MR. WATKINS: Objection to the form of the
17 question.

18 THE WITNESS: I don't recall addressing
19 performance factor in detail in my testimony.

20 (Exhibit 11 was marked for identification.)

21 BY MR. COX:

22 Q. Mr. Marsh, I've had labeled as Exhibit 11
23 to your deposition an e-mail exchange dated
24 November 9th and November 10th, 2014, Bates-marked
25 SCANA_RP0850425.

1 It involves you, Mr. Addison, and
2 Ms. Walker.

3 Go ahead and take a moment to review this
4 document if you like.

5 MR. CHALLY: Yeah. We want to take a
6 quick break on this one.

7 MR. COX: Off the record.

8 VIDEOGRAPHER: Time is 3:49 p.m., and we
9 are off the record.

10 (A recess transpired from 3:49 p.m. until
11 4:00 p.m.)

12 VIDEOGRAPHER: Time is 4:00 p.m., and we
13 are back on the record.

14 BY MR. COX:

15 Q. Mr. Marsh, have you had a chance to review
16 Exhibit 11 to your deposition?

17 A. Yes, I have.

18 Q. Have you ever seen this document before?

19 A. It didn't refresh my memory from seeing
20 it. I don't recall seeing it before.

21 Q. This e-mail exchange begins with a message
22 from Carlette Walker to Jimmy Addison.

23 And in the message, Carlette Walker says,
24 quote, Dukes has specifically indicated that he
25 wanted me to provide him with updates on the EAC and

1 the delay negotiations, end quote.

2 Did I read that correctly?

3 A. Yes, you did.

4 Q. Do you know who Dukes is?

5 A. Dukes, I believe, is referring to Dukes
6 Scott, who is the executive director of the Office of
7 Regulatory Staff.

8 Q. And Mr. Addison responded to Ms. Walker's
9 e-mail and copied you as well; is that correct?

10 A. That is correct.

11 Q. And at the end of Mr. Addison's message,
12 he says, quote, Kevin, I'll copy you in case you can
13 go ahead and provide Carlette any feedback on the
14 negotiation points, end quote.

15 And then you respond, it looks like the
16 next day, and you say -- actually, can you just read
17 your response there?

18 A. This is my response to Jimmy Addison with
19 a copy to Carlette Walker regarding her meeting with
20 the Office of Regulatory Staff: "I talked with Kenny
21 this morning, and we believe the message to ORS
22 should be that we have had one initial meeting with
23 the consortium and are still having discussions.
24 They canceled the meeting last week because they were
25 not ready. I believe" -- it says "there more." It

1 probably should have said "There will be more
2 discussions to come but can't predict the outcome.
3 We should not get into the details of the discussions
4 to date."

5 Q. So you're telling Ms. Walker that she
6 should not get into the details of the EAC
7 discussions that SCE&G has had with the consortium to
8 date, correct?

9 A. That's what I said.

10 Q. Why didn't you want to get into the
11 details of the discussion to date or provide those
12 details to ORS?

13 MR. CHALLY: Object to form.

14 MR. WATKINS: Objection to the form of the
15 question.

16 THE WITNESS: From reading the e-mail, it
17 appears that Carlette is looking for some
18 guidance on what she can share with Dukes Scott
19 because we're preparing to file our quarterly
20 BLRA report with the Office of Regulatory Staff.

21 We don't -- Dukes is considered to be the
22 public, and we didn't believe it was appropriate
23 for her to share any information that would have
24 been in that report until it were filed and it
25 was a public document.

1 So we're on the verge of filing that
2 report. We don't believe she should share any
3 information in that report.

4 With respect to negotiations, we made our
5 best effort to give Dukes an update on, you
6 know, where we were with the consortium.

7 Just based on what it says here, we had
8 had one initial meeting and are still having
9 discussions. "They canceled the meeting last
10 week because they were not ready."

11 And it was my opinion that there would be
12 more discussions to come, but it was too early
13 for me to predict the outcome.

14 So we are still in active discussions --
15 this would have been in November -- with the
16 consortium about the EAC.

17 And I didn't have -- I don't think the
18 company had any definitive information that
19 would have resulted in a resolution at that
20 point. And that's what we asked her to relay to
21 Dukes.

22 BY MR. COX:

23 Q. This e-mail, Exhibit 11, it occurred after
24 the presentation that -- the PowerPoint presentation
25 that's provided in Exhibit 7 to your deposition; is

1 that correct?

2 A. Which one was Exhibit 7?

3 You said to my testimony?

4 Q. To your deposition.

5 A. Oh.

6 Q. Just look for Exhibit 7 in there.

7 A. I should have done a better job of keeping
8 them in order.

9 MR. WATKINS: This one is 7.

10 THE WITNESS: Here it is. I think that's
11 it, 7.

12 What was the question again?

13 BY MR. COX:

14 Q. This e-mail, Exhibit 11, it occurred after
15 the presentation that's provided in Exhibit 7 to your
16 deposition; is that correct?

17 MR. CHALLY: Object to form.

18 MR. WATKINS: Objection to the form of the
19 question.

20 THE WITNESS: I can confirm that the date
21 of the e-mail is later than the date included on
22 the cover page of the presentation.

23 BY MR. COX:

24 Q. SCE&G never provided ORS with a copy of
25 Exhibit 7, did it?

1 MR. WATKINS: Object to the form of the
2 question.

3 THE WITNESS: I don't know.

4 BY MR. COX:

5 Q. SCE&G never provided Exhibit 7 to the
6 Commission; is that correct?

7 A. I don't know.

8 MR. WATKINS: Objection to the form of the
9 question.

10 BY MR. COX:

11 Q. How much, or I should say, how often did
12 you interact with Carlette Walker?

13 MR. WATKINS: Object to the form of the
14 question.

15 THE WITNESS: I didn't -- I didn't keep a
16 log. I've known Carlette for a long time. At
17 any time, she could pick up the phone and call
18 me. You know, we met from time to time on
19 issues that she had at the plant regarding
20 disputes with the consortium about how a
21 calculation was made.

22 When there was some theory involved that
23 involved more accounting and finance, she would
24 sometimes come to me and get me to validate some
25 of her calculations.

1 I mean, my door is open. She could have
2 come to me at any time, but we didn't have any
3 regularly scheduled come-give-me-update
4 meetings.

5 BY MR. COX:

6 Q. Was she seeking in those meetings to get
7 your approval as the CEO, or was it feedback from you
8 as an accountant?

9 MR. WATKINS: Objection to the form of the
10 question.

11 THE WITNESS: Okay. In the example I gave
12 you, in my view, it was more as a CPA and
13 someone who had made many calculations in my
14 history, just to validate her theory as to how a
15 number should be calculated.

16 I just remember specifically it related to
17 one of our earlier change orders and how
18 escalation was to be calculated. That's the
19 example that comes to mind.

20 BY MR. COX:

21 Q. What was your impression of her as an
22 employee?

23 MR. WATKINS: Objection to the form of the
24 question.

25 THE WITNESS: Carlette was a CPA. She was

1 a -- she was a capable accountant. She was
2 outspoken. She was aggressive and, at times, if
3 she was upset, could be combative in her
4 relationships with others around the company.

5 BY MR. COX:

6 Q. What did you think about her work as an
7 accountant for the company, quality of the work?

8 MR. WATKINS: Objection to the form of the
9 question.

10 THE WITNESS: I never -- I never
11 supervised Carlette's work directly as an
12 accountant, but I -- to my knowledge, she was a
13 capable accountant.

14 I mean, she was a CPA, and I believe that
15 established some baseline of qualifications for
16 her, for her work.

17 BY MR. COX:

18 Q. Was it concerning to you that she was
19 outspoken?

20 MR. WATKINS: Objection to form.

21 THE WITNESS: No. We -- we put her --
22 Bill Timmerman, who was the CEO, decided to put
23 her at the plant site because of her
24 personality. He wanted to make sure we had some
25 at the plant -- someone at the plant site that

1 would challenge numbers or payments or invoices
2 that came in from the consortium.

3 BY MR. COX:

4 Q. Why did -- to your knowledge, do you know
5 why Ms. Walker left employment at SCANA?

6 A. I can't point to any particular reason. I
7 know she came to see me -- let me back up.

8 She had gone through a performance
9 appraisal with Jimmy Addison in the fall of 2015.
10 Jimmy had come to me and said that Carlette was upset
11 with some of the issues he had raised in the -- in
12 the performance evaluation.

13 And Jimmy told her, "I understand you may
14 disagree. You feel free to go see Kevin and raise
15 your concerns if you want to raise those to him."

16 I recall Jimmy telling me, "Expect a call
17 from her."

18 I think I did -- I do recall receiving a
19 call, and we may have actually set up an appointment.
20 It was late in the week.

21 But before we met, she called Jimmy back
22 and said, "I don't need to see Kevin. I was -- I was
23 wrong in my comments. You and Kevin have been
24 supportive of me and my career, and I appreciate the
25 opportunities you've given me, and I don't need to

1 meet with Kevin."

2 And I did not meet with her.

3 Later in 2015 -- I believe it was over the
4 Christmas holidays of 2015, I got a very angry text
5 message from Carlette, unlike any text message I had
6 ever gotten from her before. I don't remember all of
7 the details, but I recall it had to do with the
8 company's disclosures -- I believe it had to do with
9 the company's disclosures regarding the nuclear
10 project, and she was extremely upset, used some foul
11 language in the text message that I recall, and said
12 she wanted to meet with me.

13 I texted her back, indicated I would meet
14 with her immediately.

15 And she responded and said, "No. We can
16 get together after the first of the year."

17 So as soon as I got back to the office in
18 January, I set up an appointment with Carlette.

19 And she came to -- came to see me. And
20 from what I -- what I recall of the conversation was
21 she was extremely upset. She believed that our
22 disclosures around the nuclear project were not
23 appropriate and not accurate and that, you know, she
24 didn't believe that -- that Jimmy Addison, Jeff
25 Archie, and Marty Phalen were trustworthy and that I

1 should fire all three of them immediately.

2 That didn't seem logical to me at the
3 time, but -- it seemed a little irrational, but I
4 wanted to make sure I understood what was driving her
5 concern, and I asked her about that.

6 And she proceeded to tell me about a
7 meeting she had with Jimmy, Marty Phalen -- Jimmy
8 Addison, Marty Phalen, and Jeff Archie. It was
9 regarding a personnel matter at the nuclear plant in
10 an area of the -- of Unit 1's operation -- not the
11 construction site, but Unit 1 -- because Carlette
12 also had responsibility for Unit 1.

13 It regarded an issue related to an
14 employee that Carlette believes pay grade -- or the
15 value associated with her job had not been calculated
16 appropriately and needed to be reviewed.

17 It was explained -- I don't recall who
18 explained it to Carlette, but as I was informed by
19 Marty Phalen -- and I knew the policy because it was
20 a company policy -- if a job is taken up for review
21 and the salary is reviewed and it comes back that the
22 pay should be increased or the range should be
23 increased, the employee may or may not get an
24 adjustment in their pay.

25 If the evaluation comes back and it's

1 lower, the range is lower than the employee is
2 making, I recall the policy says you'll be adjusted
3 down immediately to the top end of that range.

4 So you had a risk when you took a job up
5 for evaluation because you didn't know what the
6 answer would be.

7 And she had been advised, as I was told by
8 Marty, not sure you really want to do this. It could
9 come back on the negative side, and then we'll have
10 to adjust the salary. But she insisted that -- based
11 on what Marty had told me, she insisted on going
12 forward with the interview -- I mean, with the
13 evaluation.

14 When the evaluation came back, it was
15 lower, significantly lower than the employee was
16 making. And that employee's current pay was adjusted
17 down to the top end of the range associated with that
18 job -- or was going to be adjusted to the top end of
19 that range. I don't know when it was adjusted.

20 She was very angry about that. She went
21 through an appeals process that is available in the
22 company for someone to review decisions that are
23 made. The appeal came to my office.

24 Under the policy, my understanding was I
25 could delegate someone in the organization to hear

1 the appeal rather than myself. I chose to do that.
2 I felt like Jimmy Addison would be the appropriate
3 person. I knew Jimmy to be very fair, very rational,
4 and one that would listen to all the facts and base
5 his conclusions on information that was presented and
6 come up with the right answer.

7 My understanding is he did that and
8 concluded that the actions that were taken were
9 consistent with the company's policies and that
10 Carlette was aware of the risk associated with that
11 and the decision reached was appropriate.

12 She relayed to me a meeting she had with
13 Jimmy Addison, Marty Phalen, and Jeff Archie. And
14 what -- when she was to communicate to the employee
15 that was going to be affected.

16 And she -- I don't recall -- she said she
17 was treated very ugly in that meeting. She did not
18 like the way she was treated in that meeting based on
19 the way she presented that discussion that took
20 place.

21 I told her that, as I told any employee
22 that came into my office, you brought me a set of
23 facts. You have given me your side of the story. I
24 now feel obligated to look at the other side of the
25 story.

1 So with respect to that human resources
2 issue, I went to Marty Phalen and asked him, "Tell me
3 what went on in this meeting."

4 He described to me where they had
5 explained to Carlette how they had reached the
6 decision. It had gone through review process, and
7 the conclusion had been reached that the action taken
8 would be appropriate.

9 She again -- he said she didn't agree with
10 it and said she was going to go back and tell the
11 employee that "HR had decided to cut your salary."

12 Marty said -- Marty told me, he said,
13 "Now, wait a minute. You're an officer of the
14 company. You've got to represent the process and
15 explain the process and not blame it on an
16 individual. We went through the right process. And
17 that's what you need to explain to the employee."

18 She didn't like that answer. She was --
19 Marty said she was very upset, and I believe she
20 continued to be upset about that when she came to see
21 me because she relayed that -- said, "I don't have
22 any trust in Jimmy Addison, Marty Phalen, or Jeff
23 Archie" -- because he also worked up at the nuclear
24 plant -- and said, "I think you should terminate all
25 three of them."

1 With respect to the issues related to
2 disclosures, when she left, I took that as
3 information and told her I felt obligated to follow
4 up on that.

5 Based on what she had told me, I
6 immediately called Ron Lindsay, our general counsel,
7 and I said, "Ron" --

8 MR. CHALLY: Mr. Marsh, I want to just
9 interrupt you.

10 As to your discussions with lawyers
11 representing SCANA, I'm fine if you generally
12 describe the substance of what you sought their
13 advice on, but don't disclose in detail the
14 conversation that you had with those lawyers
15 related to the topic.

16 THE WITNESS: All right.

17 MR. WATKINS: Do you understand that, or
18 do you want to take a break to understand the
19 nature of what you can testify about in terms of
20 discussion with counsel?

21 THE WITNESS: I believe I do.

22 MR. CHALLY: Yeah.

23 MR. WATKINS: Okay.

24 THE WITNESS: I believe I do.

25 As the CEO, we had in place a corporate

1 compliance program whereby if employees believed
2 anyone or anything was not appropriate that was
3 being done by the company, you could raise that
4 to your immediate supervisor, the corporate
5 compliance officer, or the general counsel.

6 I passed that issue on to general counsel
7 for appropriate action.

8 BY MR. COX:

9 Q. What did Ms. Walker tell you in that
10 meeting about her dissatisfaction with the company's
11 disclosures about the project?

12 MR. WATKINS: Objection to form.

13 THE WITNESS: I don't remember the
14 details. I recall that it had to do with
15 disclosures.

16 BY MR. COX:

17 Q. SEC disclosures?

18 A. I don't recall the specific details. I
19 just -- I remember it had to do with disclosures, and
20 I wanted to make sure it was appropriately addressed.

21 Q. You don't remember what her problem was
22 with the disclosures?

23 MR. WATKINS: Objection to form. Asked
24 and answered.

25 THE WITNESS: I don't recall the details.

1 BY MR. COX:

2 Q. Do you recall anything more than she
3 didn't -- or wasn't happy with the disclosures?

4 MR. CHALLY: Object to form.

5 MR. WATKINS: Objection to the form of the
6 question.

7 THE WITNESS: I don't recall any more
8 detail about the conversation.

9 BY MR. COX:

10 Q. How did you make sure it was appropriately
11 addressed?

12 MR. WATKINS: Objection to the form of the
13 question.

14 THE WITNESS: I turned it over to general
15 counsel to address the issue. I don't know that
16 I can say any more than that.

17 BY MR. COX:

18 Q. Did you get a report back from general
19 counsel?

20 MR. CHALLY: Just to be clear, the
21 question is: Did you get a report back,
22 Mr. Marsh?

23 MR. WATKINS: So "yes" or "no" would be an
24 appropriate answer here, but the substance of
25 the communication would not be.

1 THE WITNESS: Yes, I did get a report.

2 BY MR. COX:

3 Q. Was that written or oral?

4 A. It was oral.

5 Q. And that report doesn't jog your memory
6 about what her concern was about the company's
7 disclosures?

8 MR. CHALLY: Object to form.

9 MR. WATKINS: Objection to the form of
10 that question.

11 THE WITNESS: I apologize, but I don't
12 remember the details. It was regarding
13 disclosures. I don't remember the specific
14 claims she made.

15 BY MR. COX:

16 Q. Did you report back to Ms. Walker
17 regarding the report that you received from general
18 counsel?

19 A. I don't know that I did.

20 Ms. Walker came back to see me -- I'm
21 going to go back and finish up. The question
22 relating to Carlette Walker leaving, I think, was the
23 initial question we started on.

24 She came back to me. I don't recall if we
25 had two or three meetings, but she came back to me

1 and expressed concerns about her personal health.

2 She -- she updated me on health issues her
3 husband was having, which she believed could be
4 life-threatening. She informed me that she was
5 losing 15 pounds a month because she was -- she was
6 upset just over the issues she had described to me
7 earlier.

8 We -- I asked her if she was getting -- if
9 she was talking to someone to address those issues,
10 and she said she was.

11 I asked her if it would help her for me to
12 move her to a different responsibility within the
13 organization; if she thought that would help her
14 address some of the health issues.

15 She initially thought that it might, but
16 later communicated back to me that she didn't want to
17 leave. She wanted to stay and see the project
18 through to completion.

19 I took that information, and I met with
20 her another time.

21 She again relayed her health concerns and
22 losing all the weight she was losing each month, and
23 she couldn't afford to go on many months before she
24 thought that would create a real issue for her.

25 I was concerned for her health. I had

1 known Carlette since, I believe, it was 1984. I
2 think she joined the company in 1983, and I joined in
3 1984.

4 I considered her a friend. I was
5 concerned for her health. And I told her that I was
6 going to put her on paid, full paid medical leave to
7 give her a chance to step away and, you know, resolve
8 issues with her husband, hopefully, and also address
9 the stress that was impacting her health and causing
10 her to lose 15 pounds a month.

11 She asked me, "How long will you do that?"

12 And I said, I don't want to put a time
13 frame on it, but I want to do it as long as it takes
14 you to recover so that we can -- we can move forward
15 and you can get well.

16 She -- she left the meeting, and I believe
17 that was the last meeting we had.

18 I was informed -- I don't recall if it
19 was -- if it was directly by her, but the company was
20 informed that she desired to retire, and she wanted
21 to talk to company representatives about what that
22 would look like.

23 She had engaged -- she informed us she had
24 engaged outside counsel, and at that point, I stepped
25 aside and turned it over to our legal department.

1 Q. Were you involved in negotiating any
2 agreements in connection with her retirement from the
3 company?

4 A. I was not involved with the negotiations
5 of the amounts. General counsel or the
6 representatives from the legal department would
7 update me from time to time on where they were in
8 negotiations and their thoughts. So I monitored that
9 based on what they told me.

10 Q. Did you recommend that any provisions be
11 placed in any agreement with her in connection with
12 her retirement?

13 MR. WATKINS: On that point, if you're
14 talking about communications with counsel,
15 again, I'll -- I'd counsel you not to disclose
16 the substantive communications with counsel,
17 whether they're giving you legal advice or
18 you're seeking legal advice.

19 But otherwise, you may answer.

20 BY MR. COX:

21 Q. Let me strike the question.

22 A. Yeah. Okay.

23 Q. Who were you dealing with at the company
24 in connection with Ms. Walker's agreement to retire
25 from the company?

1 A. I believe it was Jim Stuckey and Will
2 Brumbach. I'm not sure I get his last name
3 pronounced correctly.

4 Q. Who is Will?

5 A. He's an attorney who works in the general
6 counsel's office.

7 Q. Who signed the agreement for Ms. Walker to
8 leave the company?

9 MR. WATKINS: Objection to form.

10 THE WITNESS: I don't recall.

11 BY MR. COX:

12 Q. Wasn't you?

13 A. I don't know. I don't recall.

14 Q. Going back to that communication you had
15 with Ms. Walker where she informed you about her
16 family's and her personal health issues, I just want
17 to close the loop about your recollection about her
18 concern about the company's disclosures.

19 Do you not recall whether you ever briefed
20 her on the report you received from SCE&G counsel
21 about her concerns?

22 MR. WATKINS: Objection to form.

23 THE WITNESS: I don't recall sharing that
24 with her. I believe she indicated her desire to
25 retire before I got any feedback from the legal

1 department. But I did inform her that I was --
2 that I was taking actions to evaluate and, you
3 know, determine the basis for what she had told
4 me, whether it was accurate or inaccurate.

5 BY MR. COX:

6 Q. After receiving the report back from the
7 legal department, did you have concerns about the
8 company's disclosures?

9 A. No, I did not.

10 MR. WATKINS: When you're at a good
11 breaking point, I could use a break. You don't
12 need to stop a line of questioning, but I could
13 use a restroom break.

14 MR. COX: I think I just have a couple
15 more questions on this line.

16 BY MR. COX:

17 Q. Did you become aware at a certain point in
18 time about a voice mail that Ms. Walker left with
19 Marion Cherry?

20 A. I recall seeing a newspaper article about
21 it. I believe it was in the Post and Courier.

22 Q. Is that after you had retired from the
23 company?

24 A. I believe it was. I don't recall the
25 specific date.

1 Q. So to your recollection, you weren't aware
2 of that voice mail at the time you were CEO, correct?

3 A. I don't recall hearing or being aware of
4 it.

5 Q. That text message that Ms. Walker left for
6 you around the holidays of 2015, did you save a copy
7 of it?

8 A. I did not personally save a copy of it,
9 no.

10 Q. Did anyone else save a copy of it?

11 A. The legal team may have saved a copy of
12 it. I don't have direct knowledge of that.

13 But I know I did not personally save a
14 copy of it.

15 Q. What makes you think that the legal team
16 might have saved a copy of it?

17 MR. CHALLY: I'm just instructing
18 Mr. Marsh not to answer to the extent he's --
19 would repeat communications he had with lawyers.

20 If you have some independent knowledge as
21 to why the legal department might have retained
22 a document, you're free to provide that.

23 THE WITNESS: I shared the text message
24 with the legal department.

25

1 BY MR. COX:

2 Q. Are you aware of any other text messages
3 that employees of SCANA or SCE&G received from
4 Ms. Walker that expressed concern about the company's
5 disclosures?

6 A. I'm not aware of any. I don't recall any.

7 Q. Did you ever discuss with Mr. Addison
8 Ms. Walker's concerns about the company's
9 disclosures?

10 A. I may or may not have after the meeting I
11 had with Carlette. I just don't recall specifically.

12 MR. COX: Let's take a break and go off
13 the record.

14 THE WITNESS: Okay.

15 VIDEOGRAPHER: The time is 4:29 p.m., and
16 we are off the record.

17 (A recess transpired from 4:29 p.m. until
18 4:39 p.m.)

19 VIDEOGRAPHER: The time is 4:39 p.m., and
20 we're back on the record.

21 MR. SOLOMONS: And before we get started
22 back with the questioning, I just wanted to put
23 onto the record that Plaintiffs' counsel, due to
24 the time constraints and the PSC proceeding,
25 will not be asking questions today.

1 However, they are reserving their right to
2 either renote in the Lightsey only or to
3 reconvene this deposition however counsel sees
4 fit. But we will not be asking questions today
5 because of those time constraints.

6 MR. CHALLY: Okay.

7 MR. SOLOMONS: And we have an
8 understanding with SCANA counsel -- I don't know
9 if I have that same understanding or cleared
10 that yet with personal counsel -- but that is
11 our plan.

12 MR. CHALLY: The only clarification I
13 think we need on that is we'll -- I don't know
14 that I would characterize it as reconvene the
15 deposition, and I say that for purposes of
16 clarifying what obligations we may have to
17 discuss background facts with Mr. Marsh before
18 or after this period, so --

19 MR. SOLOMONS: We can notice that in
20 Lightsey only -- renote in Lightsey only.

21 MR. CHALLY: Fair enough. Thank you.

22 MR. SOLOMONS: Thank you.

23 BY MR. COX:

24 Q. Mr. Marsh, SCE&G did not inform the
25 Commission that Bechtel was doing an assessment of

1 the project in 2015, did it?

2 MR. WATKINS: Objection --

3 MR. CHALLY: Object to form.

4 MR. WATKINS: Objection to form.

5 THE WITNESS: The assessment being done by

6 Bechtel was at the direction of George Wenick.

7 He had engaged them to do an assessment.

8 BY MR. COX:

9 Q. And I -- I'm pretty certain that didn't
10 answer my question.

11 And I -- I think I understand what your
12 answer would be to the question, but I just want to
13 have the answer on the record.

14 I think you were explaining to me the
15 reason that SCE&G did not reveal the Bechtel
16 assessment to the Commission -- and I'm not putting
17 words in your mouth. That's what I understand your
18 answer to be.

19 But my question was just to establish the
20 fact of whether SCE&G informed the Commission that
21 Bechtel was doing an assessment.

22 And so I'm going to need to go back and
23 ask that question again just to get your answer to
24 that question on the record.

25 But isn't it true that SCE&G did not

1 inform the Commission that Bechtel had done an
2 assessment of the project in 2015?

3 MR. CHALLY: Object to form of the
4 question.

5 MR. WATKINS: Object to the form of the
6 preamble as unnecessarily argumentative, and I
7 object to the form of the question as asked and
8 answered.

9 THE WITNESS: As I stated, the company was
10 not doing an assessment. So there wasn't -- I
11 don't believe the company informed the
12 Commission that it was doing an assessment. The
13 assessment was being performed by -- George
14 Wenick had engaged Bechtel to do an assessment.

15 BY MR. COX:

16 Q. Okay. Fair enough.

17 And SCE&G did not notify the Commission
18 that Wenick had engaged Bechtel to perform an
19 assessment of the project, correct?

20 MR. CHALLY: Object to the form of the
21 question.

22 MR. WATKINS: Same objection.

23 THE WITNESS: I don't recall a
24 notification to that effect.
25

1 BY MR. COX:

2 Q. SCE&G did not reveal to the Commission the
3 written Bechtel report from the Bechtel assessment
4 until after abandonment; is that correct?

5 MR. CHALLY: Object to form.

6 MR. WATKINS: Object to the form of the
7 question.

8 THE WITNESS: The report was George
9 Wenick's report, outside counsel. And we did
10 not -- we did not provide a copy of the report
11 given to George Wenick -- that I said earlier
12 that I know of -- to the Commission.

13 BY MR. COX:

14 Q. And isn't it true that SCE&G did not
15 provide the Bechtel report to ORS as well?

16 MR. CHALLY: Object. Excuse me. Object
17 to the form of the question.

18 MR. WATKINS: Object to the form of the
19 question. Same objection.

20 THE WITNESS: To my knowledge, I don't
21 think the company provided the report given to
22 Mr. Wenick to the Office of Regulatory Staff.

23 BY MR. COX:

24 Q. The company received the Bechtel Project
25 Assessment Report from Mr. Wenick, correct?

1 MR. WATKINS: Object to the form.

2 THE WITNESS: Mr. Wenick did make that
3 report that was given to him available to the
4 company.

5 BY MR. COX:

6 Q. And isn't it true that SCE&G did not
7 provide that report to ORS?

8 MR. CHALLY: Object to form.

9 MR. WATKINS: Same -- same objection.

10 THE WITNESS: Yeah, my understanding from
11 direction from in-house counsel was that that
12 report was protected because it was -- or
13 privileged because it was prepared in
14 anticipation of litigation, and it was not
15 appropriate for us to disclose it.

16 (Exhibit 12 was marked for identification.)

17 BY MR. COX:

18 Q. Mr. Marsh, you've been handed a document
19 labeled Exhibit 12 to your deposition.

20 Have you ever seen this document before?

21 A. (No audible response.)

22 Q. Mr. Marsh, have you ever seen this
23 document labeled Exhibit 12 before?

24 A. I have not seen this document before.
25 Given the date of the document, it appears to be

1 parts of the presentation that was given to the
2 company Santee Cooper and SCE&G by Bechtel on
3 October 22nd, 2015, but I can't verify that because I
4 was not given a copy of the presentation.

5 Q. You were present at a presentation on that
6 date given by Bechtel; is that correct?

7 A. I did attend a presentation on that date.

8 Q. Did that presentation include an
9 assessment by Bechtel of the schedule on the project?

10 A. There was a presentation given on the
11 schedule. There was discussion in the room about the
12 schedule, but there were pages presented on the
13 screen that addressed schedule.

14 Q. There were or were not?

15 A. There were pages that were presented in
16 the projection on the screen that related to
17 schedule.

18 Q. If you could turn to page 24 of this
19 exhibit?

20 A. Where are the page numbers? Got it.
21 Okay. I see it down here at the bottom. Yes.

22 Q. This page is labeled "Schedule Assessment
23 Preliminary Results," and there's a chart that shows
24 "Unit 2, Unit 3 Current COD Adjustment" and then "New
25 COD."

1 Do you see that?

2 A. I do see that.

3 Q. Did -- did Bechtel at this October 2015
4 presentation provide you with the information on this
5 chart regarding its assessment of the schedule?

6 A. I don't recall. This appears to be
7 consistent with what they provided. I know there was
8 a lot of discussion in the room regarding how they
9 derived those numbers, most of which I didn't
10 understand because I'm -- I'm not a scheduling expert
11 related to construction management, but they did
12 present information related to schedule.

13 Q. And the information they provided showed a
14 commercial operation date with the adjustment on this
15 chart from the current commercial operation date?

16 A. Well, they -- they presented information
17 that related to those dates along with other items
18 identified as part of their schedule assessment.

19 Q. Did you have this information regarding
20 the schedule prior to execution of the 2015 amendment
21 to the EPC?

22 MR. WATKINS: Objection to form.

23 THE WITNESS: We had given -- I mean, we
24 had been given this information on October 22nd.
25 And, again, it was preliminary information. It

1 wasn't -- wasn't finalized.

2 And if my memory's correct, we signed the
3 amendment on October 27th, 2015. So the
4 presentation of the preliminary results we
5 received prior to the amendment to the EPC
6 contract.

7 BY MR. COX:

8 Q. The information regarding the schedule
9 assessment by Bechtel on page 24 of this document,
10 SCE&G never provided that information to the
11 Commission, correct?

12 MR. WATKINS: Objection to form.

13 MR. CHALLY: Object to form.

14 THE WITNESS: I don't -- I don't recall
15 providing that information. As I stated, this
16 was a preliminary assessment. There were
17 certainly discussions in the meeting regarding
18 the accuracy and completeness of the
19 information. I recall that very robust
20 discussion. So in my mind, this was not --
21 these were not dates that we had concluded were
22 accurate or that could be relied upon.

23 BY MR. COX:

24 Q. Did you have any discussions with any
25 nonattorneys at SCE&G or -- or Santee Cooper about

1 whether to disclose the Bechtel schedule assessment
2 to the Commission?

3 MR. CHALLY: Can we just get precisely the
4 time period?

5 Are you talking about before abandonment
6 or after abandonment?

7 MR. COX: Before abandonment.

8 MR. CHALLY: Before abandonment.

9 Go ahead, Mr. Marsh.

10 THE WITNESS: I don't recall any
11 discussions regarding disclosures. I mean, we
12 considered the information -- the company, I
13 believe, considered the information preliminary.
14 It had not been validated.

15 (Exhibit 13 was marked for identification.)

16 BY MR. COX:

17 Q. Mr. Marsh, you've been handed a document
18 labeled Exhibit 13 to your deposition. It's a
19 document entitled "V.C. Summer Nuclear Generating
20 Station Units 2 and 3 Schedule Assessment Report."

21 It's got the Bechtel logo on it. It's
22 Bates-numbered ORS_00450277 through -0303.

23 Have you ever seen this document before?

24 A. I have not seen this document.

25 Q. Were you involved in any discussions about

1 whether Bechtel should provide a written report of
2 its assessment?

3 A. I remember -- I seem to recall an e-mail
4 that I believe came from George Wenick wanting to
5 know if we wanted a written copy of the Bechtel
6 assessment report. I don't ever remember a
7 discussion regarding a schedule assessment report.
8 I've had no involvement with this.

9 Q. Did you provide Mr. Wenick with your
10 position on that issue?

11 A. Well, I knew Lonnie Carter had expressed
12 to me a desire for the report, and I indicated to
13 George that I thought we needed to -- I believe I
14 indicated to our legal counsel, to George, that we
15 needed to make the report available to Lonnie.

16 Q. Were you involved in any discussions
17 regarding whether the Bechtel Corporation should
18 issue two written reports?

19 A. I don't recall being in any of those
20 discussions.

21 Q. You didn't ever advise Mr. Wenick that you
22 wanted Bechtel to issue a Project Assessment Report
23 and a schedule assessment report?

24 MR. WATKINS: Objection to form.

25 THE WITNESS: I don't recall any

1 directions I gave to Mr. Wenick to that effect.

2 BY MR. COX:

3 Q. Did Mr. Wenick ever tell you that Bechtel
4 had issued a schedule assessment report?

5 A. I don't recall being informed by
6 Mr. Wenick that there would be a separate report.

7 Q. And I should probably make that -- repeat
8 that question and make it more broad.

9 Were you ever informed by anyone that
10 Bechtel had issued a schedule assessment report?

11 MR. CHALLY: You talking about prior to
12 abandonment?

13 BY MR. COX:

14 Q. Prior to abandonment. I apologize.

15 A. I may have been at some point. I don't
16 recall a specific conversation. I do know I've never
17 seen the report. I just don't recall if I was ever
18 informed there was a separate report.

19 Q. When did you become aware that there was a
20 Bechtel schedule assessment report?

21 A. The first time I recall is -- I believe it
22 came up in either presentations or testimony to the
23 Senate committee and/or House committee regarding the
24 abandonment decision. I remember a discussion around
25 that time.

1 I don't recall if it was in response to a
2 question or a discussion that attorneys were having.
3 I recall -- I recall hearing something about it at
4 that point.

5 Q. Were you surprised to learn that fact?

6 A. I was.

7 Q. Were you upset that you hadn't been
8 informed that Bechtel had issued a schedule
9 assessment report earlier?

10 MR. WATKINS: Objection to form.

11 THE WITNESS: No, I wasn't -- wasn't
12 upset. I had been informed by my legal counsel,
13 outside legal counsel, that the report was not
14 fully developed enough to be relied upon. So I
15 was not surprised that I didn't get a report.

16 BY MR. COX:

17 Q. You're referring to Mr. Wenick?

18 A. George Wenick, that's correct.

19 Q. And when did he inform you of that fact?

20 A. I recall an e-mail in the November 2015
21 time frame, if I remember correctly. He delineated
22 some of the reasons why he didn't believe the report
23 could be relied upon or the schedule information
24 included in the assessment could not be relied upon
25 because it was not -- not fully developed.

1 (Exhibit 14 was marked for identification.)

2 BY MR. COX:

3 Q. Mr. Marsh, I've handed you a document
4 labeled Exhibit 14 to your deposition. It's an
5 e-mail chain dated February 5th and February 8th,
6 2016, Bates-numbered ORS_SCEG_01420739.

7 MR. WATKINS: And this is 14, you said?

8 MR. COX: Exhibit 14, correct.

9 MR. WATKINS: Okay.

10 BY MR. COX:

11 Q. Mr. Marsh, is it correct to say that the
12 initial e-mail on this is Mr. Wenick forwarding the
13 Project Assessment Report to Ron Lindsay and Al Bynum
14 from SCANA?

15 A. Correct.

16 MR. WATKINS: Is there an attachment to
17 this document?

18 MR. COX: There was, yeah.

19 MR. WATKINS: Okay. But you don't have
20 it?

21 MR. COX: I don't have it with me, yeah.

22 BY MR. COX:

23 Q. And is it correct to say that Mr. Bynum
24 was forwarding this document to you?

25 A. Well, he states that he is attaching the

1 final Summer Units 2 and 3 Project Assessment Report
2 to the e-mail.

3 Q. And Mr. Bynum is instructing you not to
4 forward it to anyone else, correct?

5 MR. WATKINS: Objection to form.

6 THE WITNESS: I mean, what he says in the
7 e-mail is that I should still treat the report,
8 the Project Assessment Report, as
9 attorney-client privileged and I should not
10 forward it. If someone needs to see it, send
11 them to Ron or Al, Ron Lindsay or Al Bynum.

12 Q. Did you forward it to anyone else?

13 A. I don't believe I did.

14 Q. You mentioned earlier, I think, that
15 you're not a schedule expert.

16 Do you know whether the schedule for the
17 project that the consortium provided SCE&G was a
18 fully integrated construction schedule?

19 A. I -- I can't address that. I know
20 there -- a variety of descriptions and levels of
21 schedules, but I don't have knowledge to draw that
22 conclusion.

23 Q. Would you have the same answer to the
24 question of -- let me just ask you the question: Do
25 you know if the consortium's schedule for the project

1 was resource-loaded?

2 A. I don't know.

3 Q. Mr. Marsh, is it correct that the
4 fixed-price amendment to the EPC contract did not
5 freeze owners' costs?

6 MR. WATKINS: Objection.

7 MR. CHALLY: Object to form.

8 MR. WATKINS: Objection to the form of the
9 question.

10 THE WITNESS: The amendment to the EPC
11 contract would have addressed EPC cost. That
12 was the effect of the amendment.

13 BY MR. COX:

14 Q. And it did not fix the owners' cost
15 associated with the project; is that correct?

16 MR. WATKINS: Objection to form.

17 MR. CHALLY: Same.

18 THE WITNESS: To my knowledge, owners'
19 costs were not identified in the EPC contract.
20 So to the extent they were not identified in the
21 EPC contract, I don't believe they would have
22 been subject to the amendment.

23 BY MR. COX:

24 Q. Mr. Marsh, you were aware at the time that
25 the 2015 amendment to the EPC contract was executed

1 that Westinghouse could use the Bankruptcy Code to
2 invalidate their price and performance guarantees in
3 the EPC contract, correct?

4 MR. CHALLY: Object to form.

5 MR. WATKINS: Objection to the form of the
6 question.

7 THE WITNESS: Did you say "to invalidate"?

8 BY MR. COX:

9 Q. Correct. To invalidate.

10 MR. CHALLY: Same objection.

11 MR. WATKINS: Yeah. Same objection.

12 THE WITNESS: I don't know that I had
13 direct knowledge of that issue at the time.

14 BY MR. COX:

15 Q. The fixed-price amendment -- or strike
16 that.

17 The 2015 amendment to the EPC contract
18 resulted in an increase in the amount of monthly
19 payments from the owners to Westinghouse, correct?

20 MR. WATKINS: Objection to the form of the
21 question.

22 MR. CHALLY: Same.

23 THE WITNESS: The contract addressed a
24 series of interim payments to be made beginning
25 January 1st until a final construction milestone

1 payment schedule could be agreed to between the
2 owners and the consortium.

3 Those -- those payments were an estimate.
4 To my recollection, those estimates were an
5 estimate of actual amounts expected to be spent
6 on the project during that five-month period.
7 And at the end of that time, there was a true-up
8 mechanism that would have adjusted any
9 difference between actual amounts incurred and
10 actual amounts paid.

11 So it was a -- it was an educated estimate
12 of what we expected to pay during that period
13 for construction; however, if it didn't -- it
14 turned out to be more or less, there would be an
15 adjustment once the construction milestone
16 payment had been agreed to.

17 So it wasn't -- it wasn't a way to
18 increase project cost or lower project cost. It
19 was just a way to estimate what cost would be
20 during that five-month period.

21 BY MR. COX:

22 Q. Isn't it true that Westinghouse
23 anticipated an increase in cost after the 2015
24 amendment due to bringing Fluor on board the project?

25 MR. WATKINS: Objection to form.

1 Is the question that after the amendment,
2 they anticipated it, or before the amendment
3 they anticipated it after? I'm confused as to
4 time.

5 BY MR. COX:

6 Q. Do you understand the question?

7 A. I'm going to ask you to repeat it.

8 Q. Sure.

9 Isn't it true that Westinghouse informed
10 SCE&G that it anticipated an increase in cost after
11 execution of the 2015 amendment due to the increased
12 cost in bringing Fluor on board the project?

13 MR. CHALLY: Object to form.

14 MR. WATKINS: Same objection.

15 THE WITNESS: What I recall is
16 Westinghouse believed that Fluor would be
17 ramping up the number of construction personnel
18 on site as well as increase in activity on the
19 construction site that would have resulted in
20 increased cost as they began that ramp-up for
21 the work to be done on the project.

22 BY MR. COX:

23 Q. The interim payments that SCE&G agreed to
24 pay under the 2015 amendment, that was \$100 million a
25 month?

1 A. That's what I recall, yes.

2 Q. And is it your understanding that that
3 estimate for the monthly construction cost was
4 greater than the cost that had been incurred prior to
5 the amendment?

6 MR. WATKINS: Objection to form.

7 MR. CHALLY: Same.

8 THE WITNESS: I don't know that I can make
9 an apples-to-apples comparison between what was
10 going to be done after the amendment and what
11 was done before.

12 What I recall is the monthly amounts
13 before were less than that, but the \$100 million
14 was less than what Westinghouse had represented
15 to us they expected to spend.

16 That was an amount we negotiated as part
17 of the EPC agreement.

18 BY MR. COX:

19 Q. So Westinghouse informed SCE&G that it
20 expected to spend more than \$100 million a month
21 after the 2015 amendment?

22 A. Yes, they did.

23 Q. And the parties settled on an interim
24 payment schedule of \$100 million a month?

25 A. We did, with the understanding there was

1 to be a true-up. I mean, nobody was to gain or lose
2 money on this process. It was -- it was simply a
3 mechanism put into place based on an estimated number
4 negotiated between Westinghouse and the owners to
5 make interim payments until the construction
6 milestone payment schedule had been clearly defined.

7 Q. Did SCE&G conduct an estimate of the cost
8 to complete the project as part of deciding whether
9 to enter into the 2015 amendment to the EPC contract?

10 MR. WATKINS: Objection to form.

11 MR. CHALLY: Yeah, same objection.

12 THE WITNESS: I don't -- I don't recall a
13 specific analysis to that regard. I know we
14 provided testimony to the Commission in 2016.

15 As part, Joe Lynch provided testimony
16 regarding his evaluation of the risks associated
17 with the fixed-price option.

18 BY MR. COX:

19 Q. Did SCE&G conduct its own analysis of
20 whether it would be a good deal to enter into the
21 fixed-price option?

22 MR. WATKINS: Objection to form.

23 THE WITNESS: The company -- the company's
24 team at the site and financial team did an
25 evaluation of whether we thought the fixed-price

1 option would be good for us and good for
2 customers or -- or to leave the contract exactly
3 the way it was.

4 The amendment taken as a whole, which
5 included the fixed-price option, we believe was
6 in the best interest of the project and
7 customers.

8 BY MR. COX:

9 Q. That internal analysis that SCE&G
10 conducted, was it conducted before the October 2015
11 amendment or afterward?

12 A. I don't recall the specific analyses that
13 were done. I do remember members of the financial
14 team from the plant were working with us as we were
15 negotiating the fixed price with the consortium, but
16 I don't -- I don't recall specific analyses they did
17 to support the decision to sign the amendment.

18 Q. In deciding whether to execute the 2015
19 amendment, SCE&G used its own estimate of cost to
20 complete the project to decide whether to execute
21 that amendment and didn't rely on the consortium's
22 cost estimate, correct?

23 MR. WATKINS: Objection to the form of the
24 question.

25 MR. CHALLY: Yeah, same objection.

1 THE WITNESS: I don't -- I don't agree
2 with that statement. The amendment was broader
3 than the fixed-price option. It was an option.
4 It wasn't something we had to do. It was an
5 option that was available to us that, as we told
6 the Commission, we needed to take time to study
7 it and evaluate it.

8 But we wanted that option, which is what
9 we negotiated into the EPC amendment. There
10 were a variety of other issues that were
11 addressed in the amendment that we believe were
12 also good for the project and in the best
13 interest of customers.

14 BY MR. COX:

15 Q. Part of SCE&G's analysis was to decide how
16 likely it was that the cost to complete the project
17 would exceed the fixed-price option price, correct?

18 A. I don't recall the specific analysis. I
19 know we evaluated -- the team -- the team that was
20 doing the evaluation evaluated risks associated with
21 the project to help us determine whether or not the
22 fixed-price option was to the benefit of customers.

23 Q. And is it correct to say that as part of
24 that analysis, SCE&G developed its own estimate of
25 the cost to complete the project?

1 MR. WATKINS: Objection.

2 THE WITNESS: I don't recall a specific
3 estimate. I recall evaluations being done of
4 the risk associated with us staying with the
5 fixed-price -- staying with the existing
6 contract versus converting to the fixed-price
7 option.

8 BY MR. COX:

9 Q. What steps did SCE&G take to assess the
10 financial health of Westinghouse as part of its
11 decision to execute the 2015 amendment?

12 MR. WATKINS: Objection to the form of the
13 question. Lack of foundation.

14 THE WITNESS: I don't know. I wasn't
15 involved in any of those steps.

16 BY MR. COX:

17 Q. Do you know if any of those steps
18 occurred?

19 A. I don't recall specifically what was done.

20 I do recall, at the time we signed the
21 agreement, that Westinghouse -- excuse me -- that
22 Toshiba, who was assuming responsibility for the
23 parental guarantees, had a credit -- had a credit
24 rating of investment grade. I believe it was
25 actually higher than SCE&G's at the time.

1 Q. Those parental guarantees weren't
2 increased as part of the 2015 amendment, were they?

3 A. I don't believe they were. I don't recall
4 specifically. I don't believe that was one of the
5 changes made in the agreement.

6 Q. When did you become aware that
7 Westinghouse was having cash flow problems?

8 MR. WATKINS: Objection to form.

9 THE WITNESS: I don't -- I don't recall
10 specifically.

11 BY MR. COX:

12 Q. Did you become aware of that at some point
13 prior to Westinghouse's bankruptcy?

14 A. I remember Westinghouse filing for
15 bankruptcy. I don't -- I don't recall any specific
16 discussions around cash flow issues.

17 It was our understanding that Toshiba
18 would be able to back them up if they had any issues.

19 Q. Did you have discussions with Santee
20 Cooper in 2016 about engaging bankruptcy counsel due
21 to concern about Westinghouse entering bankruptcy?

22 MR. WATKINS: Objection to form.

23 THE WITNESS: I did have discussions. I
24 don't recall specifically who with. I know we
25 discussed it.

1 The company, several representatives, met
2 with the board of Santee Cooper, and we
3 discussed the concern that it would be prudent
4 to make sure we had bankruptcy counsel available
5 as a part of the overall project. Should there
6 be a need to engage someone, we would already
7 have someone identified.

8 We didn't identify any particular work
9 that I recall needed to be done at the time.

10 BY MR. COX:

11 Q. That step was taken -- to retain
12 bankruptcy counsel -- was taken after the 2015
13 amendment to the EPC was executed, correct?

14 MR. WATKINS: Objection to form.

15 THE WITNESS: I don't recall the exact
16 date, but it was done after the amendment was
17 executed.

18 BY MR. COX:

19 Q. Did you ever meet with Dukes Scott at
20 Lizard's Thicket?

21 A. I've had lunch with Dukes Scott on a
22 number of occasions at Lizard's Thicket.

23 Q. Anywhere else?

24 A. I think I've had breakfast with him a
25 couple times downtown at different restaurants.

1 Q. What was the purpose of those meetings?

2 A. I don't --

3 MR. CHALLY: Object to form.

4 THE WITNESS: I don't recall specifically.

5 I try to maintain a relationship with Dukes to
6 make sure he was satisfied that he was getting
7 what he needed from our team, if our people were
8 interacting with his team appropriately, and I
9 don't recall any specific issues.

10 BY MR. COX:

11 Q. Did he ever express any concerns to you
12 regarding the interactions between his team and your
13 team?

14 A. I don't recall. What I generally remember
15 him saying is that our team was being responsive and
16 that our contacts were keeping him informed and
17 working to resolve issues.

18 I don't recall him complaining about any
19 interactions on the team.

20 Q. Do you recall him raising any concerns
21 about the project during those meetings?

22 MR. WATKINS: Objection to form.

23 THE WITNESS: I -- we talked about the
24 project from time to time or issues we might
25 have been considering, or it might have been in

1 testimony. But I don't recall any specific
2 issues we discussed.

3 BY MR. COX:

4 Q. Did you inform him at some point in time
5 that you no longer trusted Westinghouse?

6 A. I don't recall making that statement to
7 Dukes.

8 Q. Did you lose trust in Westinghouse at some
9 point in time?

10 A. I became very disappointed with what we
11 learned as our team did its evaluation of what needed
12 to be done to complete the project once they made all
13 their information available to us.

14 We had been -- we had been told on
15 numerous occasions that they intended to complete the
16 project. They were committed to the project. It was
17 important that they complete these projects because
18 it was a cornerstone of their strategic business plan
19 to sell these units, not just in the United States
20 but around the world.

21 So I was shocked when they decided they
22 were going to file for bankruptcy and reject the
23 contracts.

24 Q. Did you learn in 2017 that the
25 Westinghouse schedules were inaccurate?

1 MR. CHALLY: Object to form.

2 THE WITNESS: We put together a team for
3 the purpose of making our evaluation of what we
4 thought it would take to complete the projects.

5 Our team, based on that evaluation -- it
6 was put together by Steve Byrne and the people
7 at the plant -- they came up with different
8 estimates based on what they learned as part of
9 their investigation and analysis of details that
10 for the first time had been shared with us by
11 the consortium.

12 BY MR. COX:

13 Q. And that assessment that was done by SCE&G
14 revealed that the completion dates for the units
15 would be later than Westinghouse was projecting,
16 correct?

17 MR. WATKINS: Objection to form.

18 MR. CHALLY: Same.

19 THE WITNESS: The analysis that was
20 performed came up with different dates than what
21 Westinghouse had committed to us.

22 BY MR. COX:

23 Q. Do you recall what the dates were that
24 your team came up with?

25 A. I -- I don't recall specifically what they

1 were.

2 Q. Isn't it true that the completion dates
3 that the SCE&G team came up with were even later than
4 the completion dates that the Bechtel Corporation had
5 estimated in 2015?

6 MR. CHALLY: Object to form.

7 MR. WATKINS: Objection to form.

8 THE WITNESS: I don't recall.

9 BY MR. COX:

10 Q. What information did your team have to
11 make that assessment in 2017 that it didn't have
12 prior to Westinghouse's bankruptcy?

13 MR. WATKINS: Objection to form.

14 THE WITNESS: I don't know. I wasn't
15 involved in the analysis. I just know, based on
16 what was reported to me by Steve Byrne, that we
17 had access to information that we had never been
18 able to see before because of the fixed-price
19 and proprietary nature of the contract.

20 BY MR. COX:

21 Q. But you're not aware of what the
22 information was that he was talking about, correct?

23 A. I can't tell you personally. No, I can't.

24 (Exhibit 15 was marked for identification.)

25

1 BY MR. COX:

2 Q. Mr. Marsh, you've been handed a document
3 labeled Exhibit 15. It's a one-page document
4 entitled "Bechtel Report Action Plan," Bates-numbered
5 ORS_00000497.

6 Have you ever seen this document before?

7 MR. CHALLY: Let's take a quick break.

8 VIDEOGRAPHER: The time is 5:20 p.m., and
9 we're off the record.

10 (A recess transpired from 5:20 p.m. until
11 5:26 p.m.)

12 VIDEOGRAPHER: The time is 5:27 p.m., and
13 we're back on the record.

14 BY MR. COX:

15 Q. Mr. Marsh, have you ever seen the document
16 that's labeled Exhibit 15 before?

17 A. The first time I saw this document was
18 when the company was providing testimony in front of
19 the House committee that was reviewing the
20 abandonment decision. I had not seen it prior to
21 that time. I had no knowledge of it.

22 Q. The second section of the document labeled
23 "Santee Cooper proposal for use of report," it lists
24 four steps to be taken on the project: A, B, C, and
25 D.

1 Can you tell me which of those steps, if
2 any, were implemented on the project?

3 A. I need to reiterate I'm not familiar with
4 this document. I didn't participate in preparation.
5 It was never shown to me prior to the presentation to
6 the House of Representatives subcommittee, so I just
7 don't have knowledge of this.

8 MR. WATKINS: I'll object to the form of
9 that question.

10 BY MR. COX:

11 Q. Fair enough.

12 Do you know who within SCE&G or SCANA had
13 this document prior to abandonment?

14 MR. CHALLY: Object to form.

15 THE WITNESS: I have no knowledge of this
16 document until it was handed to me at the
17 presentation of the Legislative Committee.

18 BY MR. COX:

19 Q. The -- and I realize that you were not
20 privy to this document prior to abandonment -- but
21 that second section of the document, "Santee Cooper
22 proposal for use of report," it says, quote, We will
23 continue to cooperate within the law with SCE&G's
24 efforts to avoid disclosure on the condition that
25 SCE&G will agree to use the document as a template

1 for project administration. Changes to be jointly
2 decided, but most include" -- I think that must be
3 "must" -- and then it lists four steps.

4 Can you tell me whether those four steps
5 that are listed, whether any of them were actually
6 implemented on the project?

7 MR. CHALLY: Object to form.

8 MR. WATKINS: Object to form of the
9 question for all the previous reasons, plus it's
10 now been asked and answered.

11 THE WITNESS: I can't -- I can't speak to
12 what Santee Cooper was proposing. I mean, I was
13 not aware of this document at the time it was
14 drafted.

15 BY MR. COX:

16 Q. I understand that, Mr. Marsh, and I
17 understand this is their proposal.

18 What I'm asking you is: Based on your
19 knowledge of the project, which of these proposals,
20 if any, were actually implemented?

21 MR. WATKINS: Same objection.

22 MR. CHALLY: Object to form.

23 MR. WATKINS: Same objection.

24 THE WITNESS: I don't know if those exact
25 proposals were presented to the company for

1 implementation.

2 BY MR. COX:

3 Q. That's fair enough. I understand that.

4 All I'm asking for you, to the extent you
5 know, is whether any of these four steps were ever
6 implemented on the project.

7 MR. CHALLY: Same objection.

8 MR. WATKINS: Same objection.

9 THE WITNESS: Again, I don't know if these
10 are specific recommendations that were made. I
11 don't know that the company, you know, followed
12 all of these recommendations, if they were
13 recommendations.

14 Again, it's Santee Cooper's proposal.
15 I -- you know, we made -- we made changes on a
16 regular basis with issues related to the
17 project. I don't know specifically if all these
18 were put into place or if any were put into
19 place.

20 (Exhibit 16 was marked for identification.)

21 BY MR. COX:

22 Q. Mr. Marsh, you've been handed a document
23 labeled Exhibit 16 to your deposition. It's a 9-page
24 document Bates-numbered ORS_00035603 through -611.

25 Take your time to review this document,

1 but my first question is the same.

2 Have you ever seen this document before?

3 MR. WATKINS: Let's take time to review
4 this document.

5 MR. COX: Can I go ahead and label one
6 more? I only have one more document.

7 MR. CHALLY: Smart move. Let's just do
8 that. That's a good idea.

9 MR. COX: We've reached a consensus.

10 (Exhibit 17 was marked for identification.)

11 MR. COX: So I've labeled a document
12 marked as Exhibit 17 Bates-numbered ORS_0013083
13 through ORS_0013091. We can go off the record.

14 VIDEOGRAPHER: The time is 5:34 p.m., and
15 we are off the record.

16 (A recess transpired from 5:34 p.m. until
17 5:55 p.m.)

18 VIDEOGRAPHER: Time is 5:55 p.m., and
19 we're back on the record.

20 BY MR. COX:

21 Q. Mr. Marsh, we're back from our break.

22 Exhibit 16 to your deposition, it's a
23 nine-page document produced by Santee Cooper in this
24 litigation.

25 Have you ever seen this document before?

1 A. I don't recall seeing this document.

2 Q. Did Mr. Carter ever provide talking points
3 to you for your meetings with the CEOs at the
4 consortium?

5 A. From time to time we would agree on
6 talking points, but I don't recall seeing this
7 document as part of that process.

8 Q. Exhibit 17 to your deposition, it's a
9 separate document in front of you.

10 A. Right.

11 Q. Same question on that document: Have you
12 ever seen the document before?

13 A. I have seen this.

14 Q. When did you see it?

15 A. I don't recall exactly. What I do recall
16 is it was attached to an e-mail that came to me. My
17 memory is it was in the November time frame of 2016.

18 Q. Who was the e-mail from?

19 A. Lonnie Carter.

20 Q. And do you recall why he was sending it to
21 you?

22 MR. WATKINS: Objection to the form of the
23 question.

24 MR. CHALLY: Same objection.

25 THE WITNESS: I don't know why he would

1 send it to me.

2 BY MR. COX:

3 Q. He didn't tell you why he was sending you
4 this document?

5 A. No. He sent me the letter -- he sent me
6 the e-mail. I don't recall what was in the e-mail.
7 I do recall it was right before we were scheduled to
8 meet with his board of directors.

9 Q. What was the purpose of that meeting?

10 MR. CHALLY: Object to form.

11 THE WITNESS: The board of directors
12 meeting?

13 BY MR. COX:

14 Q. Yes.

15 A. We had agreed with their board that we
16 would meet periodically throughout the year to talk
17 about actions and activities related to the project.

18 Q. And what was the information that you were
19 presenting to the Santee board at that November 2016
20 meeting?

21 MR. WATKINS: Objection to form.

22 THE WITNESS: I don't recall the specific
23 information we were to talk about.

24 BY MR. COX:

25 Q. Did you view Bechtel's presentation in

1 October 2015 to be a sales pitch?

2 MR. WATKINS: Objection to the form of the
3 question.

4 THE WITNESS: I mean, my -- my
5 understanding of the report that was presented
6 was to give us their preliminary results
7 regarding the assessment that they had done for
8 George Wenick.

9 I had been informed before the meeting --
10 I don't recall by whom -- saying that Bechtel
11 intended to give us a sales pitch at the
12 conclusion of the meeting.

13 Q. Did that occur?

14 A. No, it didn't. They offered -- they had
15 another presentation they wanted to give us. I
16 didn't feel like we had time for another
17 presentation. We were in the middle of trying to
18 negotiate the amendments to the EPC contract, a lot
19 of other activities going on.

20 And if it was a sales pitch, we told them
21 that at the beginning of the engagement that they
22 shouldn't anticipate that this engagement was a
23 steppingstone to provide opportunities for them to
24 come in and do additional work. Didn't say that it
25 wouldn't, but said there should not be an expectation

1 that this is going to lead to additional work.

2 Q. Did you become concerned at some point
3 during Bechtel's assessment that Bechtel was using
4 the assessment to try to get more work on the
5 project?

6 A. I don't recall specifically times other
7 than -- than one offer was made to bring, what I
8 recall, hundreds of employees to the site because
9 they were finishing up work on the Watts Bar project.
10 They had been engaged by TVA to finish that nuclear
11 project, and they offered to go ahead and bring
12 down -- I remember 200. That may not be an accurate
13 number, but it was a large number of people to the
14 project.

15 And I said, "No, that's not something we
16 want to contemplate at this point."

17 Q. Did that make you concerned that Bechtel
18 was using the assessment to try to get more work
19 beyond the assessment?

20 A. Certainly put my antenna up because they
21 had offered something that we had told them they
22 shouldn't expect as part of the engagement.

23 Q. Did you ever meet with anyone from Bechtel
24 during the assessment?

25 A. I had some phone conversations with Craig.

1 Craig Albert, I believe, was the president or CEO of
2 Bechtel. We had a couple of phone conversations. I
3 may have had some discussions.

4 I don't recall any of the discussions with
5 the people that were on the site unless they were
6 participants in that phone call.

7 Q. What did Mr. Albert contact you about?

8 A. We were having, I believe it was, biweekly
9 updates of the status of the work, the ongoing status
10 of the work at the project.

11 Q. Were you ever interviewed by Bechtel as
12 part of Bechtel's assessment of the project?

13 A. I don't recall being interviewed by
14 Bechtel. I may have, but I just don't recall being
15 interviewed by them.

16 Q. Did you ever meet Craig Albert in person?

17 A. Yes. He -- I met him on a couple of
18 occasions.

19 Q. Was that as part of these biweekly
20 updates, or some other type of purpose?

21 A. No, those were -- the biweekly updates
22 were done by phone. Craig met with representatives
23 of SCE&G and SCANA when they were making their
24 proposal of work they could do for the assessment.

25 Q. Did Mr. Albert present the findings of

1 Bechtel at the October 2015 meeting?

2 A. He was in the meeting. I recall him
3 making some introductory comments. But for the most
4 part, I remember the presentation being made by
5 different members of his team linked to different
6 sections of the assessment that had been done.

7 Q. Did you meet any other members of the
8 Bechtel team aside from Craig Albert?

9 A. There was a -- at least one
10 representative, I believe, in one of the meetings
11 where they were describing a -- the work to be done.
12 I remember meeting him. There may have been other
13 members of the team at the time. I just don't
14 recall. I just remember one individual.

15 Q. Did you ever meet Ty Troutman?

16 A. I don't recall ever meeting Ty Troutman.

17 Q. Did you ever meet an individual named Carl
18 Rau?

19 A. I believe Carl Rau was the one that was in
20 the presentation when they were offering suggestions
21 for the assessment.

22 Q. That's the October 2015 meeting, correct?

23 A. No, that was in April of '15, but we were
24 still -- they were still, I guess, making their pitch
25 to come in and have us consider doing the assessment.

1 MR. WATKINS: Jim, it's 6:03. I'll
2 obviously give you time to wrap things up, but
3 we had agreed on 6:00. I just want to get a
4 sense of where we are.

5 MR. COX: I think I've probably got about
6 ten more minutes.

7 MR. WATKINS: Other questions on top of
8 that, too?

9 MR. CHALLY: I'll have 10 or 15 minutes.

10 MR. WATKINS: Okay. I'll ask you to --

11 BY MR. COX:

12 Q. Okay. Do you recall who else from Bechtel
13 was present at the October 2015 presentation?

14 A. The only specific individual I recall
15 being there from Bechtel was a gentleman whose first
16 name was Jason. I don't remember Jason's last name.
17 I recall he was the one that presented the schedule
18 information as part of the assessment.

19 Q. Did you have any conversations with him
20 outside of his presentation?

21 A. Not that I recall.

22 Q. Do you currently hold any SCANA stock?

23 A. Yes, I do.

24 Q. How much stock do you hold in SCANA?

25 A. I honestly don't know the exact amount.

1 I've been accumulating stock in the Employee Stock
2 Ownership Plan, and I've also made additional
3 purchases to satisfy ownership requirements from the
4 board, but I just don't recall the exact number of
5 shares.

6 Q. Is it more than 1,000 shares?

7 A. Yes, it is.

8 Q. Is it more than 5,000?

9 A. I believe it is.

10 Q. Is it more than 10,000 shares?

11 A. I don't want to guess. I mean, those
12 numbers are reported in the proxy. It's public
13 information. I mean, it's -- it's all reported in
14 there. I've not -- I've not sold any SCANA shares.
15 Everything I've purchased I still own.

16 Q. Do you receive any annuity from SCANA?

17 MR. CHALLY: Object to form.

18 THE WITNESS: I'm not sure what you mean
19 by -- I know what an annuity is, but I'm not
20 sure what you're referring to specifically.

21 BY MR. COX:

22 Q. Sure. Do you receive any cash payments,
23 retirement payments, from SCANA?

24 A. I'm a participant, like all other
25 employees, in the SCANA Corporation Retirement Plan,

1 and I have an accumulated cash balance in that plan
2 that's vested. I have not done anything with those
3 amounts at this point. They're still -- still
4 invested or still in the Retirement Plan.

5 I have an option, like all other
6 employees, if I desire to convert that to an annuity,
7 but I've not made any decisions at this point to do
8 that.

9 Q. How much is the balance in that plan?

10 MR. WATKINS: Objection to form.

11 THE WITNESS: I don't know the exact
12 balance in the SCANA plan. My account, I
13 believe, is around a million dollars.

14 BY MR. COX:

15 Q. Have you been contacted by any
16 representatives of any law enforcement agencies about
17 the project?

18 MR. WATKINS: Objection to the form of the
19 question.

20 THE WITNESS: I have not directly been
21 contacted, no.

22 BY MR. COX:

23 Q. Have your attorneys been contacted?

24 (Instruction not to answer.)

25 MR. WATKINS: I'm going to object to the

1 form of the question, and I'm going to instruct
2 you not to discuss the substance of any
3 attorney-client communications.

4 THE WITNESS: I believe those discussions
5 are privileged with counsel.

6 BY MR. COX:

7 Q. Have you given any interviews to any law
8 enforcement agencies regarding the project?

9 MR. WATKINS: Let me think, as it's late
10 in the day.

11 I'll object to the form of the question.

12 But you may answer the question, with that
13 objection.

14 THE WITNESS: With my understanding, no, I
15 haven't, based on my understanding.

16 BY MR. COX:

17 Q. What city do you currently reside in?

18 A. I currently reside in Irmo, South
19 Carolina.

20 Q. Are you scheduled to be at home during the
21 month of November?

22 A. I will be at home some dates in November.
23 I do have travel plans for Thanksgiving. I have
24 travel plans for the remainder of this week, and I'm
25 sure there's some other days I'm unavailable.

1 I believe my wife has some doctors'
2 appointments or other schedules that would require me
3 to be home.

4 MR. COX: I have no more questions.

5 EXAMINATION

6 BY MR. CHALLY:

7 Q. Okay. Mr. Marsh, my name is Jon Chally
8 for the record. I represent SCE&G in this case. I
9 just have a few follow-up questions for you.

10 Can you generally describe for us your
11 relationship with Lonnie Carter?

12 A. Sure. I've known Lonnie for a long time.
13 He's a long-term employee of Santee Cooper as I'm a
14 long term employee of SCANA and SCE&G. We have
15 worked together in a couple of different capacities
16 along the way. For example, we were both chief
17 financial officers at one time, so we have both
18 crossed that bridge together. I've dealt with Lonnie
19 off and on throughout my career in all those
20 different roles.

21 Q. About how frequently were you two in
22 communication about the project?

23 A. There was no set time that Lonnie and I
24 would set aside for, you know, just general
25 discussions. We did set some regular meetings

1 towards the end of the project just to keep up with
2 project status.

3 But for me and Lonnie directly, it was
4 pretty much if you need me, you call me. And
5 depending on what the issues were, I could talk to
6 him four or five times in a week or I might not talk
7 to him for a week to two weeks, depending on just
8 activities I was related in, connected with the
9 project.

10 Q. Did you have a practice of using a
11 particular form of communication: E-mail, phone,
12 letters?

13 A. I prefer conversation either through the
14 phone or face-to-face. I'm not a big letter-writer.
15 I don't think most of my communications were done by
16 e-mail unless I felt the need to respond to a
17 particular e-mail.

18 Q. We saw some e-mails and letters written by
19 Lonnie Carter to you related to the project today.

20 Did you make it a practice of responding
21 to communications that Mr. Carter sent to you related
22 to the project?

23 A. I believe, as a matter of practice, I
24 did -- I did my best to make sure either I responded
25 or I asked someone who might have been more familiar

1 with the issue that Lonnie had raised to respond.
2 That was more often the case because I didn't have
3 all the direct detail knowledge of the project.

4 Q. And you understood that Lonnie expressed
5 concerns related to the project over the life of the
6 project, right?

7 A. I do. Lonnie and I had had a number of
8 conversations regarding concerns throughout the life
9 of the project.

10 Q. Was it your practice to not only respond
11 to the communication which Lonnie raised that
12 concern, but to respond to the substance of the
13 concern as well?

14 A. I certainly made my best efforts to do
15 that.

16 Q. Okay. We saw -- Mr. Cox walked you
17 through this document?

18 A. Number 17.

19 Q. Yeah, Exhibit 17. I just have a couple
20 follow-up questions related to it.

21 You said you received this document as an
22 attachment to an e-mail, I believe; is that right?

23 A. That's my recollection.

24 Q. Okay. What was your reaction to receiving
25 this document?

1 A. I was -- my initial reaction was I was
2 shocked, given my relationship with Lonnie. This is
3 not the normal communication I would expect to get
4 from Lonnie. It didn't appear to me that it was
5 something that he would write.

6 And I was -- I was offended. I didn't
7 believe it was a complete and accurate discussion of
8 the issues he tried to raise in the report.

9 And it -- it appeared to me to be a
10 deliberate attempt by someone to make the SCANA
11 teams' efforts look less than genuine in trying to
12 resolve issues on the project.

13 Q. Would you agree with that characterization
14 as you understood it?

15 A. Did Lonnie agree with that?

16 Q. Did you agree with that characterization
17 as you understood it?

18 A. I agreed with -- I mean, I agreed that I
19 didn't think it was a fair and complete
20 characterization.

21 Q. My question was a bad one.

22 You had said -- you had said that this
23 appeared to be a deliberate attempt by someone to
24 make the SCANA teams' efforts look less than genuine.

25 And what I want to make sure we're clear

1 on is: Did you agree with the -- with this attempt
2 that -- to characterize SCANA's efforts as less than
3 genuine?

4 A. I'm not sure I understand your question.

5 Q. Did you think SCANA was acting in a way,
6 less than genuine, during its oversight of the
7 project?

8 A. Absolutely not. We were open and honest,
9 in my opinion, with all of our communications with
10 Santee throughout the project. As they raised
11 concerns, I believe our -- our nuclear construction
12 team did their best to resolve those.

13 If it was something I could resolve with
14 Lonnie, I certainly feel like I made every effort to
15 do that.

16 Q. Okay. Did you discuss this letter with
17 Mr. Carter after he -- or this document with
18 Mr. Carter after he transmitted it to you?

19 A. I did. Lonnie and his team were scheduled
20 to come have a meeting with me and some other nuclear
21 project representatives, I believe it was, on a
22 Thursday or Friday of the week I got this letter.

23 When Lonnie got there, I called Lonnie
24 into my office and told him I was disappointed and
25 surprised that I would get a letter like this from

1 Lonnie. I couldn't believe that -- that he would
2 write it. I didn't think it was a complete and
3 accurate reflection of all the efforts both of our
4 companies had done to make this project successful
5 and that it wasn't the way I was accustomed to doing
6 business with Lonnie.

7 Q. What made you believe that he didn't write
8 the letter?

9 A. I've gotten enough communication from
10 Lonnie that it just didn't seem consistent with the
11 way he would write a letter.

12 Q. Okay. Did Mr. Carter respond to your
13 comments that you just described in this meeting?

14 A. He did. He indicated that he didn't write
15 the letter. As I recall, he indicated that Mike
16 Baxley, their general counsel, had written the letter
17 and apologized for the tone in the letter.

18 And we followed that up with about an
19 hour, hour and a half conversation of where we were
20 on the project.

21 We had a meeting coming up with his board
22 of directors the following week. We talked for a
23 while about what we could do to communicate to their
24 board actions that had taken place that Lonnie and I
25 had agreed to, to help make the project more

1 successful, to keep his board updated because they
2 wanted to have a good status updates on the project,
3 and left the meeting, I believe, in -- in good stead.

4 He said he apologized for the tone of the
5 letter, and we worked through a lot of issues in that
6 discussion and got prepared to make a presentation to
7 his board the following week.

8 Q. Okay. One last topic. Mr. Cox walked you
9 through some aspects of the 2015 testimony submitted
10 to the Public Service Commission and specifically
11 your testimony where you noted that SCE&G was
12 challenging certain costs that were included in the
13 consortium's estimated completion provided earlier,
14 prior to that testimony.

15 Do you recall generally that discussion
16 you had with Mr. Cox?

17 A. I do.

18 Q. Okay. And you -- do you recall that SCE&G
19 was presenting in 2015 in the testimony you provided
20 that the consortium's estimated costs for completion
21 of the project?

22 A. I do.

23 Q. Okay. And is that -- not only that was in
24 your testimony, but also Mr. Byrne's testimony and
25 Ms. Walker's testimony. Those costs, Westinghouse's

1 estimated costs, were based in part on Westinghouse's
2 estimated schedule; isn't that right?

3 A. That's correct.

4 Q. Okay. So the -- is it -- is it a fair
5 characterization of the disputed costs to say that
6 SCE&G was reserving its ability to challenge certain
7 specific categories of costs as not SCE&G's
8 responsibility under the EPC contract?

9 A. Yes, we did. We made that clear in the
10 testimony.

11 Q. Okay. Were you -- was SCE&G refuting
12 Westinghouse's schedule analysis by disputing those
13 costs?

14 A. No. I think we stated in Mr. Byrne's
15 testimony, as I recall, that we weren't disputing the
16 amounts calculated by Westinghouse in their estimate
17 as their estimated completion or the schedule that
18 they had presented to us. We believed that was the
19 best available information at the time and that that
20 was the appropriate number to be filed with the
21 Commission under the rules of the Base Load Review
22 Act.

23 However, we did inform the Commission that
24 we were disputing some of the costs that were in that
25 schedule, not that they wouldn't be spent or that

1 they weren't accurate, but whether or not we were
2 required to pay those costs.

3 Those were the issues that were at
4 dispute. And so we also -- we highlighted that for
5 the Commission.

6 And we also made some adjustments for
7 amounts we didn't believe we were obligated to pay
8 under the contract regarding some of those disputed
9 costs until those disputes could be resolved.

10 Q. Okay. But SCE&G was not disputing the
11 schedule estimates that Westinghouse had provided,
12 right?

13 A. No, we were not.

14 Q. Or the costs that flowed from the --
15 directly from the schedule estimates that
16 Westinghouse had provided?

17 A. No, we were not.

18 MR. CHALLY: Okay. That's all I've got.
19 Thank you.

20 MR. ELLERBE: No questions from me.

21 MR. WATKINS: Nothing for me.

22 VIDEOGRAPHER: The time is 6:18 p.m., and
23 this concludes today's deposition.

24 (Time Noted: 6:18 p.m.)

25 (Signature reserved.)

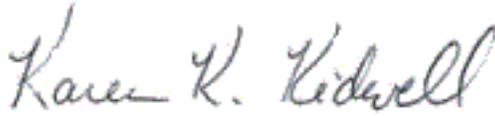
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CERTIFICATE OF REPORTER

I, Karen K. Kidwell, Registered Merit Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand this 31st day of October, 2018.



Karen K. Kidwell,
Registered Merit Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
August 21, 2024