

State of South Carolina) In the Court of Common Pleas
County of Hampton) Case No: 2017-CP-25-335

Richard Lightsey, LeBrian)
Cleckley, Phillip Cooper, et)
al., on behalf of themselves)
and all others similarly)
situated)

Plaintiff(s),) Videotaped Deposition

vs.)

of)

KENNETH BROWNE)

South Carolina Electric & Gas)
Company, a Wholly Owned)
Subsidiary of SCANA, SCANA)
Corporation, and the State of)
South Carolina)

Defendant(s).)

South Carolina Office of)
Regulatory Staff,)

Intervenor.)

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

IN RE: Friends of the Earth and)
Sierra Club Complainant/Petitioner))
v. South Carolina Electric & Gas)
Company, Defendant/Respondent)

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

IN RE: Joint Application and)
Petition of South Carolina)
Electric & Gas Company and)

Dominion Energy, Incorporated for)
Review and Approval of a Proposed)
Business Combination between SCANA)
Corporation and Dominion Energy,)
Incorporated, as May be Required,)
and for a Prudency Determination)
Regarding the Abandonment of the)
VC Summer Units 2 & 3 Project and)
Associated Customer Benefits and)
Cost Recovery Plans)
_____)

Videotaped Deposition of KENNETH BROWNE,
taken before Jennifer L. Thompson, CVR-M, Nationally
Certified Verbatim Court Reporter and Notary Public in
and for the State of South Carolina, scheduled for
10:00 a.m. and commencing at the hour of 10:09 a.m.,
Tuesday, September 25, 2018, at the office of Strom Law
Firm, Columbia, South Carolina.

Reported by:

Jennifer L. Thompson, CVR-M

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19 REPORTER'S LEGEND:

20 -- [denotes interruption/change in thought]
21 ... [denotes trailing off/incomplete
thought or statement]
[sic] [denotes word/phrase that may seem strange or
22 incorrect; written verbatim]
(ph) [denotes phonetic spelling]
23 (unintelligible) [denotes not capable of being
understood]
24 (indiscernible crosstalk) [denotes multiple speakers
at the same time, not capable of
25 being understood]

1 INDEX OF EXAMINATION

2 Stipulations6

3 Examination By Mr. Haltiwanger7

4 Examination By Mr. Cox172

5 Examination By Mr. Chally258

6 Re-Examination By Mr. Cox331

7 Re-Examination By Mr. Haltiwanger340

8 Re-Examination By Mr. Chally340

9 Certificate342

10 Signature & Errata Pages343

9 INDEX OF EXHIBITS

10 [Exhibit No. 1](#) Email SCANA_RP0639111128

11 [Exhibit No. 2](#) Email SCANA_RP0018657-58133

12 [Exhibit No. 3](#) Email SCANA_RP0388623137

13 [Exhibit No. 4](#) Email SCANA_RP0623144-5139

14 [Exhibit No. 5](#) Email SCANA_RP0006936142

15 [Exhibit No. 6](#) Email SCANA_RP0246420-41146

16 [Exhibit No. 7](#) Email SCANA_RP0255947148

17 [Exhibit No. 8](#) Email SCANA_RP0689335150

18 [Exhibit No. 9](#) Email SCANA_RP0015099-100151

19 [Exhibit No. 10](#) Email SCANA_RP0617852153

20 [Exhibit No. 11](#) Email SCANA_RP0024002-18155

21 [Exhibit No. 12](#) Email SCANA_RP0388794-797160

22 [Exhibit No. 13](#) Email SCANA_RP0381916-17166

23 [Exhibit No. 14](#) Email SCANA_RP0258894-96202

24 [Exhibit No. 15](#) EAC Review Team Preliminary208

25 Update

26 [Exhibit No. 16](#) Email SCANA_RP0020794,214

27 0954157-161

28 [Exhibit No. 17](#) Email SCANA_RP0021575, 577-583223

29 [Exhibit No. 18](#) 2015 Direct Testimony of Stephen262

30 Byrne

31 [Exhibit No. 19](#) 2016 Testimony of Joseph Lynch269

32 [Exhibit No. 20](#) Resignation Letter of Kenneth284

33 Browne

34 [Exhibit No. 21](#) Direct Testimony of Stephen299

35 Byrne 2016

36 [Exhibit No. 22](#) Direct Testimony of Carlette308

37 Walker 2015

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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16
17
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STIPULATIONS

This deposition is being taken pursuant to
the South Carolina Rules of Civil Procedure.

- - - - -

The reading and signing of this deposition is
reserved by the deponent and counsel for the
respective parties.

- - - - -

(Begin 10:09 a.m.)

Whereupon, the case caption was published and
counsel noted their appearances for the record.)

- - - - -

Whereupon,

KENNETH BROWNE, being administered an oath of
affirmation or duly sworn and cautioned to speak
the truth, the whole truth, and nothing but the
truth, testified as follows:

Court Reporter: State your full name for the
record, please.

Witness: Kenneth Browne.

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EXAMINATION

BY MR. HALTIWANGER:

Q Mr. Browne, my name is Dan Haltiwanger and we met just before this began. I'm going to be the one that's asking most of the questions this morning and probably into the afternoon. Before we begin, I know you've probably talked with your lawyers about what to expect today, but there is a couple of rules I'm required to go over so that I know that you're aware of them. One of the things, though, is even though we have video that's running today --

A Right.

Q -- it's important to verbalize all of your answers, to say yes or no instead of uh-huh or huh-uh or nodding your head or anything like that so that she can make a record of everything we say.

A Yes, sir.

Q Second, we're probably going to go for a while today, hopefully not as long as we went yesterday with Mr. Kochems. But if at anytime you need to take a break, whether it's use the restroom, get another water, whatever, let me know and we'll

1 take a break. It's not meant to be an endurance
2 contest.

3 A Sure.

4 Q Also, as you know, you were just put under oath
5 for this testimony today. So this is testimony
6 that can be used in a courtroom. And along with
7 that, your attorney and some of the other
8 attorneys may object during the questioning today.
9 There's really two kinds of objections. You'll
10 hear "object to the form," which there's something
11 about my question that they don't think would be
12 proper in a courtroom setting for a number of
13 different reasons. But unless they object and
14 instruct you not to answer the question, I'm going
15 to ask you to go ahead and answer the question as
16 best you can. But related to that, if I ever do
17 ask you a question and you don't understand it, I
18 use a word that you're not familiar with, or you
19 don't think I'm making sense to you, let me know
20 and I'll do my best to, you know, ask a better
21 question.

22 A Yes, sir.

23 Q I'm not an accountant. I'm not an engineer. I
24 may use terms that you're familiar with that I'm
25 not familiar with that you think I'm using

1 incorrectly. You're not bound to not ask me what
2 I mean. You can ask me to explain myself.

3 A Right.

4 Q Also, if anytime during the deposition today I've
5 asked you a question earlier and the answer you
6 gave earlier you think is either incomplete or
7 incorrect, you have the right to go back and say,
8 oh, oh, remember when I said, you know, I was with
9 so-and-so earlier, I now remember it wasn't
10 so-and-so, it was somebody else.

11 A Right.

12 Q Stuff like that --

13 A Sure.

14 Q You're welcome to do that. Don't feel that you
15 can't correct anything that you testified to
16 earlier. And having gone through all that, let me
17 ask you, have you ever had a deposition taken
18 before?

19 A Yes, I have.

20 Q What type of case was it?

21 A It was a case between two contractors that were
22 working on a project that I was working on, and
23 they were in a dispute over the cost of materials
24 that increased during the project.

25 Q Were you employed by one of the parties to the

1 lawsuit?

2 A No, I was employed by Santee Cooper at the time.

3 Q So you've been through this before. And all of
4 them are a little same, but everyone's a little
5 bit different. I want to start -- and again, I
6 don't want you to tell me anything that you and
7 your attorneys discussed, but I am interested in
8 finding out what you did to prepare for today's
9 deposition. And that would be people you talked
10 to or documents you looked at.

11 A Nothing. I don't have any documents to look at.

12 Q You didn't go back and review any materials that
13 you may have with you?

14 A I don't have any materials with me. When I left
15 my job, I left the materials.

16 Q And you didn't speak with any current or former
17 employees from the project?

18 A No, not specifically regarding this. It's been
19 several months since I spoke with anyone.

20 Q Well, let me ask you. Have you ever read Carlette
21 Walker's deposition in this litigation?

22 A No.

23 Q When was the last time you would have had any
24 communication with Carlette Walker?

25 A Actually, she knew of my deposition today and she

1 sent me an email just telling me to, you know,
2 good luck. And I responded "Thank you, I'm a
3 little bit on edge, but I'm not worried about it
4 too much." And that was last week. Prior to
5 that, probably two months ago just in a casual
6 meeting, my wife and I and she and her husband for
7 dinner.

8 Q At that time, did you and Mrs. Walker review any
9 materials?

10 A No.

11 Q But you did work with Carlette Walker at SCANA?

12 A Yes.

13 Q And how long did you work with her?

14 A I worked with Carlette from November of 2009 until
15 I left -- well, actually until she left in about
16 December of 2015, I think she left.

17 Q Did you know her before working with her on this
18 project?

19 A No.

20 Q How often would you interact with Ms. Walker while
21 working on this project?

22 A At work or outside of work?

23 Q At work?

24 A Daily.

25 Q Was she your supervisor?

1 A No.

2 Q What was her relationship in the hierarchy to
3 where you were?

4 A She worked for SCANA. She was the vice president
5 of nuclear accounting for SCANA Services. I
6 worked for SCE&G in the business and finance
7 group. And we had a combined group which was
8 mostly composed of SCANA personnel, and I was an
9 SCE&G employee. My supervisor, his name was Abney
10 Smith or Skip Smith. And Carlette was over the
11 accountants and the people working for SCANA
12 Services. So she was over the accounting group
13 and they were a piece of the business and finance
14 group for nuclear project.

15 Q I know because there's a couple different entities
16 involved here.

17 A Yes.

18 Q Who was your direct employer when you were working
19 on the VC Summer project?

20 A I worked for Santee Cooper for a period on the VC
21 Summer project, from -- I actually started on the
22 project in I think it was October of 2005 part
23 time. In January of 2006, I started working full
24 time commuting back and forth from Moncks Corner
25 to Columbia, but I was in Columbia four days a

1 week. Then in June of 2009, I retired from Santee
2 Cooper. In November of 2009, I went to work for
3 SCE&G.

4 Q And when you say you worked for SCE&G, did you
5 work for SCE&G, SCANA Services, SCANA which?

6 A I worked for SCE&G.

7 Q And that's who would have signed your paycheck?

8 A Yes, sir.

9 Q Did that ever change while you were -- I mean
10 after you arrived at SCE&G did --

11 A Never changed.

12 Q Have you followed any of the newspaper reporting
13 and TV reporting involving the VC Summer?

14 A Yes, I have.

15 Q Did you read the article in the Charleston Post
16 and Courier that was about a voicemail that
17 Carlette Walker had left for an employee?

18 A Yes, I did.

19 Q What was your reaction to hearing that voicemail?

20 A I knew of the voicemail when she left it.

21 Q Can you elaborate on that? And how did you know?

22 A I knew because I worked very closely with Marion
23 Cherry who was the Santee Cooper representative,
24 and he told me about the voicemail whenever
25 Carlette called and left him that voicemail.

1 Q I want to get some details from that. Did this
2 come up in -- while you were at work or after he
3 get the voicemail did he call you? Just kind of
4 lay out the narrative of how it came about.

5 A Marion and I also worked together on a daily
6 basis, and at work he told me of the voicemail.

7 Q What did he tell you -- did he play it for you or
8 did he just describe --

9 A I did not hear his voice. He just described it
10 for me.

11 Q What did he describe? What do you recall?

12 A He just described Carlette calling and leaving a
13 voicemail that -- telling him that Santee Cooper
14 needed to not approve anymore cost increases, I
15 believe were the words he used.

16 Q And kind of where did the conversation go after
17 that with Mr. Cherry?

18 A It didn't go anywhere.

19 Q Did you ever see or listen to the voicemail
20 yourself?

21 A After it was on the link for the article in the
22 paper is the first time I heard it.

23 Q What was your reaction to hearing it?

24 A A little shocked at the frankness of the
25 voicemail, but not surprised at the -- I guess the

1 intent, the message in the voicemail.

2 Q And why were you not surprised?

3 A Because I knew how Carlette felt about the
4 project.

5 Q And describe for us your understanding of what her
6 feelings were.

7 A That's difficult to be in somebody else's head,
8 but I can explain to you what my feelings were and
9 I think they were very close to Carlette's. We
10 were not -- I was not pleased with the path that
11 the project was taking at the time.

12 Q And I want to dig down into that. What
13 specifically, when you say you were not pleased,
14 what were you not pleased with that?

15 A I was not pleased with the cost of the project
16 continuously increasing.

17 Q Did you think there was -- I mean, what did you
18 personally believe was responsible for those
19 increases in costs?

20 A Contractors' inefficiencies.

21 Q And can you give me some examples?

22 A They were not meeting schedules. They were taking
23 twice as many hours -- man hours to get work done
24 that they had budgeted for each incremental piece
25 of the project and there didn't appear to be any

1 end in sight in those issues. We had been through
2 many rounds of promises of improvement, but they
3 never followed through on those promises.

4 Q And you've referenced "contractors" and "they."
5 And just so I can have a clear record, who are we
6 talking about?

7 A We're talking about, at various times in the
8 project, Westinghouse, Shaw, and Chicago Bridge &
9 Iron.

10 Q Besides not meeting the schedules and man hours,
11 what other issues do you recall being upset with
12 respect to contractors?

13 A I'm not sure what you . . .

14 Q I was just asking if there's other things the
15 contractors had in their performance that you were
16 not pleased with?

17 A I don't know what else there is to not be pleased
18 with other than failure to meet schedules and
19 performance. I mean, that's . . .

20 Q What about issues with the design of the project?
21 Did you have problems with that?

22 A Personally, I did not. I was in the business and
23 finance group.

24 Q We started kind of down this road with discussing
25 the voicemail that Carlette Walker had left. Were

1 those concerns that Ms. Walker had expressed to
2 you during the time of the project?

3 MR. CHALLY: Object to form of the question.

4 A Yes.

5 Q In addition to what we've talked about, did
6 Ms. Walker ever express any other concerns about
7 the performance of the project?

8 MR. CHALLY: Object to form.

9 A No, not -- I'm not sure I understand the question,
10 but . . .

11 Q I'm just trying to figure out if I can get an idea
12 of the universe of the complaints that Ms. Walker
13 shared with you.

14 A I mean, the same issues that I had she had, as far
15 as I'm concerned, yes.

16 Q I'm assuming from your earlier answer I know this
17 answer, but I'm just going to ask you to check it
18 off. Have you read Margaret Felkel's deposition?

19 A No.

20 Q Have you read Sheri Wicker's deposition?

21 A No.

22 Q Have you read any other depositions from this
23 litigation?

24 A I have not.

25 Q Have you discussed Kevin Kochems' deposition

1 yesterday with anyone?

2 A No. Other than you guys discussing how long it
3 took.

4 Q Okay. Let me ask you, when did you -- are you
5 currently employed?

6 A I am not.

7 Q When were you last employed?

8 A I was last employed in July of 2016 when I left
9 SCE&G.

10 Q Since July '16, have you had any discussions with
11 any SCANA employees in which the discussions of
12 lawsuits against the company arising from the VC
13 Summer project were discussed?

14 A No.

15 Q Have you had any discussions with any SCANA
16 employees in which the topic of potential criminal
17 prosecution came up?

18 A Yes.

19 Q Describe those for me.

20 A In social settings, discussing the likelihood of
21 prosecution of the executives from SCANA. Just,
22 you know, opinions and maybe some feeling of
23 regret.

24 Q Which executives in particular were discussed?

25 A Kevin Marsh, Steve Byrne, and Jimmy Addison.

1 Q Can you elaborate what you mean by regret?

2 A Yes, I can. I personally believe -- and of course
3 I'm not an attorney and I'm not a law enforcement
4 person, but I believe that there were some things
5 done by those individuals that they should be
6 prosecuted for. And the regret is I don't think
7 they ever will be.

8 Q I want to get kind of -- if I can write down a
9 list of the things that you would think would be
10 relevant to potential criminal litigation, what
11 would you list?

12 A Just one thing.

13 Q What's that?

14 A Not being truthful. Short list.

15 Q Okay. Well, maybe we can get through this quickly
16 then. What do you believe they were not truthful
17 about?

18 A I don't believe they were truthful about the
19 status of the project and multiple quarterly
20 reports and filings.

21 Q When you say "quarterly reports and filings,"
22 which ones would those be? Would this be the BLRA
23 reports?

24 A All of the reports regarding the project, not
25 specifically the BLRA reports. But the financial

1 reports I guess would be the ones that I would be
2 most concerned about.

3 Q So I'm -- and that's why I'm trying to get more
4 detail. Are you talking about SEC --

5 A SEC filings, yes.

6 Q And what in particular, if I was going to go pull
7 some SEC filings, what statements or types of
8 statements would I look for do you think were
9 inaccurate?

10 A The general reflection in those filings were that
11 the project was going well. And for at least the
12 last two years of the project when I was there,
13 the project was not going well.

14 Q And those two years would have been 2014 through
15 2016?

16 A Yes.

17 Q When you say "not going well," I want to get some
18 actual meat on that bone --

19 A Sure.

20 Q What do you mean?

21 A I'm going to go back to where I was talking about
22 the contractor. They were not meeting schedules
23 and their inefficiencies were not meeting the
24 goals that the project budget were set on. And
25 from those indicators, that's a general indication

1 of the health of the project. And the health of
2 the project was not good. But if you read in the
3 reports, the health of the project was always
4 good, a positive outlook.

5 Q Is there any -- in your opinion, is there any way
6 that Mr. Marsh, Mr. Byrne and Mr. Addison could
7 not have been aware of those problems?

8 MR. CHALLY: Object to form.

9 A You need to rephrase that question.

10 Q Sure, yeah. Is it possible that management was
11 unaware of those issues that we just discussed
12 with the scheduling and productivity?

13 MR. CHALLY: Object to form.

14 A It's not possible.

15 Q Okay. And why would you believe that?

16 A Because there were internal reports and
17 communications that provided the status of the
18 project to management.

19 Q And if I wanted to go find some of those internal
20 reports and communications, how would I go about
21 doing that? What would I look for?

22 A Emails.

23 Q From anyone in particular?

24 A Myself, my boss, Skip Smith, Carlette Walker.

25 Q And if I wanted to kind of -- I mean, if I wanted

1 to do like a Google keyword search trying to find
2 emails that might reflect this information, what
3 would you suggest I use, as far as search terms or
4 dates or anything that would help me locate those?

5 A Possibly performance factor, which would be most
6 likely a PF indication, or cost estimates or
7 estimate to complete or things like that would be.
8 EAC, estimate at completion, estimate to complete,
9 any of those terms.

10 Q Well, let me ask. Have you had any discussions
11 with anyone related to the South Carolina Law
12 Enforcement Division or SLED?

13 A Yes.

14 Q When would you have first had any contact with
15 SLED?

16 A In November of last year, November 2017.

17 Q And how did it come about?

18 A They contacted me, actually through the FBI. I
19 had a -- spent a wonderful day with the FBI and
20 the SLED guy was not there for that discussion.
21 And he contacted me and asked if he could come by
22 my home and talk to me at my house.

23 Q Okay. Well, then if the FBI came first, let's
24 start with that. How did that come about, a
25 meeting with the FBI?

1 A I'm not sure. They called me. Invited me to meet
2 with them at the US Attorney's office and, of
3 course, I accepted the invitation. And we had a
4 long, long day as well.

5 Q And approximately when would that have occurred?

6 A That was November of 2017.

7 Q Did they ask you to bring any materials?

8 A They did not ask me, and I did not have any
9 materials to bring.

10 Q While you were there, did they ask you to review
11 any materials they had?

12 A Yes, they did.

13 Q And what did you review?

14 A I reviewed a cost estimate model that we developed
15 at -- in the business and finance group, NND
16 business and finance. We developed a cost model.
17 And I spent a good portion of that day explaining
18 that model to the FBI and the US Attorney.

19 Q And this would have -- when would this model have
20 originally have been created?

21 A The model was originally created in I think it was
22 2014. And we modified it in 2015 to do an
23 analysis of the fixed-price offer that we had for
24 the contract.

25 Q Would this have been a spreadsheet that was kept

1 at SCANA?

2 A Yes.

3 Q If I wanted to find that spreadsheet, how would I
4 search for that? Is there a title to it that you
5 would point me to?

6 A Oh my goodness. I don't remember what the title
7 was of that.

8 Q Again, what about like any keywords or searches
9 that you think might if I was searching for
10 spreadsheets with these terms?

11 A Probably something cost estimate or estimate to
12 complete or something like that. It had my name,
13 Kevin Kochems' name, and Marion Cherry's name at
14 the top of it as well. The three of us jointly
15 prepared it.

16 Q And how did this cost estimate model come to be
17 created back in 2014?

18 A We were expecting an estimate to complete from the
19 contractor. And in preparation for their
20 estimate, we developed that model to just be
21 prepared for their work. It was taking them a
22 long time, and we needed something to use on our
23 own. And then when we received their estimate to
24 complete, we used that as a parallel review of
25 their cost.

1 Q And the original creators of that cost estimate
2 model, was that you, Mr. Kochems, and Mr. Cherry?

3 A Yes.

4 Q Anyone else involved in that?

5 A Not really, not in creating the sheet.

6 Q Going back to the FBI meeting. They were the ones
7 that presented you with this cost estimate model
8 you had created and asked you to explain it to
9 them?

10 A Yes.

11 Q Did they indicate whether they had met with either
12 Mr. Kochems or Mr. Cherry?

13 A I don't recall.

14 Q Besides the cost estimate model, any other
15 materials that you went over with the FBI?

16 A I don't think so, but I can't say for sure.
17 That's been a while. I know we spent most of our
18 time on that.

19 Q Besides the cost estimate model, any other topics
20 that you discussed with the FBI?

21 A Yes.

22 Q What were they?

23 A Just they wanted to understand the EPC contract,
24 how the EPC contract came to be. The -- it's a
25 very complicated contract, the pricing mechanism

1 in it. And we spent a lot of time going through
2 that. They wanted to -- I spent a lot of time
3 teaching, I guess, that date more than answering
4 questions, just trying to help them understand the
5 cost estimate and how the project was formed.

6 Q Did they inform you that they had met with any
7 other former SCANA or Santee Cooper employees?

8 A They told me they had met with Carlette Walker.
9 And I believe she was the source of the
10 spreadsheet that we went over.

11 Q Did they indicate they had anybody they were going
12 to talk to after you, besides you and Carlette?

13 A They didn't specifically say, but I sort of
14 assumed that they would be talking with probably
15 Kevin Kochems and Marion Cherry.

16 Q Have you had any conversations with Mr. Kochems
17 that this FBI took place?

18 A Yes.

19 Q And what about with Mr. Cherry?

20 A You mean whether FBI discussed with Kochems or
21 with me?

22 Q Did you ever inform either Mr. Kochems or
23 Mr. Cherry that you had met with the FBI?

24 A Yes, both.

25 Q Do you know whether Mr. Kochems ever met with the

1 FBI?

2 A I do not.

3 Q I may have asked, but when was the last time you
4 would have talked to Mr. Kochems?

5 A I think it was in May, but I'm not sure. We went
6 out to dinner with some of the people from NND,
7 and Kevin was there with that. Kevin was there;
8 Sheri Wicker was there. I'm not sure who else,
9 but -- our spouses. We just went out to dinner.

10 Q When you met with the SLED agent that wasn't there
11 the day with the FBI, what did that entail?

12 A He told me that he was primarily interested in any
13 fraudulent activities that I was aware of,
14 specifically regarding the contractors. And there
15 was one episode that we discovered, and I spent
16 most of the time with him going through the
17 details of that.

18 Q Who was the contractor?

19 A The contractor was CB&I.

20 Q What was the suspected fraud?

21 A There was a situation where one of their suppliers
22 was submitting three bids, the same supplier under
23 three different names. And CB&I was buying office
24 equipment from this supplier and paying too much
25 money for it.

1 Q How did you become aware of this?

2 A Of the situation?

3 Q Yeah.

4 A In my job responsibilities, I reviewed my invoices
5 from the contractor for the target price element,
6 and month after month I kept seeing the same
7 supplies coming from the same guy, who really I
8 didn't know why he was supplying this equipment.
9 And the prices seemed to be high, so we started
10 doing research and found out the situation. We
11 called in the SCANA audit group and they did a
12 little deeper investigation and that's how they
13 found -- how we found out that one guy was
14 submitting all three bids.

15 Q Anything else you discussed with SLED?

16 A No.

17 Q What about the Securities and Exchange Commission,
18 have you had any discussions with any
19 representatives of that?

20 A No.

21 Q After the meeting that day with the FBI, has there
22 been any follow-up with the FBI?

23 A They've called me two or three times asking me of
24 names or contact information, primarily with the
25 contractors.

1 Q When you say the contractors, would that be
2 Westinghouse?

3 A Westinghouse and Fluor and CB&I.

4 Q Who in particular were they inquiring about?

5 A The site managers.

6 Q Do you know what they wanted or did they indicate
7 to you what they wanted to talk to them about?

8 A No.

9 Q Earlier when we were discussing having any
10 conversations about potential criminal prosecution
11 you said -- you used the word "regret" --

12 A Yes.

13 Q Was there anything in the meeting with the FBI or
14 SLED that led you to believe that they were not
15 going to pursue criminal prosecution?

16 A No. It's just the time that it's taken. And it
17 might be because, you know, I watch too much TV or
18 whatever, but it's taken so long I just can't
19 imagine anything happening now.

20 Q But based on what you observed at your employment
21 at SCANA, you believe that there were material
22 misrepresentations made by management?

23 MR. CHALLY: Object to form.

24 A Yes.

25 Q What would those material misrepresentations --

1 how would you summarize them?

2 A Well, we've already been through it once, but it's
3 the reporting was -- in general, reporting a
4 positive outlook with a healthy project while I
5 believe it should have been a negative outlook
6 with an unhealthy project.

7 Q Well, let me ask you. Does that -- does your
8 belief in that respect, does that extend to Santee
9 Cooper as well? Do you believe that anyone from
10 Santee Cooper made any material representations
11 about the health of the project?

12 MR. CHALLY: Object to form.

13 A I'm not aware of reports that Santee Cooper makes,
14 so I can't respond to that question.

15 Q Based on your experience on the project, do you
16 believe that SCE&G was candid with Santee Cooper
17 about the help of the project?

18 A Yes.

19 Q If you could, explain why you would believe that.

20 A Well, the main reason I believe that is because I
21 was SCE&G and Marion Cherry was Santee Cooper, and
22 I had no secrets from Marion Cherry. Now, if
23 you're asking me did Kevin Marsh and Lonnie
24 Carter, were they truthful with each other, I
25 can't respond to that because I don't know. But I

1 know for a fact that Marion Cherry and I were
2 candid with each other and there were no secrets.

3 Q Okay. Let me ask you and get a little bit of your
4 background. And I don't know if it's easier for
5 you to start with graduating school and getting
6 your first job and going forward or starting when
7 you retired from --

8 A Probably easier to start at the beginning.

9 Q Okay.

10 A I graduated from Clemson University in December
11 of 1980. And I went to work at the Charleston
12 Naval shipyard in January of 1981. I worked in
13 the marine mechanical design group at Charleston
14 Naval Shipyard until I think it was August of 1985
15 where I -- when I left and went to work for Naval
16 Facilities Engineering Command in Charleston,
17 where I worked until, again, I think it was August
18 of 1990. And I left NAVFAC and went to Santee
19 Cooper at that time. I worked at Santee Cooper in
20 the station construction group from then until I
21 retired in June of 2009. And in November 2009, I
22 went to work for SCE&G. I left SCE&G in June --
23 or July, excuse me, of 2016. Is that what you
24 were after?

25 Q Absolutely.

1 A I didn't know if you need more details of what I
2 did at the --

3 Q Well, we'll probably dig down into the Santee
4 Cooper and SCANA. And again, I just want to make
5 sure because there are different entities. Were
6 you a SCANA Services employee or were you a SCE&G
7 direct employee?

8 A I was an SCE&G employee.

9 Q How was your compensation structured there? Was
10 it a base salary? Was there -- I mean, just how
11 were you compensated for your work there?

12 A It was primarily a base salary with a very small,
13 compared to what the executives received, bonus
14 plan.

15 Q And how did the bonus plan operate?

16 A There were goals that were set for -- it was a
17 company-wide goal, a department goal, an
18 individual goal. And your bonuses were paid out
19 based on meeting those goals.

20 Q During the time of the VC Summer Unit Two and
21 Three construction, did you have the opportunity
22 to receive bonus payments based on or specifically
23 related to the progress of the project?

24 A No.

25 Q For your time at working out on the VC Summer

1 project, I want to get kind of an understanding of
2 a cast of characters, who was in charge, who
3 oversaw what. And just as best as you can, if you
4 could lay that out for me.

5 A Within business and finance or total project or
6 what's the --

7 Q Whichever one is -- I want to get both. Whichever
8 one is easiest for you to start with.

9 A The business and finance group was composed of
10 SCE&G and SCANA. SCE&G group was fairly small.
11 That was my supervisor, immediate supervisor Skip
12 Smith, Abney Smith is his given name. He was the
13 manager of business and finance. I was senior
14 engineer business and finance. And occasionally
15 we would have an analyst or somebody else working
16 with us. Most of the time it was just the two of
17 us.

18 Q Okay.

19 A And then there was the SCANA Services group which
20 had the accounting and contract compliance. And I
21 can't remember what Sheri Wicker's -- Sheri
22 Wicker's group was accountants who did the
23 payments. And I had a fairly unique role in the
24 group because I was an engineer; I was not an
25 accountant. But because of my prior experience on

1 other projects with Santee Cooper, I was familiar
2 with accounting and business-related aspects. So
3 I sort of was a go-between between the technical
4 groups and construction for SCE&G and the
5 accountants for SCANA, because accountants didn't
6 speak construction and construction guys didn't
7 speak accounting. And I was the translator in
8 there in between those two groups. I spent a lot
9 of time reviewing invoices, which a lot of people
10 would consider an accounting thing, but the
11 accountants didn't know -- for this cost-plus
12 invoice, we would get 10,000 lines a month of
13 things they were billing us for, and an accountant
14 looking down there, she could look and see how
15 much it cost, but she wouldn't have a clue as to
16 what it was she was paying for. So I got stuck
17 with that duty for several years of reviewing
18 those things. And I spent probably 25 percent of
19 my time reviewing that target invoice because
20 nobody else was willing to do it and nobody else
21 knew -- I mean, I hate to say it, but a lot of the
22 accountants didn't know a hammer from a
23 screwdriver, you know, and they were billing us
24 for things like that.

25 Q I want to dig into that a little bit. As far as

1 your invoice review, did you ever find invoices
2 that you would challenge or question?

3 A Absolutely, every month.

4 Q Describe your experience with that.

5 A The number one issue that I would find in the
6 invoices that they would be billing us for under
7 the target price for things that should have been
8 firm price or for small tools and consumables
9 which we paid for in the labor markup, the
10 multiplier on the labor, so --

11 Q There's going to be a lot of non-engineers and
12 accountants probably looking at this.

13 A Yes.

14 Q Can you kind of put that in layman's terms?

15 A Yes. We -- early in the project, we agreed with
16 the contractor that we did not want to see line
17 item billing for small tools, which would be
18 literally hammers, screwdrivers, and anything like
19 that. So we came up with an agreement that
20 anything -- any tool under \$1,000 and any
21 consumable such as duct tape or grease or anything
22 like that, would be paid for with a labor markup.
23 So it was a certain amount per hour that we paid
24 or actually it was a percentage markup on the
25 labor that we paid to avoid having bills for those

1 individual tools under \$1,000. And just about
2 every month we would find -- or I would find tools
3 under \$1,000 on the invoice that we would have to
4 dispute the payment for.

5 Q Okay.

6 A Other things that we find in the contract, all of
7 the commodity materials which was the steel, the,
8 you know, structural steel, reinforcing bar,
9 concrete, any wire and cable, anything like that,
10 was part of the fixed-price on the contract. So
11 we should not receive billing for those items
12 under the target price. So if we found those
13 types of things, we would dispute that. Another
14 issue, we -- early in the project, we moved to
15 construction equipment to fixed-price. The
16 construction equipment were trucks, any kind of
17 welding machines, or anything like that, should
18 not be billed in the target price. So if we found
19 those on the invoice, we disputed those. So when
20 you have a 10,000 line spreadsheet where they're
21 billing you for some things that you should be
22 paying for and some things that you shouldn't be
23 paying for, you have to go line by line, look at
24 the contract and see whether it's a target price
25 or a firm or fixed-price item and dispute the

1 payment for the firm or fixed-price or other terms
2 in the contract.

3 Q I just want to make sure I understand some of
4 this. On the -- when you talk about a labor
5 markup, what that means is if you agree to pay X
6 dollars an hour for a man-hour of work, instead of
7 on top of that paying for individual duct tape and
8 other tools under \$1,000, y'all had an arrangement
9 where you said, okay for that man-hour, we're also
10 going to pay a percentage on top of that, and
11 that's going to cover all these consumables and
12 small tools?

13 A Yes, that's correct. So, in a sense, if they
14 billed us for it under target, they would be
15 getting paid twice for the same thing because
16 they're getting paid for it in the markup and then
17 if they bill it under target price again, if we
18 don't dispute it, they get paid twice for the same
19 item.

20 Q And then with the commodity materials, is that a
21 similar situation where you're paying for it under
22 the fixed-price? You know, we're going to pay
23 you, you know, X dollars as a fixed-price on the
24 contract and that's supposed to cover rebar?

25 A That's correct.

1 Q And instead, in your work you would find invoices
2 for rebar?

3 A That's correct.

4 Q And again, that would be the contractor being paid
5 twice?

6 A If we had not caught it, yes.

7 Q Okay.

8 A There are records of all of those things that we
9 caught. We had a -- we called it a Target Price
10 Log. And month after month, we would add items to
11 that log. And as we agreed that we shouldn't pay
12 for them, we would get a credit back.

13 Q Besides yourself, who else would be involved in
14 updating and creating this Target Price Log?

15 A We had one of the accountants. Or actually, it
16 was an accounting technician for SCANA Services
17 that worked with me on doing that.

18 Q Who was that?

19 A Her name was Mandy Wicker. No relation to Sheri
20 Wicker. She worked for Sheri Wicker, but no
21 relation.

22 Q Okay. And I'm just asking you to give me an idea
23 what type of dollar figures are we talking about
24 here? Is this a --

25 A Millions of dollars over the project.

1 Q And these would be millions of dollars of
2 essential double billing by the contractor?

3 A Yes.

4 Q I want to get an idea of how it was handled on
5 behalf of SCANA. You and Mandy Wicker would
6 identify these materials and it would go on a
7 Target Price Log?

8 A That's correct.

9 Q Is there any chance that was also maybe called a
10 Disputed Invoice Log? Or is that a different log?

11 A It's pretty much the same thing. It was a part of
12 it.

13 Q Okay. And the -- after it got put on the Target
14 Price Log what happened next with that issue?

15 A There would be maybe once a quarter a meeting.
16 Well, some things that were obvious and no
17 dispute, the accountants from CB&I would issue us
18 a credit immediately for those. And then there
19 would always be things that we would not agree on,
20 and those items that we did not agree on would be
21 handled in a review with -- usually it was Alan
22 Torres, the construction manager. And the site
23 manager or some other management person with CB&I
24 would go down that list and agree what should be
25 paid and what should not be paid.

1 Q Besides CB&I, what other, if any, contractors
2 would end up on this Target Price Log? Were there
3 other contractors -- I guess I'm asking did
4 everything come through CB&I and then to y'all?
5 Or did --

6 A Everything came through CB&I, yes. Or Shaw when
7 Shaw was there.

8 Q And again, just so I'm making sure I understand
9 the process. The invoices would come in from
10 CB&I. You and Mandy Wicker, as part of your job,
11 would review the invoices?

12 A I would review it. Mandy just kept up with the
13 log.

14 Q Okay. So you would review it, identify items
15 being invoiced that you did not believe were
16 proper due to the contract between the parties?

17 A Right.

18 Q Those items would go on this log. The log would
19 then be discussed quarterly with Alan Torres and a
20 representative of CB&I and Shaw?

21 A Yes, sir.

22 Q What would the outcome of that meeting typically
23 be?

24 A Occasionally it would be -- and I was not pleased
25 whenever it turned out like this, but occasionally

1 it would be "here, we'll take this one and you
2 take that one" sort of deal, maybe split the
3 difference. But usually it was an item by item
4 reconciliation and looking at the contract and
5 making a determination based on the contract.

6 Q Can you give me a rough idea like in an average
7 quarter how many items we would we be talking
8 about?

9 A In a quarter, maybe a 1,000 items.

10 Q And dollar figure that you'd be associated with
11 those items?

12 A In a quarter?

13 Q Yes.

14 A Probably varied from \$100,000 to maybe as much as
15 \$500,000 in a rare quarter, total. Total
16 aggregate of the disputed items.

17 (Parkin Hunter enters proceeding - Ian
18 Weschler leaves 11:04 a.m.)

19 (Off the Record)

20

21 VIDEOGRAPHER: This is tape number two in the
22 deposition of Kenneth Browne. We're on the record
23 at 11:16 a.m.

24 BY MR. HALTIWANGER:

25 Q All right, Mr. Browne, let me just -- a little bit

1 of follow-up on what we were talking about with
2 the Target Price Log. After compiling the
3 challenged invoices on the log, it would be
4 Mr. Torres who would be responsible for discussing
5 this with --

6 A Not always, but usually that was the case.
7 Sometimes he would send a designate his group.
8 Occasionally, Skip Smith, my boss, would take the
9 SCANA side of the argument. But usually it was
10 Alan Torres.

11 Q And I -- would that be the end of the question?
12 They'd have a meeting; we believe this was
13 improperly charged; they say, well, this is why we
14 think it was properly charged and --

15 A With very, very few exceptions, that was the end
16 of it.

17 Q Okay. Did management above Mr. Torres ever have
18 to get involved in those discussions?

19 MR. CHALLY: Object to form.

20 A In those few exceptions, yes.

21 Q And give me an example of when you recall
22 management above Torres?

23 A I can't recall any time, but I know there was
24 exceptions.

25 Q You were actually at Santee -- or let me ask you.

1 Were you at Santee Cooper when the decision to
2 build the nuclear plants was originally adopted?

3 A Yes.

4 Q And what was your role at Santee Cooper?

5 A I was the -- official title was Representative of
6 the Authority, but I was -- in common language, I
7 was the Santee Cooper representative for the
8 project. Marion Cherry was my replacement.

9 Q And when did you -- or how did it first come about
10 that Santee Cooper was going to look at taking
11 part in this project?

12 MR. CHALLY: Object to form.

13 A I'm not sure, because when I was put on the
14 project, the decision had already been made.

15 Q Okay.

16 A And I was working on cross units three and four,
17 and I was called back into my office in Moncks
18 Corner one day and on my white board in my office
19 was this little nuclear symbol and it said, "Go
20 see Maxie," who was our vice president. And I had
21 no clue what it was about. Found out that I was
22 going to be working on a nuclear plant.

23 Q So you were not part of any of the discussions
24 leading up to Santee Cooper deciding to go
25 nuclear?

1 A I was not part of the discussions leading up to
2 Santee Cooper working with SCE&G to investigate
3 the nuclear plant. I was part of the discussion
4 making the decision to sign the agreement with
5 SCE&G and execute the EPC contract. That was
6 after I was working on the project. I don't know
7 if I'm answering your question or not.

8 Q Yeah, I'm getting them.

9 A It was in phases.

10 Q So I guess describe for me how that went down, as
11 far as the getting into the agreement with SCANA
12 and just -- I'm just trying to get information
13 about how it went down.

14 A Well, it was not really a single point in time, I
15 don't guess. It was, you know, we got involved
16 with SCANA to investigate the project. We spent
17 two years negotiating, investigating, looking at
18 different technologies and, you know, kind of
19 narrowed it down to the Westinghouse AP1000. We
20 negotiated contracts for probably a
21 year-and-a-half or more with Westinghouse. We
22 were in with them, out with them, in with them,
23 out with them, back and forth. And finally, I
24 guess the final decision was made just prior to
25 execution of the EPC contract. That's when Santee

1 Cooper was in, was when they agreed to execute the
2 EPC contract.

3 Q One element we've heard about in the whole project
4 and with the expenses associated with the project
5 is the term "owner's cost."

6 A Yes.

7 Q For somebody who's not an accountant or engineer
8 or familiar with the project, can you give us a
9 definition or explanation of what are owner's cost
10 in this area.

11 A Well, there's always some things that can go
12 either way, but, in general, owner's cost refer to
13 the owner's cost of managing the project. One of
14 the major components at VC Summer for owner's cost
15 was in hiring and training the operations and
16 maintenance staff. That's probably the largest
17 component of the owner's cost was in preparing 600
18 people to take over ownership and operation of a
19 nuclear plant. You can't just hire them from
20 Ready South Carolina and put them on the board of
21 a nuclear plant the next day. So it takes years
22 to hire and train those people. That's the
23 largest component of the owner's cost with the
24 project.

25 Q And as part of the decision to go with nuclear

1 power, were you involved in any calculation of the
2 projected owner's cost for the project?

3 A Not directly. That was primarily an SCE&G
4 function. I mean, I was the representative of
5 Santee Cooper at that time. I watched the
6 development of the owner's cost, but it was
7 prepared by SCE&G.

8 Q And who in particular do you believe was
9 responsible?

10 A That was when Ron Clary was the project manager
11 for SCE&G. So it was Ron. A gentleman by the
12 name of Duke Bell was involved in it. And Kevin
13 Kochems I think was involved in it. You're
14 talking about the original development of the
15 owner's cost?

16 Q Yes.

17 A Yes.

18 Q And then -- and from your question there, I assume
19 that that changed over time?

20 A It changed over time, yes. New items would come
21 in to be added into owner's cost, the plant
22 staffing numbers were changed a number of times
23 after execution of the contract. Some -- you
24 know, buildings would need to be added. There was
25 an emergency building for where the fire trucks

1 are and all of the emergency equipment and things
2 like that was added one time on the owner's cost.
3 Things like that were changed that were not in the
4 original owner's cost budget.

5 Q Did Santee Cooper also have to perform any
6 projection of owner's cost?

7 A No, not that I'm aware of. SCE&G was always
8 responsible for the operation of the plant.

9 Q So, if I understand it, SCE&G would have developed
10 the projections for owner's cost, but Santee
11 Cooper would be financially responsible for
12 45 percent of those costs when they actually came
13 into --

14 A Yes, yes.

15 Q But to your knowledge, Santee Cooper never did an
16 independent estimate of what the owner's cost were
17 going to be?

18 A Not that I'm aware of.

19 Q Are you aware of did anybody from Santee Cooper
20 work with Ron Clary or Duke Bell or Kevin Kochems
21 to put those original owner's estimates together?

22 A I was there. No one else from Santee Cooper was
23 there.

24 Q And do you recall if you had any role in preparing
25 those numbers?

1 A Not directly. I mean, I do recall and I did not
2 directly have responsibility in preparing the
3 numbers.

4 Q And the original owner's costs that were projected
5 for the company, do you know whether those were
6 officially filed in front of the PSC?

7 MR. CHALLY: Object to form.

8 A I'm not sure. At that time, I was Santee Cooper
9 and I wasn't keeping up with what SCE&G was filing
10 and not filing.

11 Q Well, at the time that you came to work at SCE&G,
12 were you ever involved in any modifications of the
13 projected owner's costs that were filed with the
14 PSC?

15 A No.

16 Q Have you ever been told that Ron Clary instructed
17 that SCANA's owner's cost should be lowered than
18 what they had originally calculated?

19 A Yes.

20 Q And how did you hear that?

21 A I heard that from both Kevin Kochems and Duke
22 Bell.

23 Q And approximately when would you have heard that?

24 A Oh my goodness. In the maybe 2006/2007 timeframe.

25 Q So you were still at Santee Cooper?

1 A I was Santee Cooper then, yes.

2 Q Okay. And how did this come up?

3 A Just in general discussion of the project costs.
4 You know, as we were justifying the project, we
5 spent a lot of time on developing a cost for the
6 project.

7 Q Okay. And I want to get as much detail as I can
8 about how you became aware of Ron Clary's request
9 to lower those cost projections?

10 A It was just a conversation. I mean, I don't know
11 how to . . .

12 Q Okay. And this would have occurred in the
13 '06/'07 timeframe?

14 A Yes.

15 Q And what was your understanding of the impact of
16 having the owner's cost projection lowered like
17 that?

18 MR. CHALLY: Object to form.

19 A It makes the project look better.

20 Q How?

21 A Because it had to be justified on cost. If you
22 had lower owner's cost, then the project would
23 look better compared to other alternatives.

24 Q And what would those other alternatives be?

25 A Gas, probably a combined cycle gas turbine plant

1 or purchased power, I would assume.

2 Q Because it's my understanding that the owner's
3 cost projections would eventually be part of the
4 PSC filing. Is that your understanding as well?

5 A Yes.

6 Q And I just want to make sure I'm clear on when
7 Mr. Clary -- or when you were informed by Mr.
8 Kochems and Mr. Belle that Ron Clary had
9 instructed to lower these owner's costs, was he --
10 do you believe this was an honest disagreement
11 about what they should be?

12 A Yes.

13 Q Okay. And elaborate on that.

14 A I think what was happening at that time was
15 Westinghouse was providing SCE&G with projected
16 numbers of people to operate and maintain the
17 plant. And there was some disagreement among the
18 people involved at that time as to how many people
19 it would take to run the plant. And so that's
20 what -- that was the basis. Westinghouse was
21 giving one number and other people at SCE&G were
22 looking at how many people were at VC Summer Unit
23 One and the numbers in the different departments
24 and things like that. And there was some
25 disagreement among those groups as to how many

1 people it would really take to run a plant. And I
2 guess it's a matter of opinion. There had never
3 been an AP1000 built and operated, so nobody
4 really knew how many people it would take to run
5 it and maintain it.

6 Q And the dispute was, or the difference was,
7 Westinghouse believed there would be a higher
8 number --

9 A No. Westinghouse believed it would be lower
10 numbers.

11 Q Oh, Westinghouse believed there would be lower
12 numbers?

13 A Yes. That was one of their selling points of the
14 plant, is fewer people to operate it because it
15 had more modern control systems and the
16 maintenance would be easier on a lot of the
17 equipment and things like that. So it could
18 produce the same amount of power with fewer
19 people.

20 Q Okay. Have you ever participated in the
21 preparation of any filing of testimony with the
22 PSC?

23 A Yes.

24 Q In what role?

25 A Primarily just an advisory role. The testimonies

1 would be prepared and we would have a meeting in a
2 room similar to this, people sitting around a
3 table with the draft of the testimony. We would
4 read through the draft and discuss, you know, the
5 validity of the information that was in the
6 testimony and whether it could be said in another
7 way better or whatever. But in general, the
8 testimony was already prepared and this was just
9 like a review session of the draft.

10 Q Have you ever given any testimony to the PSC?

11 A No.

12 Q Did you have any role in the original application
13 to the PSC for the initial approval of the nuclear
14 plants?

15 A No.

16 Q Did you have any role in the NRC license
17 applications?

18 A Just providing the input for Santee Cooper's
19 portions of it. For example, transmission lines.
20 Santee Cooper transmission lines had to be -- all
21 the environmental work done. And that information
22 was provided for the NRC license.

23 Q And what about any role in the EPC contract
24 negotiations?

25 A Yes.

1 Q All right. Give us, as best as you can, your
2 summary of your involvement.

3 A That was two years of involvement.

4 Q Okay.

5 A But we had almost as many attorneys in the room as
6 we have here today, and representing all of the
7 entities: Westinghouse, Shaw at that time, Santee
8 Cooper, and SCE&G. And the EPC contract was just
9 hammered out over months of meetings and arguments
10 and disputes and --

11 Q Was there a particular area that you had a
12 responsibility for or --

13 A No. Didn't have a responsibility for any
14 particular area.

15 Q Had you, at Santee Cooper, participated in the
16 negotiation of EPC contracts on other types of
17 plants before?

18 A Yes.

19 Q And can you give me an example of --

20 A Santee Cooper's normal process of construction did
21 not use EPC contracts, but with the Rainey
22 Generating Station, which was a General Electric
23 combined cycle gas turbine site, we did have an
24 EPC contract for the power block, we called it,
25 which was the gas turbines, the steam turbine, the

1 heat recovery steam generator, the power plant
2 itself, that we awarded that through an EPC
3 contract with General Electric. And I was
4 involved in the negotiation of that contract and
5 responsible for managing the GE portion of the
6 station.

7 Q What time frame would that have been?

8 A Roughly 1999 til 2003.

9 Q What would you say would be the most significant
10 differences between the EPC relationship and the
11 Rainey Generation Station and the VC Summer
12 situation?

13 MR. CHALLY: Object to form.

14 A I'm not sure of the --

15 Q I just was wondering if there was anything that
16 struck out -- or stuck out to you as different in
17 the way that the EPC contracts were handled.

18 MR. CHALLY: Same objection.

19 A Not really. I mean, of course, the VC Summer EPC
20 was much larger. I mean, the Rainey Station EPC,
21 if I remember correctly, was in the \$300 million
22 range for the total project and VC Summer was
23 originally over \$6 billion. So you get an idea of
24 the order of magnitude there. But EPC contracts
25 are different animals. The contractor is

1 responsible. You know, he's -- it's almost a
2 turnkey concept. So the contractor is responsible
3 for doing the design, procuring the equipment and
4 constructing it.

5 Q We're getting ready to talk -- I'm getting ready
6 to shift into the topic of the Westinghouse
7 bankruptcy, but before I do, at the time of the
8 EPC negotiations, were there ever any discussions
9 about a potential of Westinghouse going bankrupt?

10 MR. CHALLY: Object to form.

11 A Not as something that was expected, but you always
12 have to consider that as a possibility. So, you
13 know, it was not an unusual amount of discussion
14 over it because of the size of the contract or
15 anything, but whenever you're having a contract
16 you should always have some way to terminate the
17 contract, you know, for either party. Or if there
18 is a bankruptcy, what are you going to do. It's
19 just a good practice to follow.

20 Q And do you recall if there was any particular
21 aspect of the EPC contract that was intended to
22 address that potential?

23 A Yes.

24 Q And what was that?

25 A That was the proprietary material that

1 Westinghouse owned regarding the design. There
2 was -- we called it a lockbox. I'm not sure
3 really what it was -- the real name of it is. But
4 Westinghouse was supposed to put information in
5 that box somewhere to allow SCE&G to finish the
6 construction if for some reason Westinghouse were
7 to pull out. And we paid for that box. And I
8 assume Westinghouse put all the materials in
9 there. It was not available to us unless there
10 was an event, you know, a triggering event that
11 caused us to go to get that material.

12 Q So, as I understand it, part of the EPC contract
13 had provided that the intellectual property, kind
14 of how to run the things, the computers and very
15 different -- various different elements of the
16 plant would be put into this lockbox so that if,
17 for some reason, Westinghouse was unable to
18 perform, SCANA could access it?

19 A Well, how to construct it.

20 Q How to construct it?

21 A How to construct it, right. It was the
22 intellectual property regarding the construction
23 and all of the -- the NRC requires a bunch of
24 calculations and computer models and all that sort
25 of thing that normally the owner would not have

1 access to unless for some reason Westinghouse was
2 not there anymore and you needed it to finish
3 constructing the plant.

4 Q What about any financial -- I mean, that's an
5 intellectual property, I guess, protection. What
6 about financial protections? Anything in the
7 contract designed to --

8 A I don't recall. It's possible. It's been a while
9 since I read that contract, but I don't recall
10 anything for financial issues regarding
11 bankruptcy.

12 Q Do you recall if there was ever any discussion of
13 having a performance bond in place?

14 A Yes.

15 Q All right. Tell me what you recall about that?

16 A What I recall about that was Westinghouse and
17 Shaw, at the time, saying, "Sure, we'll have a
18 performance bond, but you're going to pay for it."
19 And it would be very expensive. So, I mean, that
20 was pretty much an owner's decision to not require
21 the performance bond because the cost was
22 exorbitant.

23 Q But you recall those discussions occurring and
24 Shaw and Westinghouse not paying -- or not saying
25 they would pay for it, but, you know, SCANA was

1 welcome to do so?

2 A Sure.

3 Q And do you know if SCANA undertook to evaluate the
4 options of getting a performance bond?

5 A I don't recall, but I don't think they seriously
6 did.

7 Q And why would you feel that way?

8 A Because the cost was so enormous it would -- I
9 mean, I don't know what the cost would have been,
10 but I was told that, you know, it was a cost we
11 couldn't stand to get a bond for a \$6 billion
12 construction project.

13 Q Do you know who at SCANA would have looked at the
14 potential of getting a performance bond?

15 A I would assume their risk-management, but that's
16 just an assumption. I really don't know.

17 Q And if you were going to go ask somebody at SCANA
18 to try to find that information out, who would be
19 the person you would ask to see if that was done?

20 A There was a gentleman there named Mark Cannon, but
21 he's not there anymore.

22 Q Okay.

23 A I think he was over -- you know, remember, at that
24 time, I was Santee Cooper and not SCE&G, so I
25 didn't know a lot of the internal behind the

1 scenes SCE&G things going on. But I would start
2 with Mark Cannon.

3 Q I know it's been a while and I'm just curious to
4 know if you ever heard of any figures of
5 approximate cost of what a performance bond would
6 --

7 A I don't recall ever hearing.

8 Q Besides the discussion about a performance bond,
9 any other I guess what I would call sort of
10 financial protection mechanisms in the EPC
11 contract negotiations that could address a
12 potential contractor bankruptcy?

13 A I don't think so.

14 Q What about the Toshiba guarantees, the parental
15 guarantees that ended up being -- I guess that
16 ended up getting paid after the bankruptcy. Do
17 you recall discussions about those?

18 A Those discussions were primarily at the time we
19 negotiated the fixed-price agreement.

20 Q Okay. And what was that time frame?

21 A 2015, maybe October 2015.

22 Q Well, as we've been discussing, eventually
23 Westinghouse did declare bankruptcy in March
24 of 2017.

25 A Yes.

1 Q You were no longer employed at SCANA at that time?

2 A Correct.

3 Q How did you first hear about Westinghouse's
4 bankruptcy? Newspaper or somebody call you?

5 A Newspaper or television news or something. I
6 don't -- nobody called me and told me that.

7 Frankly, after I left the project, I tried to
8 forget about it.

9 Q And why was that?

10 A Why did I try to forget about it?

11 Q Yeah.

12 A I left with a bad taste in my mouth. I was not
13 pleased with the way things were going.

14 Q Well, I want to give you the opportunity to
15 explain what you mean by that.

16 A The schedules were continuously pushing out, as we
17 discussed earlier this morning. They were not
18 meeting their performance efficiencies; schedule
19 was pushing out and continually made promises that
20 they didn't keep, as far as improvements. You
21 could look at their month-to-month performance and
22 if you drew a line on their performance, it would
23 be 2030 or later before they finished the plant.
24 And everybody was still moving forward and acting
25 like they were going to finish it in 2020.

1 Q When you said "everybody" in that last statement,
2 I want to understand who you mean by everybody was
3 acting like it would be done in 2020?

4 A The management of the contractor and the
5 management of SCE&G.

6 Q But based on the -- and did you actually do that
7 work? Did you look at the actual historical
8 performance data-to-date and figure what a
9 realistic completion date would be?

10 MR. CHALLY: Object to form.

11 A Yes.

12 Q And take us through what your conclusions were.

13 A I don't remember the specific dates, but it was
14 certainly in the late 2020 to 2030 timeframe,
15 unless performance was to show a drastic
16 improvement. And what was happening, their
17 performance was not improving. The time was going
18 by so the curve to finish the plant was getting
19 steeper and steeper and steeper to the point of,
20 you know, you would have to put 20,000 people on
21 the site to get the number of man hours on the
22 project in the time left to finish.

23 Q And would SCANA management have been aware of that
24 situation?

25 MR. CHALLY: Object to form.

1 A Yes.

2 Q And how do you know they would have been aware?

3 MR. CHALLY: Same objection.

4 A Because they said in meetings where I presented
5 that information. Or I didn't present it, I would
6 dispute with the people from the contractor who
7 were saying they were going to finish on time, and
8 I would say you're not going to finish on time.
9 If you take your performance that you're doing
10 right now and you carry it out, it's just simple
11 math. When are you going to finish, because
12 you're not going to finish when you're saying you
13 are. And management would be in that same
14 meeting.

15 Q And did the contractor ever come back with a
16 satisfactory explanation to your opinion about how
17 they were going to make this change?

18 MR. CHALLY: Object to form.

19 A No.

20 Q Did they try to ever give any, I guess, concrete
21 examples of what they were going to do different?

22 MR. CHALLY: Same objection.

23 A No.

24 Q Did you ever have any discussions then afterwards
25 with management about that schedule and your

1 conclusion that it would be the late 2020s or
2 2030s?

3 MR. CHALLY: Same objection.

4 A The discussion with my immediate supervisor and
5 Carlette Walker.

6 Q And who was your immediate supervisor?

7 A Skip Smith.

8 Q And describe what you recall about those
9 discussions.

10 A There's no dispute. It was an agreement. I mean,
11 it was clear that -- you know, I used to say Ray
12 Charles could have seen it because it was so
13 obvious, but nobody wanted to do anything about
14 it.

15 Q When you say "nobody," who would you include in
16 that list of people who could have done something
17 about it?

18 A It would have to be the management of SCE&G.

19 Q And the individuals we talked about earlier, Mr.
20 Addison, Mr. Byrne, Mr. Marsh?

21 A Primarily that would be Steve Byrne and Kevin
22 Marsh. I don't know that Jimmy Addison is a
23 financial -- he was the CFO at the time. I don't
24 really know what he could have done, but . . .

25 Q When you made the statement or when you recall

1 having made the statement that "Ray Charles could
2 see it," I just want to be clear on our record,
3 what is the "it" you would consider that even Ray
4 Charles could see?

5 A The performance curves and the absurdity of
6 finishing the project on schedule at the current
7 rates of performance.

8 Q And approximately what time frame are we talking
9 about this going on?

10 A I guess it really became obvious in the 2015/2016
11 time frame when the time was getting so close that
12 there was not enough. You know, it just became
13 unreasonable to think that a -- the change
14 required to finish on time could be implemented.

15 Q And was there any triggering event or study or
16 work that occurred in that timeframe that, I
17 guess, brought this to a head?

18 MR. CHALLY: Object to form.

19 A I guess the Bechtel study. But everybody wants to
20 draw attention to the Bechtel study. There were
21 people in the project who knew everything that was
22 in the Bechtel study before Bechtel ever showed up
23 on site.

24 Q When did they show up on site?

25 MR. CHALLY: Object to form.

1 A I'm not sure when they showed up. I was not
2 involved at all in that study.

3 Q But as I understand it, you don't believe the
4 Bechtel study brought any new information to those
5 people actually on the site?

6 A Very little.

7 Q What is your understanding of some of the major
8 issues that Bechtel discussed in their study?

9 MR. CHALLY: Object to form.

10 A I don't -- I've never read the Bechtel study.

11 Q Okay. We had discussed you learning of
12 Westinghouse's bankruptcy, I guess through press
13 reports?

14 A Yes.

15 Q What thoughts went through your head when you
16 heard about it? What was your reaction?

17 A Disaster. The project, there's no -- the only
18 thing left for that project was the fixed-price
19 agreement. And when we negotiated that
20 fixed-price agreement, it was like the last ray of
21 hope that the project could be finished was if
22 Toshiba was going to stand behind it and truly
23 take a loss on the project to be able to finish it
24 and sell other plants. That was the argument that
25 we were presented with. They knew they were not

1 going to make money on this, on VC Summer and
2 Vogtle. But their plan was to complete these
3 projects, have successful plants, and then sell
4 other plants around the world. And that's the
5 only concept that would have made it a success for
6 Toshiba, Westinghouse, SCE&G or Southern Company,
7 for that matter, was for Toshiba to take a loss
8 and finish the plants in accordance with their
9 agreements. And the bankruptcy shot that hope
10 dead because that got Toshiba out of the
11 agreement.

12 Q Let me ask if you recall whether the potential for
13 either a Westinghouse or a Toshiba bankruptcy was
14 discussed when the fixed-price agreement was being
15 negotiated?

16 MR. CHALLY: Object to form.

17 A I don't recall any discussions of it. It was
18 mentioned as an obvious flaw in the plan, but I
19 don't recall any -- there were no serious
20 discussions of a bankruptcy that I participated
21 in.

22 Q When you say it was mentioned as a serious flaw in
23 the plan, can you give me an idea of who may have
24 been having those discussions?

25 A Again, those were not discussions. They were --

1 it was a more or less, you know, this is a great
2 deal as long as Toshiba is willing to stand behind
3 it, and if they were to declare bankruptcy, that
4 would get them out of it. I mean, you know, and
5 that was the extent of the discussion that I
6 participated in.

7 Q Earlier when we were talking about the EPC, we
8 talked about potential financial protections that
9 could be put in place in anticipation.

10 A Right.

11 Q Was there anything like a performance bond again
12 discussed at this time?

13 A No, not that I recall. We did get an increased
14 parental guarantee at that time. And I don't
15 recall how much it was increased, I just recall it
16 was increased.

17 Q And if I -- if you wanted to find more information
18 about the parental guarantee aspect of that
19 negotiation, who would you talk to? I mean who
20 would you call up and say, hey, I want to find out
21 more about --

22 A I don't know what -- what's the question? What do
23 you need to find out?

24 Q How the negotiations went about on choosing a
25 price or a -- selecting --

1 A Of the value of the parental guarantee?

2 Q Yeah.

3 A I guess you would probably have to talk to maybe
4 Kevin Marsh and Lonnie Carter. I think they were
5 the ones that were . . .

6 Q After the Westinghouse bankruptcy became public,
7 did you either contact or were you contacted by
8 any of the -- of your former coworkers at the site
9 to discuss the bankruptcy?

10 A Not specifically. I mean, we had contact because
11 I occasionally do talk to them, but I don't recall
12 any specific discussions of the bankruptcy or the
13 effects of the bankruptcy or anything like that.

14 Q Earlier when we were talking about the EPC
15 negotiations and the lockbox for the intellectual
16 property to be able to finish the construction,
17 after the Westinghouse bankruptcy, have you -- did
18 you have any discussions with any of your former
19 coworkers about the potential for SCANA to finish
20 the construction project?

21 A No.

22 Q Have you ever had any discussions with any of
23 Westinghouse employees about the bankruptcy?

24 A No. In fact, I've not had any discussions with
25 any Westinghouse employees about anything. I

1 don't think I've seen one since I left the
2 project.

3 Q And what was the date that you left?

4 A July of 2016, end of July. I don't recall if it
5 was the last day of July, but it was like the last
6 Friday of July 2016.

7 Q And how did you come to leave the project or leave
8 employment at SCE&G?

9 A I resigned.

10 Q I guess I want to hear your story on how your
11 resignation came to be. Was it you had reached a
12 certain age? You know, I turned X age, I'm
13 retiring or --

14 A I could. The last year I was at SCE&G, I worked
15 part time. My goal was during that part-time
16 period was for Skip to find somebody to take my
17 place and for me to train them and leave. And
18 that goal was conceived in sometime in 2015.

19 Q What brought about conceiving that goal?

20 A Several things. Number one is I have an
21 89-year-old mother who lives alone in Charleston
22 who needs assistance occasionally. She's also a
23 customer of SCE&G, by the way. At that -- in
24 2015, she was experiencing some health issues and
25 that's why I went part time was to spend time with

1 her helping her out, getting her to recover. And
2 I always had the goal and plan of moving back to
3 Charleston. I've not done it yet. I still live
4 up here in Columbia, but -- or the Charleston
5 area. I've got two daughters that live down there
6 as well. Four grandchildren down there. My wife
7 spends a lot of time down there and she wants to
8 move down there, but -- so, you know, all of that
9 plays in. The number one reason that I left is
10 because I could. I was retired from Santee
11 Cooper. I was approaching the magical age of
12 59-and-a-half and didn't need to work anymore.

13 Q Prior to you leaving, was Fluor brought onto the
14 project?

15 A Just prior to my departure. They were brought on
16 in January of 2016 and I left in July.

17 Q Did you have any involvement with on-boarding
18 Fluor onto the project?

19 A During the period of November and December 2015, I
20 took part in an off-site exercise with Fluor in an
21 effort -- I don't remember how many teams there
22 were, something like 15 or 17 teams, that were
23 developed to improve processes and the way things
24 were going on the project. And I happened to be
25 placed on the project controls team and I worked

1 directly with Fluor and Westinghouse off-site for
2 most of the month of November and about half of
3 December 2015.

4 Q What was Fluor's role going to be on the VC Summer
5 project?

6 A Fluor was coming in as the contractor for
7 Westinghouse, as opposed to a partner which was
8 the way CB&I -- it was structured as a partner
9 relationship. Fluor was coming in as a contractor
10 working under the direction of Westinghouse to do
11 the construction of the project.

12 Q Do you know if Fluor ever performed any type of
13 estimate as a cost to complete the project before
14 it began work?

15 A Not before they began work.

16 Q Okay.

17 A I assume they did. And I've heard that they did
18 do a cost to complete estimate after they started
19 work. But when they came onto the project they
20 were still operating with the CB&I/Westinghouse
21 cost estimate.

22 Q Well, who would you have heard that Fluor may have
23 completed its own cost to complete estimate? How
24 would you have gotten that information?

25 A I believe it was in the paper. I think that was

1 one of the reasons that the project was eventually
2 canceled was because the Fluor cost estimate was
3 more than -- and actually probably the reason that
4 Westinghouse went bankrupt was because of that
5 estimate.

6 Q Explain what you mean by that.

7 MR. CHALLY: Object to form.

8 A When Fluor prepared their cost estimate -- and
9 this is all an assumption because I was not there.
10 I don't know, but I would assume that Fluor
11 performed a cost estimate and saw that the cost
12 was much greater than the fixed-price agreement
13 that Westinghouse had executed, and Westinghouse
14 says we're not willing to take that much of a
15 loss, so we're going to declare bankruptcy. That
16 is pure conjecture, but a rational person would
17 assume that that's what happened.

18 Q If you wanted to find out more information about
19 Fluor's cost to complete work, like who prepared
20 it, how it was done and what basis they use for
21 their calculation, who would you talk to?

22 MR. CHALLY: Object to form.

23 A I have no idea.

24 Q If you wanted to try to find that out from
25 somebody at SCANA, who would you call at SCANA to

1 say, hey, who do -- who knows at Fluor what they
2 did?

3 MR. CHALLY: Object to form.

4 A I'd probably start with Kevin Kochems, but I have
5 no interest and don't know.

6 Q Okay. Do you remember any approximate dollar
7 figure of what the Fluor cost to complete was?

8 A I have no idea.

9 Q Was Fluor coming on board related to the switch to
10 the fixed-price contract?

11 A Yes.

12 Q Can you describe how?

13 A Yes. In the time period when the fixed-price
14 contract was negotiated, the partners, CB&I and
15 Westinghouse, were fighting with each other more
16 than they were fighting with us. And I think they
17 came to a separate agreement that CB&I would exit
18 the project. The problem was CB&I could not exit
19 the project without the owner's approval because
20 of the joint and several liability in the
21 contract. So the two parties -- it's my
22 understanding because I was not there for the
23 meeting, but I understand that Westinghouse and
24 CB&I came to the management of Santee Cooper and
25 SCE&G and said here's the deal: CB&I wants out;

1 we want them out; what can we do to get you to
2 agree to let CB&I exit the project. And that was
3 the birth of the fixed-price agreement.

4 Q So . . .

5 A So Westinghouse gave us a fixed-price contract and
6 we gave CB&I permission to exit the project. And
7 Fluor came in as the constructor at that time.

8 Q And the amount of the fixed-price contract, as we
9 discussed earlier, it's your understanding was for
10 an amount dramatically less than the actual cost
11 to complete it?

12 A That was my belief at the time, yes. We actually
13 did an analysis that compared many -- options is
14 not the right word, but possibilities,
15 eventualities of price. And almost all of the
16 possibilities came out higher than the fixed-price
17 contract. And that's how we justified the
18 fixed-price contract.

19 Q Let me make sure I understand that. These would
20 have been persons at SCE&G making an analysis of
21 the possibilities of what the price of a
22 fixed-price contract should be?

23 A No. We had an offer of what the fixed-price was.

24 Q Okay.

25 A But we did an analysis to determine whether that

1 was a good price or not.

2 Q Okay.

3 A If our eventualities of prices came out less than
4 the fixed-price contract, then you wouldn't
5 execute a fixed-price contract. But almost all of
6 the -- we did a Monte Carlo analysis. And almost
7 all of the results were higher than the
8 fixed-price.

9 Q Give me an idea of how that analysis was
10 undertaken by SCANA, the different possible
11 prices. Did y'all form a team? What did y'all --
12 how did y'all do that?

13 A Well, they used our cost model, the cost model
14 that we discussed earlier today, and we gave that
15 model to the -- I'm not sure what the name of the
16 group is, but it's Dr. Lynch's group at SCE&G.
17 Joe Lynch and his folks did the statistical
18 analysis to --

19 (Interruption)

20 A So they used our cost model, the NND cost model,
21 and applied a statistical analysis with that
22 model. And I don't know if it was a team or might
23 have been two people that work under Joe Lynch at
24 SCE&G.

25 Q All right. Well, let me make sure I'm keeping all

1 my models straight and everything else.

2 A Sure.

3 Q If I understand it, there was the Westinghouse
4 cost model that we discussed where they were going
5 to be getting done in around the 2020 timeframe?

6 A Right.

7 Q There was the numbers that you and others had come
8 up with that projected it more closer to 2030
9 timeframe?

10 A That was not in the model.

11 Q That's what I'm asking.

12 A Okay.

13 Q Which model were you using or whose model were you
14 using to do the analysis?

15 A We were using the NND Cost Model, the same thing
16 that I went over with the FBI in the interview
17 that day. And there's surprisingly very few
18 variables in that model.

19 Q Okay.

20 A And the analysis group did a statistical analysis
21 of changing those variables, what -- you know,
22 what's the most likely, what's the least likely
23 outcome. And that's how they came up with the
24 projected cost above the fixed-price.

25 Q Now, is that NND cost model, was that the same

1 cost model that was used to prepare the numbers
2 submitted to the PSC?

3 MR. CHALLY: Object to form.

4 A The numbers submitted to the PSC did not come out
5 of the model. The numbers submitted to the PSC
6 came from Westinghouse and CB&I. Those were
7 contractor numbers; those were not owner numbers.

8 Q But at the time that the PSC -- or the numbers
9 were submitted to the PSC, did SCANA have this NND
10 cost model in place and available?

11 MR. CHALLY: Object to form.

12 A Yes.

13 Q Do you know why the Westinghouse numbers were
14 submitted to the PSC instead of the numbers from
15 SCANA's NND cost model?

16 A I know one reason that was given to me. And that
17 reason was that if we were to submit a cost higher
18 than the cost that our contractor told us they
19 would finish the project for, it would, in effect,
20 be a contingency. And the Public Service
21 Commission had ruled against any form of
22 contingency on the project. So when you have a
23 contractor who is giving you a price to build
24 something, if you've been told you can't have a
25 contingency, which I think is ridiculous, then you

1 have no choice but to submit the cost that your
2 contractor is telling you he's going to finish the
3 project for.

4 Q But you would agree that --

5 A Does that make sense?

6 Q Yes, I see where you're going with that. And I
7 just want to make sure though that the numbers
8 that we're talking about that Westinghouse
9 submitted as their numbers to complete, those were
10 different than the numbers that SCANA had
11 calculated on its own?

12 MR. CHALLY: Object to form.

13 A Yes.

14 Q And under all the different various models that
15 you ran, is it accurate to say that the numbers
16 Westinghouse were submitting to you were too low
17 for the actual cost of completion?

18 MR. CHALLY: Object to form.

19 A If you input the same variables into our model
20 that Westinghouse used in developing their costs,
21 you would come out with the same costs that
22 Westinghouse provided. There was some judgment
23 applied. For example, in the Westinghouse cost
24 they told us they were going to have a performance
25 factor of 1.15, which means that they would

1 complete all of their work at 115 percent or less
2 of the estimated time in the original cost
3 estimate. Well, historically, they had never even
4 come close to a 1.15 performance factor. So we
5 used more reasonable performance factors, in our
6 opinion, more realistic performance factors which
7 would result in a higher cost. But all the while
8 the contractors were telling us we will finish
9 this project with a 1.15 performance factor.

10 Q And the numbers that you understand were submitted
11 to the PSC were based on the 1.15 performance
12 factor?

13 A Yes.

14 Q Even though historically that had never been
15 accomplished?

16 A Yes, but that doesn't mean that they were never
17 going to do it. Do you understand what I'm
18 saying? It's not likely.

19 Q Yeah. Well, what was your personal belief about
20 whether it was doable or not?

21 A I don't think it was doable, my personal opinion.
22 But there were other people that had the opinion
23 it was.

24 Q Who would that have been?

25 A Other people weighing into the decision. I'm sure

1 Alan Torres, Ron Jones, you know, other people
2 higher than me at SCE&G were saying it's
3 reasonable, they're going -- you know, they're
4 going to come in and make changes and meet their
5 performance. I'm always a glass half empty kind
6 of guy, and I didn't think they were going to do
7 it.

8 Q During the time that there was negotiation and
9 eventual switch to the fixed-price contract, were
10 there any discussions of any of -- I guess -- I
11 would imagine there had to have been discussion of
12 the benefits and risks of this switch. Is that
13 fair to say?

14 A Yes.

15 Q And what do you recall being sort of touted as the
16 benefits and what do you recall being highlighted
17 as the risks?

18 A The benefits obviously were coming up with a cap
19 on the cost of the plant. The risk was having a
20 contractor who was not going to stand behind the
21 agreement.

22 Q And that eventually happened with the Westinghouse
23 bankruptcy?

24 A That eventually happened with the Westinghouse
25 bankruptcy.

1 Q Have you ever heard any discussions or, I guess,
2 speculation about whether the switch to the
3 fixed-price contract actually contributed to the
4 Westinghouse bankruptcy?

5 A I've never heard anything about that, but I think
6 it's a rational conclusion.

7 Q And can you explain why you believe that would be
8 a rational conclusion?

9 A Because had they not switched to a fixed-price
10 contract, they were guaranteed to always make a
11 profit no matter how much the plant cost. But
12 once they agreed to the fixed-price, that put
13 Westinghouse on the hook and their guaranteed
14 profit was gone, vaporized.

15 Q I'm having a -- and I'm just having difficulty
16 understanding the benefits of the switch to the
17 fixed-price contract for Westinghouse. I mean,
18 you mentioned letting -- they needed CBI switched
19 out for Fluor, but I guess I have -- can you tell
20 me what you understood to be the benefits to
21 Westinghouse --

22 MR. CHALLY: Object to the predicate and the
23 form of the question.

24 A The only benefit that I can see is getting out of
25 the agreement with CB&I. And we don't know -- we

1 did not know at the time how bad that dispute was.
2 Apparently, it was pretty bad for them to be
3 willing to accept the fixed-price and as an
4 exchange.

5 Q Do you recall if anybody at SCANA was opposed to
6 switching to the fixed-price contract?

7 A I don't recall anyone being opposed to that.

8 Q And prior to finalizing the fixed-price
9 arrangement, you took part in using the - I want
10 to make sure I get it right. - the NND -- what do
11 we call it?

12 A Cost model.

13 Q Yes, NND cost model.

14 A Yes.

15 Q To determine whether it was a good deal for SCANA
16 to enter into?

17 A Yes.

18 Q And that's because in order to figure out if it
19 was a good deal or not, SCANA had to know what it
20 would actually cost to finish the project?

21 A Correct.

22 Q And in making that calculation, they did not rely
23 on the Westinghouse numbers that were submitted to
24 the PSC for cost of completion?

25 MR. CHALLY: Object to form.

1 A The Westinghouse numbers that were submitted to
2 the PSC for cost completion were a year prior to
3 the fixed-price negotiation.

4 Q Okay.

5 A So we did not use the Westinghouse numbers, and it
6 would not have been appropriate to use
7 Westinghouse numbers.

8 Q Any reason not to use them as appropriate besides
9 that they were a year old at that time?

10 MR. CHALLY: Object to form.

11 A No. Other than the fact they used the 1.15
12 performance factor, which was becoming all more
13 unlikely a year later.

14 Q In the year since those numbers were generated,
15 the PF factor didn't get any better. Is that what
16 you're saying?

17 MR. CHALLY: Object to form.

18 A Yes.

19 Q Did it, in fact, get worse?

20 MR. CHALLY: Object to form.

21 A I believe it did. I can't say for sure because I
22 don't recall the exact numbers. But I believe
23 that the cumulative performance factor did get
24 worse over that period.

25 Q And at that time, would it also have been true

1 that the anticipated schedule for completion would
2 have also been out of whack, to use a layman's
3 terms, as supposed to, you know, just as the cost
4 would have been?

5 MR. CHALLY: Object to form.

6 A I don't understand the question, honestly.

7 Q It's probably because it's a terrible question.

8 But the -- in addition to the PF factor of 1.15
9 being a basis of the Westinghouse numbers, the
10 performance since that date, the schedule also was
11 continuing to be impacted by the performance, so
12 --

13 A Obviously, yes.

14 Q So a year later whenever you're looking at the
15 fixed-price arrangement, the --

16 A In fact, the schedule was changed with the
17 fixed-price arrangement. I don't remember the
18 details of the dates, but the schedule was pushed
19 out at the time of the fixed-price arrangement
20 and -- the performance factor does not directly
21 affect your time in the schedule because you can
22 always bring more people on. If it's taking you
23 twice as long to do something, you can double the
24 amount of people and get it done in the same
25 amount of time.

1 Q How would the cost for that be -- be allocated?

2 A The cost would double, if you doubled your
3 performance. If it took you twice as long to do
4 it, the cost would double, but your time would be
5 the same. But if you have a fixed-price
6 agreement, the cost is no longer relevant to the
7 owner because we have a fixed-price, it's just a
8 matter of whether they can get enough people to
9 get the job done.

10 Q So prior to the fixed-price agreement, if SCANA
11 had wanted to push for a doubling of the workforce
12 to double or to half -- cut in half the PF factor
13 --

14 A That doesn't change the PF factor. The PF factor
15 stays the same.

16 Q Okay.

17 A You just get the work done on time.

18 Q Okay.

19 A And it would have cost the owner twice as much.

20 Q So that would have been the labor under the
21 agreement prior to the fixed-price situation,
22 SCANA --

23 A Target price.

24 Q Target price.

25 A Time and material, for a layman's term.

1 Q Okay. And that -- the risk associated with the
2 labor PF factor was born by the owner?

3 A That's correct.

4 Q That was SCANA?

5 A That's correct. After the fixed-price, the risk
6 for the labor cost was born by the contractor.
7 That's why the fixed-price was a good deal.

8 Q Just to be clear, that's not -- there are some
9 limitations on that as far as, for instance, when
10 you talk about doubling the number of people --

11 A Oh, absolutely.

12 Q You can't put them all in the same --

13 MR. CHALLY: Object to form of the question.

14 Q You can't put them all the same room. If you only
15 have limited space, you can't just say we're going
16 to double the workforce --

17 A You can't necessarily hire them.

18 MR. CHALLY: Object to form.

19 Q And why is that?

20 MR. CHALLY: Same objection.

21 A You have to have the availability of resources.
22 At that time, CB&I was having a hard time hiring
23 people to staff the project. So every time they
24 would hire, they would need 20, they would hire
25 ten and loose three. So, you know, it takes you a

1 long time. And they could not ever reach their
2 number of people that they needed to do the
3 construction.

4 Q Was that an issue from the beginning of the
5 project or did that arise at some point during the
6 project?

7 A That was an issue from the first day of the
8 project.

9 Q That CB&I was not able to actually hire --

10 A Shaw at the beginning.

11 Q Oh, Shaw. Okay.

12 A Yes.

13 Q In other words, they -- if I understand what
14 you're saying, your understanding was that it
15 wasn't an unwillingness to hire these people, they
16 just were not able to find them?

17 MR. CHALLY: Object to form.

18 A It was my understanding they were not able to
19 find -- the biggest problem, believe it or not,
20 was the passing of drug tests. When half of your
21 people show up to the site and can't pass a drug
22 test, you have a hard time staffing a project.
23 And I don't know what the exact numbers were, but
24 it was astounding at the number of people failing
25 the drug tests to work on the site.

1 Q Just as a general question, the drug test, was
2 that something all persons on the site had to take
3 or only the contractors?

4 MR. CHALLY: Object to form.

5 A Everyone on the site had to pass a drug test.

6 Q So were you yourself drug tested?

7 A Absolutely.

8 Q Was the management of SCANA ever drug tested?

9 MR. CHALLY: Object to form.

10 A I'm sure they were. Anybody that works on a site
11 under the control of the Nuclear Regulatory
12 Commission has to pass a drug test. It's not a
13 SCANA requirement, although it is, but it was an
14 NRC requirement.

15 MR. HALTIWANGER: Y'all want to take a break?
16 We've been going longer than an hour. Take a
17 break and get sandwiches?

18 MR. CHALLY: That's fine.

19 VIDEOGRAPHER: This is the end of tape number
20 two in the deposition of Kenneth Browne. We're
21 off the record at 12:29 p.m.

22 (Off the Record)

23

24 VIDEOGRAPHER: This is tape number three in
25 the deposition of Kenneth Browne. We're on the

1 record at 1:19 p.m.

2

3 BY MR. HALTIWANGER:

4 Q Okay. Mr. Browne, when did the switch to the
5 fixed-price agreement take place?

6 A October of 2015.

7 Q And what impact --

8 A Well, that's when we executed it. I guess it
9 really took place January of -- January 1st I
10 think was the effective date.

11 Q Okay. And if I understand it correctly, the
12 contract gave SCANA the option to switch to a
13 fixed-price arrangement?

14 A Yes.

15 Q And you're saying that that was exercised in
16 October of 2015?

17 A The contract was executed in October. I can't
18 remember when the switch was made. But it was --
19 the reason it was done in that manner is because
20 there was a cost increase, and the cost increase
21 could not be approved without getting approval
22 from the Public Service Commission. So we had to
23 do it in steps.

24 Q Okay.

25 A We executed it without option knowing we were

1 going to exercise the option unless there was
2 something really drastic was to happen. And then
3 we exercised that option. And I don't recall, I
4 guess it was probably November that the option was
5 exercised.

6 Q And was it everybody's understanding that the
7 option would be exercised? You just had to set it
8 up in stages in order to get it approved by the
9 PSC?

10 A Yes. Well, if the PSC had not approved it, it
11 wouldn't have been exercised. But that was the
12 intent.

13 Q Okay. And what impact did the switch have on the
14 amount of money SCANA was paying monthly to
15 Westinghouse? Did it go up, did it go down, or
16 did it stay the same?

17 A The way the contract was structured, the
18 fixed-price, there was a period of several
19 months -- and I can't remember how many months it
20 was that we were to be making a lump sum payment
21 in lieu of milestone payments. And those payments
22 were -- there was a little bit of disagreement
23 within our company about that, but we agreed to
24 pay, I think it was \$100 million a month. I can't
25 remember for sure how much it was, which was

1 probably about 40 million more than what we had
2 been historically paying per month. And during
3 that period, we were supposed to agree to a
4 milestone payment schedule which would have
5 construction milestones to be completed and
6 dollars associated with those milestones to be
7 paid. And I left in July of '16, and the
8 milestone payment schedule had not been agreed
9 upon at that time because we were disputing with
10 the contractor over the milestones and the dollars
11 associated with the milestones. What we were
12 trying to do was see that we did not get upside
13 down, if you would, on making more payments than
14 the work had been completed to justify.

15 Q Okay. So -- and I just want to make sure I'm
16 understanding your testimony, the -- SCANA was
17 paying a varying amount every month before the
18 exercise of the fixed-price agreement?

19 A Yes. Yes.

20 Q And --

21 A Typically in the 50 to -- probably 50 to
22 \$70 million a month. Occasionally there might be
23 an outlier where there might be a hundred, but
24 then after the execution of the fixed-price, I
25 think the first six months were \$100 million a

1 month. I can't remember exactly what that was.

2 Q All right. I want to jump back in time from that
3 period to when the project began. Obviously,
4 there was some what I would call the original cost
5 projections for the project.

6 A Okay.

7 Q And those were filed with the PSC, correct?

8 MR. CHALLY: Object to form.

9 A Yes.

10 Q And based on your recollection, from the beginning
11 of the project, how many times was the projection
12 for the cost of completion changed?

13 A I couldn't tell you. If you recall, the first
14 three years of the project, I was working for
15 Santee Cooper. I didn't keep up with it.

16 Q Okay.

17 A And honestly, after I did go to work for SCE&G, I
18 didn't keep up with the PSC filings because that
19 was not my area, and I just didn't worry about
20 that.

21 Q Okay. Well, let me then switch to an area that I
22 do believe you were involved in, which was the EAC
23 team.

24 A Yes.

25 Q What does EAC stand for?

1 A Estimate at completion.

2 Q And --

3 A It's total price, if you will. That's from
4 beginning to end how much is the project going to
5 cost.

6 Q And was this a -- let me -- I want to make sure I
7 ask correctly. What is your understanding of how
8 the EAC team came to be?

9 A Which team are you referring to? The owner's team
10 or the contractor's team.

11 Q Okay. Well, let's start with each of them. The
12 contractor's team, how did -- that would have been
13 Westinghouse?

14 A That would have been Westinghouse and CB&I at that
15 time when the EAC was developed. I'm assuming
16 you're talking about the 2014 estimate. Is that
17 the one you're --

18 Q Well, is that the first EAC team -- EAC SCANA team
19 that you're aware of?

20 A Yes.

21 Q Okay.

22 A There was a team with Westinghouse and CB&I
23 developed the EAC. And there was a SCANA team
24 that reviewed that EAC. They presented that to us
25 and we reviewed it and made comments to our

1 management on the estimate.

2 Q What were you told or what did you understand to
3 be the reason Westinghouse undertook to create its
4 EAC?

5 MR. CHALLY: Object to form.

6 A It's good project management to have an updated
7 estimate. Their estimates were not good at the
8 time. And for their benefit and for the owner's
9 benefit, they undertook that effort, which was a
10 sizable effort. It took several months of I don't
11 know how many people working on that cost
12 estimate.

13 Q Well, I guess, do you know if SCANA asked them to
14 undertake this? Did they come to SCANA and say
15 we're going to do this or was there an event that
16 everybody agreed, okay, after this we're going to
17 --

18 A I'm not sure why. I don't know if there was an
19 event that kicked it off, honestly. I know we had
20 been asking for it for years.

21 Q When you say we --

22 A SCANA.

23 Q And anyone in particular pushing for it?

24 A I was pushing for it.

25 Q Okay. Did you have any allies with you saying we

1 need to have an EAC process?

2 A Yes.

3 Q Who would have been --

4 A My boss Carlette. That was my circle of influence
5 right there. I assume our management was wanting
6 an EAC as well, a cost, you know. It's just
7 another name for cost, project cost.

8 Q Okay. When was the EAC team -- and I'm going to
9 refer to the EAC team as the 2014 SCANA EAC team.

10 A Right.

11 Q When was that EAC team formed?

12 A Probably August timeframe of '15. It was around
13 the time we got the cost in from
14 Westinghouse/CB&I.

15 Q August '15 or August '14?

16 A '14. I'm sorry, '14.

17 Q Okay. And who was on that team?

18 A That was Kevin Kochems, Margaret Felkel. I
19 believe Kyle Young was on there, I'm not sure.
20 And myself. And Marion Cherry was sort of an ad
21 hoc member. He was in and out.

22 Q How were those individuals selected?

23 A Our -- well, it was my job. It was Kevin's job.
24 The others, Margaret was in our contract
25 compliance group. She was put in on the team for

1 a couple reasons, and I'm not sure, but to learn
2 how to do it because she was fairly young and
3 didn't have a lot of experience in that. And she
4 was on the team for that purpose. Kyle Young was
5 there to represent the construction group.

6 Q Was Sheri Wicker on that team?

7 A I think she may have been. I can't recall for
8 sure.

9 Q And I want to get a feel for how long did the EAC
10 team operate?

11 A About a month.

12 Q About a month.

13 A Yeah.

14 Q And was this -- how often or how much of your
15 workday would have been devoted to the EAC work
16 during that month?

17 A Practically all day during the month.

18 Q Okay. And would that be accurate for all the
19 members of the team?

20 A Pretty much. Now, Marion was in and out. Kyle
21 Young was in and out. The rest of us spent, you
22 know, pretty much full-time on that several
23 days -- or for a month.

24 Q During your time at SCANA, did you ever
25 participate in any other projects similar to the

1 EAC team?

2 A I don't think so. I'm not going to say for sure
3 or not. I mean, our job was really sort of like
4 that, so I did it for several years, but --

5 Q Okay.

6 A -- not a focused group effort like the EAC team.

7 Q And if I understood what you said earlier, the --
8 I guess the starting point for the EAC team work
9 was the reception of Westinghouse's EAC?

10 A Yes.

11 Q What were you provided from Westinghouse? Was it
12 a spreadsheet --

13 A Multiple spreadsheets and backup information. And
14 what we did is we took the information from
15 Westinghouse. We spent probably a week or two
16 with it. Came up with questions and then we
17 conducted interviews of people within Westinghouse
18 with their project controls group and their
19 accounting group to come in and explain a lot of
20 the information that they had transmitted to us,
21 because some of it didn't make sense to us,
22 honestly.

23 Q Can you give me an example of that?

24 A The way they did their cost estimates for labor,
25 we had to have someone from the project controls

1 come in. And they had switched the categories of
2 work and we almost had to have a roadmap to show
3 how they changed from the original cost to the new
4 cost that was in the EAC, because they changed
5 numbers -- account numbers and things like that.

6 Q So this wasn't -- if I understand that, was there
7 an original EAC from Westinghouse?

8 A There was an original cost, yes.

9 Q Original cost, okay.

10 A Yes.

11 Q And did that have a name? When y'all referred to
12 that material, did that have a --

13 A It did, and I can't remember what it was.

14 Q Okay. Well, that's -- like I said at the very
15 beginning, if it comes to you later --

16 A Right.

17 Q -- just interrupt and let me know.

18 A It had a -- it was the -- I don't know, cost
19 estimate. You know, I don't remember. It had a
20 name that we called it and we had it, but we had
21 the original file and then we got the EAC and the
22 two didn't match up directly because they had
23 changed some of their categories.

24 Q And that is what you had Westinghouse come in and
25 explain to you what they had done?

1 A Yes. It was actually CB&I, not Westinghouse.

2 Q Okay.

3 A Most of the cost that we were dealing with at that
4 time were CB&I cost, because the -- what we were
5 interested in was the target portion of the
6 contract. We didn't really care about the fixed
7 portion. But about 50 percent of the contract was
8 target price. And so the target price was
9 primarily a CB&I function, not a Westinghouse
10 function, at that time before Westinghouse took
11 over.

12 Q Okay. And when you say "target price," what does
13 that mean for somebody who's not in the business?

14 A Target price is the T&M, time and material,
15 portion of the contract that had a target that was
16 set at the original date and modified up; it never
17 went down. But if they completed -- if the
18 contractor completed their work under the target,
19 they got a big portion of a bonus there.

20 Q Okay.

21 A If they went over the target, then they went to a
22 minimum profit percentage. So -- but it was
23 basically a time and material piece of the
24 contract, so the risk was on the owner, but the
25 contractor stood to lose profit if he went over

1 that target.

2 Q Okay. So at the end of the month of the EAC team
3 work, what happened next?

4 A We gave a presentation to our management.

5 Q And who actually delivered that presentation?

6 A The whole team.

7 Q And who from management was there to receive it?

8 A I remember specifically that Kevin Marsh was
9 there. Lonnie Carter from Santee Cooper was
10 there. Mike Crosby from Santee Cooper was there.
11 From SCANA, I believe Steve Byrne was there. But
12 it's been a while and I -- for some reason, I
13 don't think Jimmy Addison was there.

14 Q Okay. And --

15 A Project manager, Ron Jones, was there.

16 Q Anyone else you remember?

17 A Well, our NND management. I don't think Carlette
18 was there. I think she may have been out at that
19 time. But Skip Smith, my boss, was there.

20 Q And I believe I've seen a PowerPoint addressing
21 this --

22 A Probably. We did have a PowerPoint of that.

23 Q Any materials besides the PowerPoint you recall
24 being prepared by the EAC team?

25 A We did -- we had a spreadsheet that we developed

1 that went along with the PowerPoint evaluating the
2 cost categories and showing our position on those
3 costs.

4 Q And what would you say was the overall conclusion
5 of the EAC team's work?

6 A Our conclusion was that CB&I had underestimated
7 the cost in a number of categories.

8 Q And can you give me an approximate number of how
9 underestimated you believe it was?

10 A I don't recall exactly, no. Less than a billion
11 dollars.

12 Q Less than a billion --

13 A Less than a billion, but it was a substantial
14 difference.

15 Q After the presentation to management, what
16 happened next with the EAC?

17 A Nothing.

18 Q Did the EAC team do anymore work, any follow-up?

19 A No.

20 Q What did -- what are you aware of management doing
21 with the EAC work?

22 A I'm not aware of them doing anything with it.

23 Q Did management ever follow up with the EAC team
24 wanting more information?

25 A No.

1 Q Do you know if management used the EAC team work
2 to prepare any future PSC filings?

3 A They used the contractor's price. That's, you
4 know, what I was talking about earlier.
5 Westinghouse provided us with a price. And our
6 cost was higher and the position from our counsel
7 and management was that to file for a higher cost
8 would have been, in effect, creating a contingency
9 on the project. What's critical to remember is
10 the actual cost to the owner was going to be what
11 the cost was and not what the contractor presented
12 as the cost, because it was a target -- it was a
13 time and material contract. So if he went over in
14 labor, they didn't have any skin in the EAC. The
15 risk was still on the owner.

16 Q Elaborate what you mean by that.

17 A If the cost exceeded the EAC, the owner still had
18 to pay it --

19 Q How is that --

20 A Because of the structure of the contract because
21 it was a target -- or a time and material based
22 contract.

23 Q Are you talking about prior to the switch to the
24 fixed-price?

25 A Yes. All of this was prior to the switch to the

1 fixed-price.

2 Q Okay.

3 A And that's why the fixed-price was such a good
4 deal and so important.

5 Q So prior to the fixed-price option, whether SCANA
6 was using the Westinghouse numbers or the EAC
7 numbers, they were still going to be responsible
8 for whatever the actual number was going to be?

9 MR. CHALLY: Object to form.

10 A Absolutely, yes.

11 Q After the -- do you know if there was ever a
12 second EAC team?

13 A I don't recall there ever being one, other than
14 associated with the fixed-price, you know,
15 negotiation. In a sense, we did the same thing a
16 year later.

17 Q And in those negotiations, SCANA did utilize the
18 EAC team's new nuclear cost projections?

19 A Yes.

20 Q Do you remember having any conversations about the
21 EAC team's conclusions with Carlette Walker? You
22 mentioned she was at the presentation.

23 A I don't think she was at the presentation.

24 Q Oh, you don't think she was at the presentation?

25 A I don't think she was there.

1 Q Okay.

2 A And yes, we did discuss it with Carlette.

3 Q And what do you recall about the substance of
4 those conversations?

5 A Just explained to her the difference between the
6 EAC is received from the contractor and what we
7 felt like was a better cost, which was higher.

8 Q And what do you recall if she had any reaction to
9 that?

10 A She was I guess a little concerned that we were
11 filing a lower number when we felt like the cost
12 was going to be higher.

13 Q Did she express those concerns to you?

14 A Yes.

15 Q Do you know if she expressed those in writing to
16 you? In conversation?

17 A Just conversation.

18 Q And as best as you can, can you recall any
19 specific exchanges about her concerns, what she
20 said?

21 A No, not really.

22 Q Did Santee Cooper participate in the EAC work? I
23 mean, I think you mentioned --

24 MR. CHALLY: Object to form.

25 A Marion was involved. He was not full time on our

1 team. He was involved and aware. I mean,
2 obviously, he worked on the model; he contributed
3 a lot to the model. That probably was his
4 greatest involvement. And they were present for
5 the presentation.

6 Q And I believe I asked you earlier, you, yourself,
7 have never given any testimony to the PSC?

8 A Correct, I have not.

9 Q Did you ever participate in helping Carlette
10 Walker prepare her testimony for the PSC?

11 A The way testimony was prepared, and I think we've
12 been through this before, but the outside counsel
13 for SCE&G would write a draft of testimony,
14 everybody's testimony. Then a group of people -
15 Sometimes I participated; sometimes not. - would,
16 in a conference room, show the words of the
17 testimony on the wall and discuss whether it was
18 accurate, not accurate and, you know, maybe change
19 words, change things around. But it was a group
20 effort to prepare all of the testimony that was
21 submitted with the filings.

22 Q And --

23 A That would be for anyone who was giving testimony,
24 including Carlette.

25 Q Did Carlette Walker ever express to you concern

1 about her 2015 testimony and the numbers being
2 submitted to the PSC?

3 A Yes.

4 Q Tell me what you remember about that.

5 A I just remember that she was not comfortable with
6 the lower numbers being filed as the -- you know,
7 the lower cost numbers being filed as opposed to
8 what the owner had developed as a cost.

9 Q Did she share that in these group effort meetings?

10 MR. CHALLY: Object to form. And I'm going
11 to instruct the witness not to answer. These are
12 meetings that involved SCANA lawyers, and I'm not
13 going to allow him to testify as to the substance
14 of communications that occurred in meetings
15 involving SCANA lawyers. If he has recollection
16 of a meeting or discussion with Carlette Walker
17 that excludes SCANA lawyers, he can answer the
18 question, but otherwise he can't.

19 MR. WEST: Well, first of all, let me say for
20 the record that I don't think it's your place to
21 instruct my witness about what he can and can't
22 answer.

23 MR. CHALLY: It is, Mr. West. It's SCANA's
24 privilege. And he, at the time of these meetings,
25 was a SCANA employee. So it is absolutely SCANA's

1 role to carve out and protect it's own privilege
2 as we're doing.

3 A Let me say something. And if I'm not supposed to
4 say you can erase it.

5 MR. CHALLY: No, no, no.

6 A Carlette was not even present --

7 MR. CHALLY: Whoa --

8 A -- when her testimony was being prepared.

9 MR. HALTIWANGER: Okay.

10 A Can I say that?

11 MR. WEST: Yes.

12 BY THE WITNESS:

13 A Carlette was dealing with problems. Her husband
14 had severe health issues, was in the hospital, in
15 Johns Hopkins, I believe. And she was not present
16 when her testimony was prepared.

17 Q Let me ask, were SCANA counsel involved in
18 preparing that testimony?

19 A Yes.

20 Q Besides SCANA counsel who else was involved?

21 MR. CHALLY: Object to form.

22 A I don't recall everyone's name who was present.
23 Typically, there would have been somebody from the
24 regulatory group at SCANA, and business and
25 finance, project management. Typically, involved

1 in those meetings, SCANA inside counsel and SCANA
2 outside counsel.

3 Q Okay. And I have to ask the question, and I
4 realize Mr. Chally may object.

5
6 MR. HALTIWANGER: I'll put on the record
7 that, you know, we've had a disagreement about
8 whether regulatory communications do or do not
9 qualify for attorney-client protection in this
10 situation, so I'm going to ask the question in
11 anticipation of an objection, and then I'll let
12 Mr. Browne and his attorney discuss what they want
13 to do.

14
15 BY MR. HALTIWANGER:

16 Q During the group discussion in preparing
17 Ms. Walker's testimony, for which she was not
18 present, were there disagreements about whether to
19 use the EAC numbers prepared by SCANA or the
20 Westinghouse numbers that were used?

21 A Yes.

22 MR. CHALLY: I move to strike the answer from
23 the deposition transcript. I'm instructing the
24 witness not to answer and divulge SCANA's
25 confidential attorney-client work product

1 information.

2 MR. HALTIWANGER: Mr. West, if you would want
3 to have a conference with your client.

4 MR. WEST: I would like to have an
5 off-the-record conference with him.

6 MR. HALTIWANGER: There's a conference room
7 right across the hall.

8 VIDEOGRAPHER: Off the record at 1:47 p.m.

9 (Off the Record)

10 VIDEOGRAPHER: We're on the record at 1:57
11 p.m.

12

13 BY MR. HALTIWANGER:

14 Q Mr. Browne, there's been a lot of press coverage
15 of what's been referred to as the Bechtel report
16 involved in the VC Summer project. Have you seen
17 some of that press coverage?

18 A Yes.

19 Q Were you at SCANA when the Bechtel report was
20 being prepared?

21 A Yes.

22 Q Did you have any interaction with the Bechtel
23 employees?

24 A No.

25 Q Were you aware that Bechtel was on the site or

1 what -- were you aware that they were on the site?

2 A Yes.

3 Q What was your understanding of what Bechtel was
4 doing?

5 A It was my understanding that Bechtel was there to
6 evaluate the project management, evaluate the
7 construction contractors and make recommendations
8 for improvements to aid in completing the project
9 on schedule and budget.

10 Q And was that your understanding at the time or is
11 that something you learned later?

12 A That was my understanding at the time.

13 Q And who informed you that that was going on?

14 A Marion Cherry.

15 Q Were you ever interviewed by Bechtel?

16 A No.

17 Q Were you ever told that there was a specific event
18 or occurrence that triggered the retention of
19 Bechtel?

20 A No.

21 Q Were you aware of the Bechtel report and its
22 conclusions prior to seeing it in the press?

23 A I knew there was a report. Well, I knew there was
24 a presentation. I don't think the original -- the
25 draft report was submitted. I knew there was a

1 presentation. And then at some point in early of
2 2016, I did see a list of recommendations and was
3 tasked with responding to some of those
4 recommendations. I never did see a complete list
5 of recommendations or the Bechtel report.

6 Q How did you get that list --

7 A From my supervisor.

8

9 (Interruption - Phone conference with
10 the Hon. John C. Hayes, III.)

11

12 MR. HALTIWANGER: Your Honor, this is Dan
13 Haltiwanger. We are in the middle of a deposition
14 of Ken Browne who was a SCANA employee for a
15 period during the construction of the VC Summer
16 plant. And we are on the topic of Carlette
17 Walker's testimony that was presented to the PSC
18 in 2015. I was asking Mr. Browne about the
19 preparation of that testimony. And, as background
20 so the question makes sense, and Mr. Chally will
21 have an opportunity to say whether this is an
22 accurate presentation or not, but there was a
23 gathering of SCANA employees that included --

24

25

THE COURT: Let me interrupt you just a
minute. Interestingly enough, I was working on

1 Carlette. You know, I hadn't heard the motion and
2 I was working on that yesterday, and I read the --
3 her testimony about the presentation. I mean, you
4 can elaborate, but I think I know a little bit
5 about where you're going.

6 MR. HALTIWANGER: Okay. Well, she -- the
7 testimony was that Ms. Walker was not present for
8 the preparation of her testimony that was
9 submitted to the PSC.

10 THE COURT: Right.

11 MR. HALTIWANGER: And the question of the
12 numbers that were submitted to the PSC for the
13 cost of completion, the use of the numbers
14 prepared by SCANA's EAC or estimate at completion
15 team versus Westinghouse's numbers that were
16 submitted to SCANA came up. And I'll let the
17 court reporter read the question and then give
18 Mr. Chally an opportunity to address his
19 objection.

20 THE COURT: All right. Question.

21 MADAM COURT REPORTER: The question was,
22 "During the group discussion in preparing Ms.
23 Walker's testimony, for which she was not present,
24 were there disagreements about whether to use the
25 EAC numbers prepared by SCANA or the Westinghouse

1 numbers that were used.

2 THE COURT: Mr. Chally.

3 MR. CHALLY: Yes, Your Honor, thank you. We
4 apologize for bothering you, but there is
5 testimony that this is a discussion, the specific
6 question relates to a discussion that involves
7 SCANA lawyers. And given that Mr. Browne received
8 information, was invited to that meeting because
9 he was an employee of the company and thus
10 information that was disclosed to SCANA's lawyers
11 in that context would remain privileged, we think
12 that discussions Mr. Browne may have had or may
13 have been exposed to in this meeting with SCANA
14 lawyers would be privileged. And so we believe
15 that that information shouldn't be disclosed.
16 I've made clear on the record that to the extent
17 Mr. Browne is familiar with discussions on this
18 topic that excluded lawyers, he is free to
19 disclose those answers or disclose those
20 communications throughout the deposition. So my
21 objection here is to questions that reveal
22 discussions that involve lawyers related to this
23 testimony.

24 THE COURT: Well, this wasn't in anticipation
25 of litigation or anything like that, I feel sure,

1 but simply because the lawyers were present, being
2 with the submission of some testimony and the
3 figures involved that it becomes privileged. Is
4 that your position, Mr. Chally?

5 MR. CHALLY: No, sir. I do not believe that
6 just because discussions existed, that lawyers
7 were also familiar with, that necessarily makes
8 the information privileged, but the purpose of
9 this meeting is to finalize -- to work with
10 lawyers and to finalize draft testimony. And
11 those communications that are had in the presence
12 of lawyers so that those lawyers can provide
13 attorney-client privileged advice as to the
14 substance of the disclosures made to the PSC is,
15 in fact, privileged.

16 MR. HALTIWANGER: And --

17 THE COURT: All right, go ahead.

18 MR. HALTIWANGER: Well, Your Honor, I was
19 going to say I should have introduced Mr. West.
20 There is -- Mr. Browne has personal counsel here
21 as well. And I just want to make sure, since you
22 were not aware, that we gave him an opportunity if
23 he wanted to address the issue before I responded.

24 THE COURT: Okay.

25 MR. WEST: Your Honor, this is John West from

1 Moncks Corner representing Ken Browne. Our
2 position today -- Mr. Browne's position today is
3 is that he came here for the purpose of telling
4 the full and complete story as he understands it
5 and to truthfully answer questions. And he feels
6 like that this is a very fine legal, technical
7 point. And he feels constrained in his ability to
8 fully testify. And he disagrees with counsel that
9 this is privileged. And we disagree with
10 counsel's instruction that he not answer the
11 question.

12 MR. HALTIWANGER: And if -- and so that the
13 plaintiffs' -- this is Mr. Haltiwanger again. The
14 plaintiffs' position is that this was not
15 litigation anticipated discussions. This was
16 discussions for regulatory compliance. We don't
17 believe that such business advice from attorneys
18 qualify as attorney-client privileged material.
19 And that also I would put on the record, if this
20 was to go forward, we'll note it now, that we
21 believe the crime fraud exception would apply here
22 in light of the -- in light of the situation and,
23 therefore, we think that we should be able to ask
24 the witness what he recalls about these
25 discussions.

1 THE COURT: All right. Well, what is the --
2 does anybody have a good plan as to how to wiggle
3 out of this at this point without -- I'm inclined,
4 Mr. Chally, to find that it is not privileged,
5 based on the limited information I have now. And,
6 quite frankly, this is done in the background of
7 having yesterday read the exact portion of the
8 testimony. In fact, I think I could spit out the
9 number that she said and the number that was given
10 because it's so fresh in my mind from yesterday.
11 But it doesn't sound like to me that it was done
12 in a legal setting. I don't know about crime
13 fraud exception. I mean, I do know what it is,
14 but I don't know about it in this situation. I
15 don't know how it's developed in this situation I
16 guess is what I'm saying as how we get there with
17 just the limited information that was given now.
18 But I'm going to rule that the witness will have
19 to answer the question, of course, truthfully.
20 And I'll do this, Mr. Chally, this is a very
21 awkward way to handle stuff, obviously, but I
22 will -- if you want to appeal my decision at this
23 point, I don't know whether you -- you know, how
24 you go about this, but I would suggest that if
25 SCE&G wants to get some quick ruling from an

1 appellate court, that the deposition be adjourned
2 and reconvened after SCE&G has an opportunity to
3 do whatever it may want to do and whatever its
4 available options are at this time. And, quite
5 frankly, I don't know what there are, but
6 that's -- I'm going to require him answer to the
7 question.

8 MR. CHALLY: Thank you, Your Honor. I do
9 have one follow-up question. Part of our concern
10 in this regard is that the plaintiffs or others
11 involved in these proceedings would take any
12 testimony that we believe reveals privileged
13 information to work as a waiver of our ability to
14 claim privilege on any related information.

15 THE COURT: No, I don't consider -- I don't
16 consider this a waiver. A waiver would have to be
17 something that was initiated by you. And this was
18 something you have vigorously objected and
19 vigorously argued against. I don't consider --
20 I'm not granting any waiver. This is specific as
21 to this particular testimony on this date at this
22 time in the arena y'all are in. So I don't see
23 how that could constitute any kind of waiver. But
24 again, I'm not the final arbiter.

25 MR. CHALLY: I understand that. And part of

1 the reason I raise that here on the record and
2 with all counsel present is to see whether anyone
3 intends to take the position that Mr. Browne
4 answering this line of questioning would work as a
5 waiver of SCANA's ability to claim privilege on
6 any other information.

7 THE COURT: Well, the limited power I have to
8 grant that at this point, I'm not sure exactly how
9 I do it. It's sort of moot at this time and
10 participatory ruling, but I don't consider this --
11 I don't consider my ruling -- I'm forcing him to
12 answer over defendant SCE&G's vehement objection.
13 And therefore, I can't conceive under any
14 circumstance how that would constitute a waiver.

15 MR. CHALLY: Okay.

16 THE COURT: But again, I haven't researched
17 it and I'm sitting in my children's --
18 grandchildren's playroom right now not with any
19 access to any great legal terms.

20 MR. CHALLY: Understood, Your Honor. I
21 think -- unless others have questions for you, I
22 think you have done all you can be fairly asked to
23 do for us today, so we will address this topic
24 further amongst ourselves and let you go back to
25 what you, no doubt, had more important things to

1 complete today. So thank you.

2 THE COURT: Well, I don't know if they're
3 more important to the world, but they're important
4 to me.

5 MR. CHALLY: Understood.

6 THE COURT: Okay, take care.

7 MR. CHALLY: Thank you.

8 THE COURT: Bye.

9 MR. CHALLY: So in determining whether or not
10 we need to seek that immediate relief, is anyone
11 intending to take Mr. Browne's answers to these
12 questions as a waiver of our ability to claim
13 privilege on anything else?

14 MR. SOLOMONS: No. From the plaintiffs,
15 the -- just like you've said, though, I want to
16 make sure we're clear. This is confined to the
17 very topic that we're talking about today. So I
18 don't want to act as if me saying no, I agree that
19 we won't -- Mr. Browne's actions aren't a waiver,
20 that that's some blanket statement that I'm not
21 going to dispute with you, Jon, some other waiver
22 argument, so.

23 MR. CHALLY: Yeah.

24 MR. SOLOMONS: As long as you understand that
25 confinement, then the answer is no from the

1 plaintiffs.

2 MR. COX: This is Jim Cox for the Office of
3 Regulatory Staff. We also do not take SCE&G's
4 position here to be a waiver, in light of Judge
5 Hayes' ruling. We take the position that Judge
6 Hayes took there. But as Gibson said, any other
7 ground that comes up, and not just the crime fraud
8 exception, but the point that I mentioned to you
9 off the record, Jon, if, in fact, at some point
10 SCE&G takes any action where it directly or
11 indirectly suggests that the fact that SCE&G
12 involved counsel in any decisions, that we
13 preserve the right to argue that that is a waiver
14 itself of privilege.

15 MR. CHALLY: All right, Central.

16 FRANK ELLORBY: Frank Ellerby for Central.
17 We agree this testimony would not be a waiver.

18 MR. CHALLY: Okay. And State?

19 MR. WECHSLER: Can we go off the record? I
20 have to call the office on this.

21 MR. CHALLY: Why don't you do that and then
22 I'll confirm Santee's position and then we'll come
23 back to you.

24 VIDEOGRAPHER: Off the record --

25 MR. CHALLY: Hold on, hold on. Hold on, sir.

1 Go ahead, Rush.

2 MR. SMITH: This is not a waiver.

3 MR. CHALLY: Okay. All right, we'll wait for
4 the State.

5 VIDEOGRAPHER: Off the record at 2:14 p.m.

6 (Off the Record)

7 VIDEOGRAPHER: On the record at 2:21 p.m.

8 MR. WECHSLER: The Attorney General's office
9 does not view this as a waiver.

10 MR. CHALLY: Okay. So with that
11 clarification, which I appreciate, and subject to
12 our continuing objection and instruction to the
13 witness not to reveal privileged information or
14 product information that he was exposed to or
15 participated in while at SCANA, and in recognition
16 of Judge Hayes' ruling, we'll keep moving forward.

17 MR. HALTIWANGER: Okay.

18 MADAM COURT REPORTER: And the question was,
19 "During the group discussion in preparing Ms.
20 Walker's testimony, for which she was not present,
21 were there disagreements about whether to use the
22 EAC numbers prepared by SCANA or the Westinghouse
23 numbers that were used?"

24

25

1 BY THE WITNESS:

2 A Yes, there were.

3 Q Describe what the disagreements were.

4 A The difference revolved around obviously the
5 difference in the cost estimates and whether it
6 was appropriate to go forward with a number that
7 we did not completely have confidence in as being
8 the most accurate reflection of the costs.

9 Q And when you refer to the one that you -- the
10 number that you do not have the most confidence
11 in --

12 A Yes.

13 Q -- which number are you referring to?

14 A The lower number that was provided by the
15 contractor, by Westinghouse and CB&I.

16 Q Who in the meeting advocated against using the
17 Westinghouse number?

18 A Primarily me.

19 Q And in addition to you, anyone else?

20 A Not vocally.

21 Q Well, what about --

22 A There was a lot of people who were thinking that,
23 but I'm the one who said why don't we use the cost
24 that we believe is more accurate.

25 Q And what was the response to your --

1 A The response - And this is what I was going to say
2 earlier. I've already said it three times
3 today. - was it was viewed that to go forward with
4 a higher cost above what the contractor had stated
5 would be, in effect, adding a contingency to the
6 project cost which had been ruled against by the
7 Public Service Commission. And so we were to
8 present the cost that had been provided by our
9 contractor without that additional cost or
10 contingency as the filing.

11 Q And was there a vote taken?

12 A No.

13 Q And who raised the point about or made the
14 argument that adopting the EAC numbers would be
15 using -- would be trying to add a contingency into
16 the number?

17 A It was one of the outside counsel. I'm not sure
18 if it was Mr. Ziegler or Mr. Willoughby, but one
19 of those two gentlemen who prepared our testimony
20 presented that case. And, frankly, it was a good
21 argument. I mean, I dropped the issue. And that
22 was where the decision was made to use -- or I
23 guess the decision had already been made, but it
24 was -- I dropped my argument whenever presented
25 with that.

1 Q And earlier your testimony was that Ms. Walker was
2 not at this meeting?

3 A I'm almost positive she was not at that meeting.
4 I'm not -- I couldn't say for sure, but I don't
5 believe she was there. If she was there, she
6 would have been, in addition to myself, raising
7 question.

8 Q And how do you know that?

9 A Because I know Ms. Walker.

10 Q And had she expressed that opinion to you before?

11 A Yes.

12 Q And did she express that opinion to you after this
13 meeting?

14 A Yes.

15 Q Describe that for us.

16 A She just told me she did not agree with going with
17 lower costs, she wasn't comfortable with that.

18 Q Did she elaborate on that at all with you?

19 A No.

20 Q Did you have more than one conversation where this
21 topic came up?

22 A Not really, not after it was resolved.

23 Q After 2015, based on the performance of the
24 construction project after the testimony was
25 filed, do you have an opinion about which numbers

1 were more accurate, based on the performance
2 following that date, the EAC numbers or the
3 numbers provided by Westinghouse?

4 MR. CHALLY: Object to form.

5 A After 2015?

6 Q Uh-huh.

7 A I would say neither one of them were accurate.

8 Q And why is that?

9 A Because they were both terrifically low. Even the
10 higher cost was well below where the costs were
11 trending.

12 Q And you had already left employment at SCANA when
13 the decision to abandon the project was made?

14 A Yes.

15 Q Prior to your leaving, were you ever a part of or
16 aware of discussions about potentially abandoning
17 the project?

18 A Not to my knowledge.

19 Q Prior to hearing about the announcement the
20 project was being abandoned, had you, yourself,
21 ever thought that there was a possibility the
22 project wouldn't be completed?

23 A Yes.

24 Q When would you have first had those thoughts?

25 A When Westinghouse declared bankruptcy.

1 Q Prior to that, did you believe the plants would
2 one day be operational?

3 A Yes.

4 Q Did you ever have any discussions with Carlette
5 Walker about her leaving employment at SCANA?

6 A Yes.

7 Q And describe what you recall about those
8 discussions.

9 A She described to me the last day that she was an
10 active employee where she was called into a
11 meeting and instructed to turn over her badge and
12 cell phone and laptop computer and told that she
13 had been under a lot of stress and they were going
14 to give her, I believe, a 90-day leave of absence
15 period to give her a break from things and
16 escorted her out of the building. I'm not sure
17 how long the period, but I think it was a 90-day.
18 It may not have been defined. But she had been
19 under a lot of stress, which she had. And she was
20 basically given time off to recover and
21 recuperate.

22 Q Did Ms. Walker herself indicate to you that she
23 was under a lot of stress?

24 A Yes.

25 Q And did she identify for you what the source of

1 her stress was?

2 A Yes.

3 Q And what was it?

4 A Her husband, at that time, was terminal with liver
5 disease -- or no, it's kidney, not liver. Kidney
6 disease. And she had been spending months with
7 him at Johns Hopkins Hospital. And she was also
8 dealing with the issues regarding the project --

9 Q And can you --

10 A -- the cost issues regarding the project.

11 Q And specifically what about those cost issues?

12 A She had a hard time personally giving testimony
13 that she did not believe.

14 Q Did she ever indicate to you that that was one of
15 the reasons she was leaving employment?

16 A I don't think she voluntarily left employment.

17 Q Okay. Did you ever work with Marty Phalen?

18 A No.

19 Q What about Mark Cannon?

20 A Yes.

21 Q Do you know whether Mr. Cannon is still employed
22 by SCANA?

23 A I don't think he is. In fact, I think he may have
24 left before I did.

25 Q Okay. What, if anything, did you hear about the

1 reason for his departure?

2 A Retirement. I don't know of any other reason.

3 Q We're going to go through a few documents.

4 MR. HALTIWANGER: Again, I made these before
5 I left Aiken, so I would have added more copies
6 after yesterday, but I didn't have an opportunity
7 to.

8 (Whereupon, Email SCANA_RP0639111 was
9 marked Exhibit No. 1 for
10 identification.)

11

12 BY MR. HALTIWANGER:

13 Q Bates number is SCANA_RP0639111. And Mr. Browne,
14 I've got a number of documents to go through.

15 A Yes.

16 Q And what I'll do is I'll have the court reporter
17 mark the document and hand it to you. I'm going
18 to give you the opportunity to review it as much
19 as you feel you need to. Some of these documents
20 may be longer and I only want to discuss a small
21 portion.

22 A Sure.

23 Q But whenever you're, you know, comfortable having
24 recognized the document or scanned over it, let me
25 know and I'll ask my questions.

1 A (Witness reviewing document). Okay.

2 Q Okay. Mr. Browne, do you recognize what Exhibit
3 No. 1 is?

4 A Yes.

5 Q What is it?

6 A It's an email from myself to Kyle Young -- or
7 actually to Kyle Young and also to my boss, Skip
8 Smith or Abney Smith, Carlette Walker and Shirley
9 Johnson addressing what I identified as a terrible
10 month's performance from August of 2013, labor
11 performance.

12 Q And specifically, does this deal with the PF,
13 performance factor, that we've been discussing?

14 A Absolutely. Yes, it does.

15 Q Okay. And I want to ask you about some of the
16 information in this email. The second email
17 there, the September 11, 2013 at 10:02 a.m. In
18 the first sentence there, you discuss that you're
19 putting together a sheet to analyze the monthly
20 performance each month rather than the
21 inception-to-date that CB&I reports. Why did you
22 do that?

23 A Because I felt like it was important to zero in on
24 an actual month's performance or a snapshot rather
25 than to wash that out by looking at the ITD, or

1 inception to date, which was from the beginning of
2 the project. And the reason -- one of the main
3 reasons for that is because in the beginning of
4 the project, they were cutting down trees and
5 making it flat. And this was construction --
6 above-ground construction that would be taking
7 place for the remainder of the project. The crews
8 did a pretty good job cutting down trees and
9 making the land flat. There's not a lot that you
10 can mess up on that.

11 Q Okay.

12 A But when you're building nuclear grade concrete
13 and buildings, that's where they had the problems
14 and that's what they were going to be looking at
15 for the rest of the project from this date
16 forward.

17 Q Were you asked to do that or was this your own
18 idea?

19 A I was asked basically by my boss, by Skip Smith.
20 But the way we were working, it was like a team
21 and a group effort. And this was what I was
22 familiar with and I was most qualified to do this
23 analysis. I had the information, so that's why I
24 was doing this.

25 Q Okay. The second to last sentence of the first

1 paragraph you have underlined "overall performance
2 for the month shows a PF of 2.52 with 73,411
3 man-hours worked and 29,076 earned." First of
4 all, let me ask if you can put that into layman's
5 terms. What does it mean with man-hour worked
6 verse earned?

7 A Whenever the project estimate is developed, they
8 use what they call unit rates, which is a
9 measurement of how much time would normally be
10 expected to -- you would use to do a particular
11 job, whether it's pouring concrete -- you know, if
12 you're pouring a yard of concrete and it takes --
13 and you would spend four hours pouring a yard of
14 concrete, then that would be your effective unit
15 rate.

16 Q Okay.

17 A Well, all of the work, all of the labor and
18 construction is estimated based on unit rates
19 which are industry standard, and that's what the
20 estimates were based on. And when you complete a
21 task, the time that you earn is what that unit
22 rate would be. The actual is how many it takes
23 you to do it. So if you're pouring a yard of
24 concrete and your unit rate is supposed to be four
25 hours and it takes you eight hours, then your

1 worked is eight, your earned is four and your PF
2 is going to be eight divided by four, or two.

3 Q Okay. So in my layman's understanding, it took
4 them 73,411 hours to do 29,076 hours of budgeted
5 work?

6 A Yes, correct.

7 Q The first sentence of the second paragraph --
8 yeah, the second full paragraph there it says,
9 "This shows a steadily increasing trend from a ITD
10 PF of 1.14 in January 2013 to the present of
11 1.25."

12 A Yes.

13 Q And that -- is that your recollection that the PF
14 was steadily increasing during that period?

15 A Yes. And what that is, is you're taking the total
16 hours worked-to-date divided by the total hours
17 earned-to-date. So what you were seeing there is
18 the high 2.52 for that month is bringing up the
19 average. Just like when you're in college and you
20 start out as a freshman and your GPR is really
21 down and you hope you're going to make some As
22 when you're a senior, this is the same thing here,
23 only it's the performance factor is increasing is
24 a bad thing and not a good thing.

25 Q Yeah. The second to last sentence in that

1 paragraph, "Unless this trend is reversed, we
2 should expect a substantial overrun of target
3 price craft labor cost." Do you see that
4 sentence?

5 A Yes.

6 Q The trend you're talking about is the steadily
7 increasing PF factor?

8 A That's correct.

9 Q And explain what the impact of a substantial
10 overrun of target price craft labor would have on
11 the market.

12 A It would increase the cost.

13 Q To who?

14 A To the owner, as long as the owner is responsible
15 for -- this is before the fixed-price and the
16 owner bore the risk of cost overruns on labor. So
17 as it takes them two-and-a-half-times,
18 two-and-a-half-hours to do one hour worth of work,
19 the owner is picking up the additional cost for
20 that, not the contractor.

21 (Whereupon, Email SCANA_RP0018657-58 was
22 marked Exhibit No. 2 for
23 identification.)

24

25

1 BY MR. HALTIWANGER:

2 Q And again, just let me know when you feel
3 you've --

4 A Okay.

5 Q -- had a chance to look it over.

6 A (Witness reviewing document). Okay.

7 Q Okay. And do you recognize what Exhibit No. 2 is?

8 A Yes.

9 Q And what is it?

10 A It's an email from myself to Carlette Walker and
11 Skip Smith.

12 Q Okay. And the date of this email appears to be
13 about a little less than a month after the
14 previous email we just looked at. Is that
15 correct?

16 A Yes.

17 Q And here this email includes the performance
18 factor for the month of September.

19 A Yes.

20 Q And if I can draw your attention to the second
21 paragraph there. The first sentence says,
22 "Unfortunately, the Consortium direct craft labor
23 performance has fallen off further this month with
24 a monthly PF of 2.68." Do you see that sentence?

25 A Yes.

1 Q What was the target PF at that time?

2 A 1.15.

3 Q The next sentence says, "The ITD project
4 inception-to-date is now 1.29." That would be the
5 inception-to-date PF you had discussed in Exhibit
6 No. 1, the previous email?

7 A Yes. Went from to. 25 to 1.29 as a result of
8 this month's performance.

9 Q All right. And going down to paragraph number two
10 in that email. It says, "The concrete work scope
11 has a monthly PF of 3.00 with 62,249 hours worked
12 and 20,750 hours earned."

13 A Yes.

14 Q Was concrete a major percentage of the work being
15 done at that time?

16 A Yes.

17 Q Was a PF of 3, did that occur often on this
18 project?

19 A Unfortunately, yes.

20 Q And is the layman's understanding, that means it
21 would take three times what was --

22 A Three hours to do one hour's work.

23 Q Okay.

24 A That's correct.

25 Q And obviously, you are aware or -- you were aware

1 of this back in 2013, correct?

2 A Yes.

3 Q And you were passing that information along to
4 other members of SCANA back in 2013?

5 A Obviously, yes.

6 Q The last sentence of that first page of the email,
7 "If performance continues at the current ITD rate,
8 the direct craft labor portion of the target price
9 will be roughly 28.6 percent over the budget. If
10 performance continues at the YTD rate, the direct
11 craft labor portion of the target price will be
12 70 percent over the budget." Let me ask you, what
13 explains the difference between the 28.6 and the
14 70 percent over budget?

15 A The ITD was project inception-to-date, which was a
16 longer period and had a lot more tree cutting and
17 land clearing. The YTD is year-to-date, that's
18 January 1, '13 to September '13, so it has a lot
19 more of the construction type work. So the YTD
20 performance factor is -- did I say that in here?
21 1.79 --

22 Q Okay.

23 A From January '13 to September '13, the PF for this
24 nine-month period is 1.79 with 616,986 worked.
25 344,736 earned.

1 Q Okay. And the -- you're talking about the impact
2 this would have on the direct craft labor portion
3 of the target price. What -- or how significant
4 is the direct craft portion of the target price?

5 A Very significant. Those are the people building
6 the plant.

7 Q What percentage of the projected budget would that
8 have been?

9 MR. CHALLY: Object to form.

10 A It should be about 75 percent of your budget.
11 Should be. This project was estimated with a
12 higher -- there's direct craft and indirect craft.
13 Indirect craft are the support people. They are
14 the ones who are bringing water, cleaning up and
15 things like that. This project had a higher
16 percentage of indirect craft than anything I've
17 ever seen before. They're the nonproductive
18 people. But on a normal project, it would be
19 75 percent. On this project I think was about a
20 half, 50 percent.

21 (Whereupon, Email SCANA_RP0388623 was
22 marked Exhibit No. 3 for
23 identification.)

24
25

1 BY MR. HALTIWANGER:

2 Q Just let me know when you --

3 A I'm ready.

4 Q You're ready. Let me ask if you recognize Exhibit
5 No. 3.

6 A Yes.

7 Q And what is Exhibit No. 3?

8 A It's an email from myself to Carlette Walker and
9 Skip Smith.

10 Q And what is the date of the email?

11 A March 10, 2014.

12 Q And the subject of this is, "Strange call from --
13 is it --

14 A Shimon.

15 Q Shimon?

16 A Yes.

17 Q Who is Shimon?

18 A Shimon was a engineer who worked for CB&I.

19 Q And obviously, from the subject, the body of this
20 email discusses a phone call you had gotten from
21 them.

22 A Yes.

23 Q Or from him. Did you ever meet with him to
24 discuss what his issues were?

25 A I assume that I did. I can't recall. And I don't

1 recall what he divulged to me in that meeting
2 either, unfortunately.

3 Q Okay.

4 (Whereupon, Email SCANA_RP0623144-5 was
5 marked Exhibit No. 4 for
6 identification.)
7

8 BY MR. HALTIWANGER:

9 Q Okay. Have you had a chance to review Exhibit
10 No. 4?

11 A Yes.

12 Q And do you recognize what Exhibit No. 4 is?

13 A Yes.

14 Q Describe for us what is Exhibit No. 4.

15 A It's a string of emails, I guess three of them
16 originating with Bernard Hydrick or Bernie Hydrick
17 who worked in our construction group. He was our
18 scheduler in the construction group. And he was
19 passing along to others on our team the schedule
20 that have been provided by CB&I for us to review.

21 Q So would this be -- is it fair to say this was
22 part of the information y'all were gathering as
23 part of the EAC work?

24 A Probably not. This is just a general schedule of
25 construction.

1 Q So this would not be part of the EAC that
2 Westinghouse had provided to SCANA?

3 A I doubt it.

4 Q And what --

5 A The EAC is generally a cost-related issue and not
6 schedule.

7 Q Oh, okay.

8 A The schedule impacts the EAC, but we did not
9 review schedule when we were reviewing the EAC.

10 Q Okay. The bottom email on the first page is --
11 subject is, "Bud and Ryan." Who are they?

12 A I have no idea.

13 Q All right. I want to read the third email on the
14 chain from the top from Bernard Hydrick at -- on
15 August 5, 2014 at 9:50 a.m.

16 A Yes.

17 Q I'm going to read the first three sentences. "The
18 schedule is a joke, there is nothing verifiable in
19 what they posted on RT01. It is just a grouping
20 of hammocks with long arbitrary durations, in my
21 opinion, with no relationships or ties to sub-tier
22 activities. This is not acceptable." Let me ask,
23 first of all, what is RT01?

24 A It was a computer network drive that CB&I would
25 put information on that SCANA people had access

1 to. So if SCANA wanted to -- or if CB&I wanted to
2 pass information in the form of a computer file,
3 such as a Primavera schedule document, they would
4 put it on RT01 drive and then SCANA would have
5 access to it. They could go to the drive and
6 download it and open it to look at it.

7 Q Okay. What was your understanding of his use of
8 the phrase, "It is just a grouping of hammocks"?

9 A Hammock is a -- I don't know if it's an official
10 term, but it's certainly used a lot in scheduling.
11 You know how a hammock would hang between trees or
12 something? Whenever you're doing a schedule, you
13 may have a critical path line and then the hammock
14 would be activities that were done parallel to
15 that, that if you looked at it in a diagram on
16 paper, kind of hangs down like a hammock does, and
17 so that's why those are called are hammocks. And
18 it's just a grouping of activities that are done
19 in a sequence on a schedule.

20 Q Okay. And the email you sent at the top of the
21 page at 11:18 a.m. it says -- you were sending it
22 to Skip Smith and the statement is, "Look at what
23 they gave us to perform our review on."

24 A Right.

25 Q So you actually, at the time, did review the

1 schedule that was submitted to SCANA?

2 A Yes.

3 Q Did you agree with Mr. Bernard Hydrick's
4 observation that the schedule is a joke?

5 A Yes. Well, to elaborate on that, it was
6 insufficient information to be able to perform a
7 review on.

8 Q Were there any actions taken in response to
9 getting this schedule to try to get more
10 information or --

11 MR. CHALLY: Object to form.

12 A I don't recall this specific situation, but I'm
13 sure there were actions, there were requests made
14 to get additional information.

15

16 MR. HALTIWANGER: Why don't we go ahead and
17 switch the tape.

18 VIDEOGRAPHER: This is the end of tape number
19 three in the deposition of Kenneth Browne. We're
20 off the record at 2:58 p.m.

21 (Off the Record)

22 VIDEOGRAPHER: This is tape number four in
23 the deposition of Kenneth Browne. We're on the
24 record at 3:08 p.m.

25 (Whereupon, Email SCANA_RP0006936 was

1 marked Exhibit No. 5 for
2 identification.)

3

4 BY MR. HALTIWANGER:

5 Q Mr. Browne, just let me know when you're ready.

6 A I'm ready.

7 Q Do you recognize Exhibit No. 5?

8 A Yes.

9 Q What is it?

10 A It's an email from myself to Skip Smith and
11 Carlette Walker.

12 Q The subject is update on real schedule status.

13 A Yes.

14 Q I guess what context are you using that subject
15 line in?

16 A It's real is to identify -- you have to get down
17 into the email, but it is saying that -- we're
18 saying there's a June 19 Unit Two substantial
19 completion date, but it's actually June 26th,
20 which is late June. And if you read on further,
21 it's saying that that's not a real date because
22 there are hard constraints in there holding the
23 schedule to prevent actual work durations from
24 moving the schedule out. This was all in an
25 effort to maintain a June substantial completion

1 date which was, at that time, the contractual
2 date.

3 Q But -- and I don't want to put words in your
4 mouth. I just want to make sure I'm understanding
5 what you're saying. There was a June 2019
6 substantial completion date for Unit Two. Who --
7 when you say "just learned," who would have been
8 providing that information?

9 A Either CB&I or Westinghouse.

10 Q And the date that they gave you was June 26, 2019?

11 A Yes. When you look into the schedule, it's a June
12 26th date.

13 Q But as -- your belief, though, was even though
14 that June 26th was not real because of certain
15 factors that you're listing below that?

16 A Yes.

17 Q And those factors were exactly what?

18 A It's based on assumption that NNI, that's Newport
19 News, who was supplying panels for the shield
20 building, meets their original delivery dates,
21 which did not happen. And CB&I Services, CB&IS is
22 able to start shield building erection on
23 March 24, 2015. And then I said that's a hard
24 constraint in the schedule, which means that
25 whenever the schedule is developed somebody

1 actually typed in the date of March 24th instead
2 of allowing it to slide out based on events that
3 have to take place before that happens.

4 Q So they have to get the panels before they can --

5 A They have to get the panels before they can start
6 putting it together. And the other thing, the
7 foundations had to be complete before they could
8 start putting that together as well.

9 Q Okay.

10 A And so if the foundation pushes out past March
11 24th, but you have somebody keying in a hard
12 date of March 24th, it's not a real schedule --

13 Q Okay.

14 A -- because you're saying they're going to start
15 work on March 24th, but the foundation's not
16 ready to start work on March 24th.

17 Q The last sentence of that paragraph, "All along,
18 our management has been told the current date is
19 June 2019 and we pass it along."

20 A Yes.

21 Q When you say "our management has been told," by
22 who?

23 A By our contractors.

24 Q When you say "we pass it along" who are you
25 passing it along to?

1 A Anybody who asks.

2 Q Would that include the PSC?

3 A That would include the PSC, ORS, your wife at
4 home, anybody.

5 (Whereupon, Email SCANA_RP0246420-41 was
6 marked Exhibit No. 6 for
7 identification.)

8

9 BY MR. HALTIWANGER:

10 Q Do you recognize Exhibit No. 6?

11 A Yes.

12 Q And what is Exhibit No. 6?

13 A That's an email chain originating with an email
14 from myself. Let's see, that was -- to a string
15 of people. Kevin Kochems replied to that and then
16 I replied to that from Kevin.

17 Q I've really one question about this one document.
18 In the email from Mr. Kochems that you were a
19 copy -- a recipient of, the second one on that
20 page, there's a number five, which I believe
21 corresponds to your number five in the previous
22 email, the question of "What schedule do we base
23 our EAC on?"

24 A Yes, sir.

25 Q Mr. Kochems reply was, "I think this needs to be

1 schedule we plan to file with the PSC whether we
2 think it is achievable or not." Do you see that
3 statement?

4 A Yes.

5 Q What was your interpretation or how did you
6 understand his statement that, "I think this needs
7 to be the schedule we plan to file with the PSC
8 whether we think it's achievable or not"?

9 MR. CHALLY: Object to form.

10 A I'm going to get you to repeat that for me again.

11 Q Okay. Well, I guess, what was your understanding
12 of his proposal to use the "schedule we plan to
13 file with the PSC whether we think it's achievable
14 or not"?

15 MR. CHALLY: Same objection.

16 A In order to do a cost estimate, you have to have
17 some time schedule to base your cost on, the
18 estimate on. And my question on the second page
19 was what schedule do we need to base our cost on.
20 And Kevin's response to me was that it needed to
21 be the same schedule that we filed with the PSC so
22 that the cost and the schedule would match, that
23 they would be copacetic with each other, they work
24 with each other. And at least I did not, and I'm
25 sure Kevin did not either, believe that it was an

1 achievable schedule.

2 Q Okay.

3 (Whereupon, Email SCANA_RP0255947 was
4 marked Exhibit No. 7 for
5 identification.)

6

7 A Whenever you're ready.

8 BY MR. HALTIWANGER:

9 Q Okay. Do you recognize Exhibit No. 7?

10 A Yes.

11 Q And what is it?

12 A That's an email from myself to Carlette Walker,
13 Kevin Kochems, Shirley Johnson, and Skip Smith.

14 Q And the subject of this email is a Revision 2 of
15 the cancellation analysis. And then there's an
16 attachment that is entitled
17 CancelCostEST8-20-12-Rev2.

18 A That's a spreadsheet.

19 Q That's what I was going to ask. That appears to
20 be an Excel spreadsheet?

21 A Yes.

22 Q And when you worked with the spreadsheets, does
23 the numbers there, the 8-20-12 indicate a date?

24 A Yes.

25 Q Is that the creation date or is that the date that

1 you last worked with it? How do you date those?

2 A Generally, it was the last date that it was
3 accessed.

4 Q Then what does Rev2 indicate?

5 A Revision 2. So there may have been a previous
6 date, maybe 8-19-12, and that would have been like
7 a Revision 1.

8 Q All right. What is a cancellation analysis?

9 A Periodically, we were asked to prepare a cost
10 analysis for terminating the project, and that was
11 primarily for a use in the analysis of looking at
12 options. I don't know -- I don't think it was
13 every time we did a filing, but occasionally with
14 filings they had to do a cost justification of the
15 project. And in order to do that justification,
16 they would have to look at the cost that would be
17 incurred to cancel the project, which would be and
18 adder to -- for example, if you were comparing it
19 to a gas combined cycle site, it's acknowledging
20 that you couldn't just stop the project and walk
21 away and not spend money and cancel it.

22 Q There would be costs associated with it?

23 A There would be costs associated with doing that.
24 And the fact that this was prepared does not
25 indicate that there was ever a consideration of

1 canceling the project at this time, it was just
2 part of that analysis.

3 Q Okay.

4 (Whereupon, Email SCANA_RP0689335 was
5 marked Exhibit No. 8 for
6 identification.)

7

8 A Okay.

9 BY MR. HALTIWANGER:

10 Q And have you had a chance to look at Exhibit
11 No. 8?

12 A Yes.

13 Q And what is Exhibit No. 8?

14 A Exhibit No. 8 is an email from myself to Carlette
15 Walker passing along the third revision of that
16 same sheet, Cancel Cost Estimate 8-22-12 Revision
17 3.

18 Q And I guess -- I just don't know. Do you know
19 whether this number or these calculations would be
20 included in PSC filings?

21 A They would not.

22 Q What would they -- where would they show up at the
23 company?

24 A They would be used in an analysis that Dr. Lynch
25 did to justify continuation of the project.

1 (Whereupon, Email SCANA_RP0015099-100
2 was marked Exhibit No. 9 for
3 identification.)
4

5 A Okay.

6 BY MR. HALTIWANGER:

7 Q All right. Can you tell us what Exhibit No. 9 is?

8 A That is an email from myself to Jimmy Addison. It
9 looks like one, two, three, four different, five
10 different emails in the chain.

11 Q All right. Turning to the last email in the
12 chain, or the earliest email. That would be one
13 authored by you on October 21, 2015?

14 A Yes.

15 Q The first sentence there says, "Jimmy, here is an
16 attempt at answering your question from
17 yesterday." Who would Jimmy be?

18 A That would be Jimmy Addison.

19 Q And from reviewing this document and from your
20 memory, do you recall what his question from
21 yesterday was?

22 A I do not.

23 Q The subject, "Cost comparison as requested current
24 PSC budget vs. settlement w/o fixed-price option."
25 What -- I guess can you tell us what we're looking

1 at here?

2 A I'm not sure, so I'm going to -- if it's okay, I'm
3 going to make a guess, but I believe what this is
4 referring to is the status of the PSC budget at
5 this time compared to the option that we had
6 whenever we went to the fixed-price. And this was
7 a comparison of the prior budget from the previous
8 filing to the option without fixed-price. You
9 know, we had an option to go fixed-price or not
10 fixed-price with the settlement that we had when
11 CB&I got out of the project.

12 Q Okay.

13 A And I think what this is is the comparison of that
14 previous filing budget as it would be changed by
15 the settlement without execution of the
16 fixed-price option.

17 Q Okay. And --

18 A So there's three prices there. There's the prior
19 budget, there's the price with the settlement
20 without the fixed-price, and then there's another
21 one, which would be the settlement with the
22 fixed-price.

23 Q And the third one is the option that eventually
24 was taken?

25 A Yes.

1 Q And this is looking at what would the cost of the
2 section option would have been?

3 A Yes.

4 Q And based on the first email in that chain there,
5 did you determine what SCANA's price would be
6 under that option two?

7 A It looks like we did, yes.

8 Q And that conclusion, was that option two was going
9 to be \$1,038,876,000 more than what was currently
10 filed at the PSC?

11 A Honestly, I don't remember the numbers, but that's
12 what the email says.

13 Q Okay.

14 A That does look like it's fixed-price. It says for
15 55 percent fixed-price.

16 Q I want to give you an opportunity to make sure --

17 A Yeah. I'm not sure if that means that it was the
18 fixed-price or -- 55 percent was fixed in the
19 project, roughly, as well. So I'm not sure if
20 that's the fixed-price option or if that means
21 that 55 percent of the project is fixed and
22 45 percent is still a target price.

23 (Whereupon, Email SCANA_RP0617852 was
24 marked Exhibit No. 10 for
25 identification.)

1

2 BY MR. HALTIWANGER:

3 Q Okay. I'm going to try this. My brilliant
4 printing skills, I printed the attachment that was
5 the article -- the Post and Courier article that
6 was part of what's been marked as Exhibit No. 10,
7 but I didn't print it collated, so it's copies of
8 the first page then copies of the second. If
9 anyone wants to dig out and actually look at it,
10 I'll let them, but I don't know if you recall the
11 article or not, if you'd like to see it.

12 MR. CHALLY: I'm sorry. You've got one copy
13 of it?

14 MR. HALTIWANGER: No, I've got six copies,
15 but there's six of the first page and then six of
16 the second. It didn't get collated. And I
17 just -- I have no idea if he remembers anything
18 about this or not. I just -- so I wasn't going to
19 go through the effort of doing this if he has no
20 recollection of --

21

22 A That email is just passing along an article from
23 the paper. I mean, I don't know . . .

24 Q I guess the reason I'm asking, would there -- why
25 would you share that story, I guess would be my

1 question?

2 A Because I kept up with the Charleston paper, being
3 from Charleston. And the other people did not
4 keep up with the Charleston papers. And there was
5 an article about the project and I thought people
6 would be interested in it.

7 Q Well, do you recall any discussions followed your
8 sending out that copy of the article?

9 A I don't, no.

10 (Whereupon, Email SCANA_RP0024002-18 was
11 marked Exhibit No. 11 for
12 identification.)

13

14 A I'm ready.

15 BY MR. HALTIWANGER:

16 Q It sounds like you're familiar with this email.

17 A This is the issue that I discussed earlier today
18 when you asked about having the discussion with
19 the SLED agent and office equipment fraud, that's
20 what this is about.

21 Q So let me ask you so it's clear for the record.

22 Do you recognize Exhibit No. 11?

23 A Yes.

24 Q And what is it?

25 A It's an email from myself to Sean Burk who was a

1 manager at CB&I.

2 Q And why did this email come about?

3 A This email came about because they had a supplier
4 who was submitting all three bids on equipment,
5 office equipment, ordering it from Staples, having
6 it shipped to the site directly from Staples,
7 marking it up to CB&I, and CB&I was marking it up
8 and selling it to SCE&G. And we caught them doing
9 it.

10 Q And I just want to -- and it's a lengthy email, so
11 I'm not going to go through point by point, but a
12 couple of things I want to ask you about. The
13 second line of the email it says -- you use the
14 phrase "this is backup information approved by
15 you" is underlined. What was the purpose in
16 underlining that particular provision?

17 A It was pointing out to Mr. Burk that he was the
18 one who approved the purchases, although I knew he
19 wasn't looking at it, but his signature was on the
20 forms.

21 Q And what was the -- what is the basis for your
22 belief he wasn't looking at it?

23 A Had he been looking at it, he would not have
24 approved it.

25 Q The bottom of the second full paragraph there, I

1 will read this sentence, "Instead, through the
2 purchase from Compuworld, CB&I have spent this
3 amount unnecessarily and thus increased the cost
4 to SCE&G by this amount plus 3.09 percent in G&A,
5 \$440.86, and 4.562 percent profit, \$677.09, to
6 CB&I, with a total of \$15,518.95 of unnecessary
7 cost." Take me through -- what is that
8 mathematical extrapolation you're doing there?

9 A This gets back to the time and material piece of
10 our contract. Whenever CB&I billed SCE&G for
11 anything there were markups, a series of markups
12 on there. The 3.09 percent is generally the
13 administrative markup on every cost. 4.562 is the
14 CB&I profit, which is on top of the cost plus the
15 G&A. So in spending -- if you go a couple of
16 lines up, they spent \$14,397 unnecessarily on this
17 one purchase.

18 Q Okay.

19 A And in addition to that, there's the G&A and
20 profit because CB&I made more profit when they
21 spent more money. So I was just pointing out to
22 him that it's more than the \$14,000, it's \$15,518
23 that CB&I billed SCE&G for that was invalid on
24 this one purchase.

25 Q All right. Well, let me see if we can't

1 extrapolate that further, because your email stops
2 with the cost going to SCANA.

3 A Right.

4 Q How would that cost then extrapolate out to
5 ultimately the ratepayers?

6 A I'm not sure.

7 Q Okay.

8 A Obviously, it would cost more.

9 Q Well, what elements would go into that? Would
10 there be a return on investment by SCANA?

11 A Yes.

12 Q Would there also be any other additional cost
13 added on that would eventually flow down to --

14 A I don't think so.

15 Q I guess I'm trying to get a rough idea of what
16 that \$15,000, once it reaches to the point of
17 being put into rates, what amount it would be.

18 A I don't know. But if I can, can I tell you the
19 end of this story?

20 Q Yes. Very interested.

21 A We went back to CB&I and we found that they had
22 purchased more than a million dollars worth of
23 stuff from this guy here in Columbia who ran
24 Compuworld. We did get satisfaction from them on
25 that, so we wound up taking back 100 percent of

1 everything they had spent with Compuworld. We
2 withheld from their invoices and dared them to
3 dispute it. So not only did we find them doing
4 this, we saved -- we got over a million dollars
5 back because of catching this happening.

6 Q And that was part of your job at SCE&G?

7 A Yes. I made it my job. If you read on down --
8 and I'm going to get on a soapbox here.

9 Q All right.

10 A But hopefully you guys have caught on to me in the
11 little bit of time we've spent together. I looked
12 after all of this money like it was my money being
13 spent. And it may have been a \$10 billion
14 project, but I squeezed every nickel and dime that
15 I could get my hands on. And that's why this was
16 caught and that's why this was done.

17 Q Well, in that line, the statement in the second to
18 last paragraph, "This \$15,519 represent to me an
19 indicator of the attitude that I see every month
20 as I review the CB&I invoices. This is not an
21 isolated case." Can you think of some other
22 examples besides this where --

23 A Not as gross as this.

24 Q Okay.

25 A But I can think of many instances where they spent

1 money that should not have been spent.

2 Q Okay. And the last sentence of that same
3 paragraph says, "Again, CB&I has this
4 responsibility to SCE&G, and SCE&G has this
5 responsibility to our customers." Explain for me
6 why you had made the statement that SCE&G has this
7 responsibility to our customers.

8 MR. CHALLY: Object to form.

9 A I've got an 89-year-old mother in Charleston
10 living on \$1300 a month Social Security, and when
11 she gets a 300-something electric bill and can't
12 pay for her medicine, that's what I mean by that.
13 And there's people like that all over the state.

14 (Whereupon, Email SCANA_RP0388794-797
15 was marked Exhibit No. 12 for
16 identification.)

17

18 BY MR. HALTIWANGER:

19 Q And if it helps you, I don't plan on asking you
20 any questions about the original email from Don
21 DePierro.

22 A Okay.

23 Q Do you recognize Exhibit No. 12?

24 A Yes.

25 Q And what is it?

1 A It's an email. The very end of the string is an
2 email from me to Skip Smith, Carlette Walker,
3 Kevin Kochems, Sheri Wicker and Shirley Johnson.

4 Q And if we can look at the second page of Exhibit
5 No. 12. This would be an email from Abney Smith
6 on October 2, 2014 at 9:15 p.m. First of all,
7 well, I should set the context here. The email
8 that begins this chain is from a Don DePierro.
9 Who was he?

10 A He was a vice president at CB&I.

11 Q And it's an email from him that triggered the
12 following email chain of which I want to ask you
13 some questions, but --

14 A Senior Vice President of nuclear power at CB&I.

15 Q Okay. What was, I guess, Mr. DePierro, what was
16 he emailing Mr. Archie about or what is the --

17 A It looks like a follow-up to a phone call that is
18 discussing the implementation of a team to track
19 progress and work on-site.

20 Q Okay.

21 A Without reading all of the details of this.

22 Q All right.

23 A By the way, the Ken here, Ken, Chris and Ron, that
24 is not me. That's another Ken.

25 Q And where are you looking for that one?

1 A That's on the last page.

2 Q Oh, okay. Okay, okay. I want to read to you some
3 of the email originally drafted by Mr. Abney
4 Smith.

5 A Yes.

6 Q It's on the second page, "A lot of the same CBI
7 talk on planning, protocol, briefings,
8 presentations, alignments. So not very impressive
9 in my opinion. A wise old mentor once very
10 bluntly suggested to me get off you're
11 a-blank-blank-blank and get out in the field and
12 find out what's going on and get the job done
13 without all the b-blank-blank-blank
14 s-blank-blank-blank. CB&I has productivity
15 problems in the field, can't meet a schedule. WEC
16 keeps changing design that impact field and shops.
17 The shops have quality and production problems.
18 There are a multiple of procurement issues. The
19 field non-manuals and indirects are out of
20 control. CBI, one of the largest contractors in
21 the universe can't find the necessary resources."

22 A Other than that everything was great.

23 Q I guess I was going to ask you, this is a litany
24 of, I guess, complaints Mr. Smith was making?

25 A Skip. When I say Skip Smith, this was my boss.

1 Q Okay. And this is in October of 2014?

2 A Yes.

3 Q And were you familiar with those problems
4 occurring in that time frame on the project?

5 A Yes.

6 Q Do you think Mr. Smith was accurate in his
7 recitation of the problems that CB&I was
8 experiencing?

9 A Yes.

10 Q On the first page at the bottom, there's an email
11 from Carlette Walker. She states, "I agree 100%.
12 We need actionable items on their WEC and CB&I
13 parts to drive change and let's quit talking about
14 and around the problems. Just for the record, I
15 don't have any emotion in my voice." And then a
16 little smiley face emoticon. I wanted to ask a
17 question about the last statement there, "I don't
18 have any emotion in my voice." Do you know what
19 she's referring to?

20 A Yes.

21 Q Tell us what you believe she's referring to?

22 A Understand through discussions with Ms. Walker
23 that she was -- I don't know if accused is the
24 right word, but she was chastised on occasion from
25 some of our senior management for showing too much

1 emotion related to the project.

2 Q What type of emotion was she showing?

3 MR. CHALLY: Object to form.

4 A I was not present when she was chastised with
5 this, but it would be my assumption that she was
6 being challenged as a woman working in a man's
7 world and showing emotion as a woman.

8 Q But was -- I guess the emotion, was this anger?
9 Frustration? Happiness? What type of emotion?

10 MR. CHALLY: Object to form.

11 A Anger, passion to try and make it a better
12 project.

13 Q And based on your work on the project, is -- are
14 those emotions -- would those have been typical of
15 what you experienced with working with Ms. Walker?

16 MR. CHALLY: Object to form.

17 A Yes. And not just Ms. Walker, I might add.

18 Q Who else would you include?

19 A Myself.

20 Q Anyone else?

21 A Mr. Smith.

22 Q Okay. Anyone else?

23 A No, unfortunately.

24 Q At the top is an email you authored on October 3,
25 2014. It says, "Skip, Preach on Rev. You hit the

1 nail on the head. The Consortium response to
2 every issue is another program, more people, more
3 money. The new OSS group is a perfect example."
4 What was the OSS group?

5 A That is the group that is addressed in the
6 telephone call and the follow-up email from Don
7 DePierro. And actually, I have forgotten what
8 the OSS stands for, but it was a group that was
9 going to be established on-site to monitor
10 progress and schedule performance and things like
11 that, when we already had groups that should have
12 been doing that and they were not doing their
13 jobs. So instead of making the groups who should
14 have been doing it do their job, they bring in
15 another group with more people - We're paying the
16 cost because we're paying labor. - and allow the
17 other people to continue not doing their job.

18 Q And those costs would eventually be passed on to
19 the ratepayers?

20 A Absolutely.

21 MR. CHALLY: I was late, but I'm going to
22 object to the form of that question.

23 Q A little bit more than halfway down that email the
24 statement is, "At least one-half of their effort
25 is hiding costs, not fixing problems." Who is the

1 their you're referring to?

2 A The contractor, CB&I.

3 Q The third from the end sentence there. It says,
4 "Bring this up and we'll be challenged as petty
5 because it's only \$12,500."

6 A Yes.

7 Q Why did you anticipate that would happen?

8 A Because it happened on numerous occasions before
9 this and with this.

10 Q And who would challenge it as petty?

11 A The people we dealt with at CB&I.

12 Q And what was SCANA's management's response to
13 their challenge of it being petty?

14 MR. CHALLY: Object to form.

15 A They didn't care. I mean, if we found something
16 that was wrong that we shouldn't be paying for, we
17 didn't pay for it.

18 (Whereupon, Email SCANA_RP0381916-17 was
19 marked Exhibit No. 13 for
20 identification.)

21

22 A Okay.

23 BY MR. HALTIWANGER:

24 Q Okay. Can you tell us what Exhibit No. 13 is?

25 A Exhibit 13 is an email string. Looks like it's

1 mostly between me, Carlette, Skip. I would say
2 that's it, yes.

3 Q Okay. And I want to discuss your email which is
4 at the top of the exhibit. But before that, I
5 want to put that into context by reading
6 Ms. Walker's email to you on August 27, 2014 at
7 8:34 a.m.

8 A All right.

9 Q She emails, "How is the schedule work going?
10 Close to wrapping up?" And in response, your
11 email says, "Carlette, I don't know that wrapping
12 up is a good description, covering up is probably
13 better." With respect to covering up, who would
14 be covering up?

15 A This email is addressing a joint schedule effort
16 between the owner and the contractor. And we were
17 going through multiple critical path strings in
18 the schedule, looking at what's the longest thing
19 that's pushing out to completion. And I would say
20 it would be a joint effort at covering up,
21 primarily the contractor because they were driving
22 the schedule show. They had possession of the
23 schedule and they were making all of the changes
24 and controlling the schedule, which is their job
25 as the EPC contractor. The owner's job is to

1 review it and, you know, not necessarily control
2 it or even participate in it.

3 Q And I guess would it be the owner's job to be
4 evaluating that schedule?

5 A Yes.

6 Q And that's part of what you did?

7 A Yes. I was a junior participant in that. The
8 schedule primarily resided with the construction
9 group.

10 Q Okay. About halfway down that paragraph, you say,
11 "It is unanimous that there is a 100 percent
12 chance we will not meet the September dates."
13 What are the September dates you're referring to?

14 A I'm not sure.

15 Q Is it possible those were the September completion
16 dates we had discussed earlier for Units Two and
17 Three?

18 MR. CHALLY: Object to form.

19 A We have a schedule that shows completion of Unit
20 Two in September of '18 and Unit Three in
21 September of '19, so I'm assuming that not meeting
22 the September dates would be those two dates,
23 September '18 and September '19 schedule dates.

24 Q The second -- or down near the bottom of the
25 email, there's a paragraph sentence, "If I

1 honestly believed any of this was possible, I
2 would stop on the way home and buy a lottery
3 ticket, just one." When you say "any of this,"
4 what would "this" be?

5 A Meeting those September '18 and September '19
6 completion dates.

7 Q The last line there it says, "Note, please don't
8 forward this note because I would prefer to make
9 my departure on my terms and not because I was
10 fired." I think I can detect some sarcasm, but at
11 the same time, I want to ask what you meant by
12 that statement. Or was it even sarcastic?

13 A Well, it was actually serious.

14 Q Okay.

15 A Because if this note had been passed along to our
16 senior project management people, I very well
17 could have been fired.

18 Q Why do you believe that?

19 A Because I was challenging the position, the
20 official position of the project.

21 Q In the portion we read earlier, though, you stated
22 that it was unanimous that there's a 100 percent
23 chance we will not meet the September date, so I
24 assume that means it was not just your opinion.

25 A Right.

1 Q Who else had that opinion?

2 MR. CHALLY: Object to form.

3 A I would assume everybody in the schedule review.
4 What we did is we put together a schedule and we
5 put together a list of challenges to meeting that
6 schedule. And going down the list of challenges,
7 most of the challenges were acknowledged as going
8 to happen.

9 Q Okay.

10 A So it was very little chance of meeting the
11 scheduled dates due to those complications.

12 Q And I guess -- but isn't that information that in
13 your job you would be passing along to your
14 management?

15 A Not in my job.

16 Q In whose job?

17 A That would be in the scheduling, the people
18 responsible for scheduling in the construction
19 group.

20 Q Okay.

21 A I was participating in this from a business and
22 finance standpoint because our costs had to be
23 reflected off of the same information that was in
24 their schedule.

25 Q And you believed that you may be fired if you

1 brought this information to whose attention? Or
2 if this note had been forwarded to who?

3 A To Ron Jones.

4 Q Okay.

5 A The project manager.

6 Q So if you had -- at the time you wrote this email,
7 the concern was that if these scheduling problems
8 were brought to the attention of the scheduling
9 growth, there could be retaliation against you?

10 A Yes, for putting this in writing and sending it to
11 someone outside of our group.

12 Q Okay. And that someone out of the group was
13 Carlette Walker?

14 A She was in the group.

15 Q She was in the group, okay.

16 A I sent this to Carlette.

17 Q Okay. Did you ever have any discussions with
18 Carlette Walker about potentially being terminated
19 for this?

20 A For this situation, no.

21 Q Well, did Ms. Walker ever discuss with you
22 concerns that she may be terminated?

23 A No.

24 MR. HALTIWANGER: Okay. I'm going to go
25 ahead and pass the witness and move along.

1 try not to cover the same ground he did and ask
2 the same questions, but I will be following up on
3 different issues that he talked to you about.
4 I'll try to familiarize you with the subject
5 matter and then move into the follow-up questions
6 that I have on that. One of the risks in moving
7 around like that is you may not understand the
8 context in which my question is being asked. It
9 may be vague or I may not have directed you to the
10 right time period or you may not be sure of what
11 I'm asking. If that occurs, I'd like for you to
12 be sure to let me know about what you're not sure
13 of and I'll try to improve the question so that
14 you understand it. Will you let me know if you
15 don't understand?

16 A Sure, yes.

17 Q Mr. Browne, other than you, do you know of anyone
18 else who worked on the project who worked for both
19 Santee Cooper and SCANA/SCE&G during the life of
20 the project?

21 A Not off the top of my head, not immediately.

22 Q Do you feel that background put you in sort of a
23 unique position as far as understanding the
24 project?

25 A Yes.

1 Q Can you describe a little bit about how that is?

2 A Well, I'm not sure, but I think at the time I left
3 I had been on the project longer than anyone else,
4 because I was actually the third person to start
5 working on the project whenever I started. And
6 both of the guys who were there when I left -- or
7 when I started left before I did, Ron Clary and Al
8 Paglia.

9 Q So at the time you left the project, you had been
10 on the project longer than anyone else from both
11 of the owners, right?

12 A Yes. And the contractors.

13 Q Now, in addition to that continuity that you had
14 there, do you feel that you're having worked for
15 both owners kind of gave you some sort of
16 perspective on the project that others didn't
17 have?

18 A Possibly, yes.

19 Q Do you have any thoughts as to how that -- how
20 your perspective might be different?

21 A Well, it's hard to get into other people's minds,
22 but I believe that I had a respect for Santee
23 Cooper that others did not have on the project. I
24 thought of them as more than a 45 percent junior
25 partner. I mean, I really felt like I was working

1 for both SCE&G and Santee Cooper when I was there,
2 which, technically, everyone was because Santee
3 Cooper paid 45 percent of the salary for everybody
4 working on that project. And I understood what
5 that meant and I felt like I was working for both.
6 If it was good for SCE&G and good for Santee
7 Cooper, then I was behind it.

8 Q Did you take any actions -- or what actions did
9 you take to kind of manifest that respect that you
10 felt toward Santee Cooper while you were
11 officially working for SCE&G?

12 A I just did my job in that manner. You know, I
13 tried to represent both utilities and the
14 customers of both utilities.

15 Q Did you work closely with Marion Cherry from
16 Santee Cooper?

17 A Yes.

18 Q Can you describe what kind of relationship you had
19 with him?

20 A We were very good friends. And with regards to
21 the business and financial aspects of the project
22 that I was involved in, I kept Marion up to speed
23 on what was going on.

24 Q You mentioned earlier at several points about the
25 concern that you and Carlette Walker and Skip

1 Smith had about the cost and schedule overruns at
2 the project. Is that correct?

3 A Yes.

4 Q Did Marion Cherry share those concerns?

5 A Yes, he did.

6 Q How do you know that?

7 A Because we had many conversations discussing that.

8 Q Can you describe how those conversations typically
9 went? What was said in those conversations?

10 A It's hard to paraphrase and get it into words,
11 but, I mean, we agreed on things. You know, it's
12 hard to -- really hard to describe that, but we
13 were of like minds with regards to the project
14 status and what needed to be done, you know.

15 Q Is that very similar to the way you felt about
16 your relationship with Carlette Walker?

17 A Yes.

18 Q Did you and Mr. Cherry or you and Ms. Walker ever
19 talk about your frustration in getting senior
20 management of the owners to understand the
21 seriousness of the cost and schedule delays?

22 MR. CHALLY: Object to form.

23 A Yes.

24 Q Can you describe how often those conversations
25 occurred?

1 A Maybe every few months. In general, we had a
2 project review meeting monthly, a monthly project
3 review meeting. And we -- the business and
4 finance team tried to get -- while we were able to
5 attend the meeting, we tried to get business and
6 finance related commercial issues on the table and
7 discussed in those meetings. And we were
8 repeatedly challenged and told that the commercial
9 issues did not need to be discussed in those
10 meetings. And the reason we wanted to get them on
11 the table and be discussed in those meetings is
12 because of the people who were there, the
13 manager -- you know, the senior management was
14 attending those meetings. If we had a separate
15 commercial meeting, we were lucky to get the
16 project manager there. They thought a commercial
17 meeting had to be just the commercial folks from
18 the contractor and SCE&G. And we wanted an
19 audience of senior management and senior -- you
20 know, executive management to be aware of the
21 commercial issues that we were describing.

22 Q Were you generally told before those meetings not
23 to bring it up or were you told during the meeting
24 when you tried to bring it up?

25 A Usually during the meetings.

1 Q And who would tell you not to bring that up?

2 A Either Ron Jones, the project manager. Jeff
3 Archie occasionally would tell us. Sometimes the
4 contractor would ask us and say let's discuss that
5 at a commercial meeting and not in here. Because
6 that's a meeting with, you know, 50 or 60 people
7 attending the meeting, not ten or 12 that we may
8 have at a commercial meeting.

9 Q Did you feel that Ron Jones was concerned to the
10 right degree about the scheduling cost delays on
11 the project?

12 MR. CHALLY: Object to form.

13 A That's hard for me to say. I don't know. You
14 know, I can't really say whether he was concerned
15 or not about it.

16 Q Did Mr. Marsh, Mr. Addison or Mr. Byrne ever shut
17 you down as far as trying -- when you were trying
18 to present this information about commercial
19 issues?

20 A No.

21 Q In general, from your experience on the project,
22 do you feel that the senior management of Santee
23 Cooper was more concerned about the schedule and
24 cost delays than the senior management of SCE&G?

25 MR. CHALLY: Object to form.

1 A I can't address that. I don't know.

2 Q You don't know. If I would use the term senior
3 management of Santee Cooper, who would you believe
4 that that included?

5 A Michael Crosby and Lonnie Carter.

6 Q And if I were to say the senior management of
7 SCE&G or SCANA, who would you put in that group?

8 A Jeff Archie, Steve Byrne, Kevin Marsh, Jimmy
9 Addison.

10 Q Now, Marion Cherry at Santee Cooper, he took over
11 the position that you had --

12 A Yes.

13 Q -- after you retired from Santee Cooper. Is that
14 correct?

15 A Correct.

16 Q Did you have any transition time with him when you
17 were still at Santee Cooper?

18 A Yes, about a month.

19 Q Okay. And what did you do during that time
20 period?

21 A Introduced him to everybody, showed him the way
22 around and the idiosyncrasies of working at a
23 nuclear plant and things like that.

24 Q Now, I believe you mentioned earlier that you
25 presented the 2014 estimate at completion cost

1 team analysis to senior management from SCE&G. Is
2 that correct?

3 A That's correct.

4 Q And I believe you testified that management didn't
5 do anything with it after that point. Is that
6 right?

7 MR. CHALLY: Object to form.

8 A It's hard to say what they did or didn't do. I
9 mean, we didn't see any impact from it.

10 Q Did that frustrate you at all?

11 A A little. A little.

12 Q Did you talk to Carlette Walker about not getting
13 any follow-up from management on the team's
14 conclusions on that issue?

15 A I don't recall specifically addressing that with
16 Carlette. It's possible. We did feel -- I mean,
17 we never even got to a final report stage. We had
18 a draft report and gave our presentation. And
19 that was sort of the end of it.

20 Q Why didn't you complete a final report?

21 A Moved on to other things.

22 Q Did anyone tell you to not write a final report?

23 A No.

24 Q You mentioned earlier that you believe there were
25 material misrepresentations made by SCE&G in some

1 filings. Is that correct?

2 A If representation as a, you know, positive outlook
3 and status of a project, if that's a material
4 representation, then yes, that would be a true
5 statement.

6 Q Now, is it correct that no one at SCE&G or SCANA
7 told you that your team's cost analysis was not
8 going to go into the PSC filing because it was
9 believed to not be the most accurate numbers?

10 MR. CHALLY: Object to form.

11 A No.

12 Q So no one gave you the explanation that the
13 numbers that were going to be presented to the PSC
14 in 2015, the Consortium's numbers, were being used
15 because those numbers were believed to be the most
16 accurate?

17 MR. CHALLY: Object to form.

18 A That is -- we were never told that.

19 Q Okay.

20 A I'll say it, I think for the fourth or fifth time,
21 we were told that to use a cost higher than what
22 we received from our contractor would be, in
23 effect, placing a contingency on the project. And
24 we were not permitted to have a -- any level of
25 contingency. So the contractor provided us with a

1 cost estimate. I'm guessing the proper action
2 would have been to go back to the contractor and
3 say are you sure this is your cost and ask him to
4 increase his cost. Now, that's kind of a strange
5 thing to do, but maybe that's what should have
6 been done, but we didn't do that. We took what
7 the contractor provided us as his cost estimate,
8 we did not add any contingency to it. And the
9 filing was made based on the contractor's cost.

10 Q And that reason that you were given as to why that
11 number was being used in the filing, that was the
12 only reason that you were told as to why that
13 number was being used?

14 MR. CHALLY: Object to form.

15 A Yes.

16 Q I'd like to go back in time, Mr. Browne, to before
17 your 2014 EAC team's work. You had mentioned that
18 the Consortium had made promises to improve
19 productivity that they never were able to meet.

20 A Right.

21 Q When did they start making these promises,
22 roughly?

23 A 2012. Whenever the vertical construction started.
24 And, you know, the first few months of poor
25 performance with that, they said, you know, give

1 us time, as soon as we get things rolling it's
2 going to get better. And it never got better.

3 Q In what form did they make these promises? Was it
4 emails, conversations, all of the above?

5 A All of the above. Generally, meetings. You know,
6 presenting in the monthly meetings we're going to
7 put this team over here and they're going to do
8 better; we're going to take the ones that worked
9 on Unit Two and move them to Unit Three; it's
10 going to get better. You know, those types of
11 issues.

12 Q When did you start becoming skeptical of their
13 promises that they would be able to meet their
14 promises?

15 A Probably about 2014 was when I started getting
16 concerned.

17 Q Do you remember when in that year?

18 A Let's see, when did we -- maybe 2013, because at
19 the time of these emails is about the time I was
20 getting concerned that things weren't turning
21 around. That was August of '13, September of '13.

22 Q What exhibit are you looking at, Mr. Browne.

23 A Exhibit No. 1 and Exhibit No. 2.

24 Q So these two emails, Exhibit No. 1 and Exhibit
25 No. 2, where you're expressing dismay at the poor

1 PF factor that's being performed, this is when you
2 started becoming skeptical of the Consortium's
3 ability to --

4 A This is when I started taking action on it. And,
5 you know, a little before this, I was getting
6 concerned. It was hard because they were giving
7 us reports that did not have the monthly
8 performance factor and just an inception-to-date,
9 so it was watered down. And I started doing my
10 own monthly's and looking at the work that had
11 been completed in a month and said, you know,
12 we've got a trend developing here, if it's not
13 corrected, we're going to be in trouble. And
14 that's what these emails were about.

15 Q And one thing I should mention, Mr. Browne. Is
16 there's going to be a number of occasions where
17 you know exactly what my question is going to be,
18 even before I finish. And I would just ask that
19 you -- even though you know that, if you hold off
20 on answering until I finish, because, otherwise,
21 it's going to be really difficult for the court
22 reporter.

23 A Sure.

24 Q And it also helps because you might -- it helps
25 make sure you know what the question is too, so

1 it's good for everyone.

2 Did Carlette Walker and Skip Smith become
3 skeptical of the Consortium's promises on
4 improving productivity at about the same time you
5 did or was there some time difference in who first
6 became skeptical?

7 MR. CHALLY: Object to form.

8 A Maybe a little bit of a lag. I mean, I had to put
9 the things on paper and show, but once they saw
10 the trends, it didn't take long for them to become
11 concerned.

12 Q Have you ever heard the expression "the canary in
13 the coal mine?"

14 A Yes.

15 Q Do you feel like you were sort of the first canary
16 to kind of express alarms about this issue?

17 A Yes.

18 Q Now, I want to be sure I understand your
19 organizational chain. You reported to Skip Smith,
20 correct?

21 A Correct.

22 Q Who else reported to Skip Smith?

23 A Occasionally, we would have an analyst. Maybe for
24 a year or two we had an analyst working for us.
25 And then in the last six months before I left we

1 brought in -- actually he was an accountant, but
2 he was going to be taking my place. But most of
3 the time it was just me, just the two of us
4 working for SCE&G.

5 Q Who was that accountant that was brought in?

6 A His name was Joey Gillespie.

7 Q Do you recall when he started on the project?

8 A He was originally in our audit group. And I'm not
9 sure when he started in that group, but he changed
10 over from SCANA Services audit to SCE&G business
11 and finance about six months before I left, so
12 maybe January of '17 or '16 or so.

13 Q So he was in Carlette Walker and Kyle Kochems'
14 group?

15 A No. He was in the audit group which was under
16 Iris Griffin at the time, assigned to our project.

17 Q Do you know whether Joey Gillespie started doing
18 the same work that you had been doing on the
19 project after you left?

20 A Yes. That job changed drastically when we went to
21 fixed-price because we didn't have that monthly
22 target price invoice to review. But Joey took
23 over most of my responsibilities.

24 Q Who did Skip Smith report to when you were on the
25 project?

1 A Ron Jones, the project manager.

2 Q And who else reported to Ron Jones, to your
3 knowledge?

4 A On my goodness. Direct reports? All of the
5 managers, the design engineering, Brad Stokes,
6 Alan Torres who was general manager of
7 construction. Roosevelt Ward was like ODNP, human
8 performance, you know, it's a nuclear term. Larry
9 Cunningham was quality. Licensing was April Rice.
10 When I left, Al Paglia before April. I think
11 that's everybody.

12 Q And to your knowledge, do you know who Ron Jones
13 reported to?

14 A Ron Jones reported to Jeff Archie.

15 Q Do you know who Jeff Archie reported to?

16 A Jeff Archie reported to Steve Byrne.

17 Q Did Skip Smith ever talk to you about whether he
18 shared the concerns about the Consortium's
19 productivity and cost overruns with Ron Jones?

20 A No.

21 Q Did you ever ask him about that?

22 A No.

23 Q Why not?

24 A I just assumed it really wasn't any of my
25 business. I mean, my job was to tell Skip. What

1 Skip did with it was his business.

2 Q Did Skip Smith ever share with you any actions he
3 was taking to try to address the situation about
4 cost overruns?

5 A No.

6 Q What was the relationship, organizationally,
7 between Skip Smith and Carlette Walker?

8 MR. CHALLY: Object to form.

9 A Carlette was in the SCANA chain as the vice
10 president of nuclear accounting, but they sort of
11 functioned as co-leaders of our business and
12 finance group. I mean, Carlette had her people
13 working for her and Skip had me, and we worked as
14 a team. But skip did not report to Carlette.

15 Q Mr. Browne, in 2014 when your team reached its
16 cost estimates, the EAC team reached its cost
17 estimate, did you feel that you needed anymore
18 data from the Consortium to know that their cost
19 estimates were inaccurate?

20 A There were a lot of questions we had that we never
21 got answered, you know, for the Consortium. But,
22 honestly, we felt like ours was a better number,
23 not because of them leaving out anything, just
24 assumptions that they made and the performance
25 factor that they used. It was a big one.

1 Q And let's go ahead and kind of dive into those
2 assumptions that are relevant to the estimate of
3 cost.

4 A Sure.

5 Q You mentioned performance factor. Would you say
6 that's the most important factor?

7 A Yes.

8 Q And can you list other factors that are relevant
9 to that estimate? Kind of -- and also describe
10 how important they are.

11 A Sure. Other factors would be the ratio of
12 indirect craft to direct craft. I think I
13 mentioned earlier indirect craft are people who
14 are maybe cleaning up and bringing -- you know,
15 keeping ice water in the coolers and taking care
16 of the facilities on-site. They're not directly
17 involved in constructing the plant. And there's a
18 ratio that was the direct to indirect ratio.
19 Normally, I was used to seeing maybe ten or
20 15 percent. If you have a hundred people direct
21 craft, maybe 15 people working on indirect to
22 support them. On this project, that ratio was out
23 of whack. At times, there were more indirect than
24 there were direct. Then there's a ratio of field
25 non-manual. Field non-manual are supervisors,

1 engineers, people like that. They're actually on
2 site, but they're not doing manual work. So
3 there's going to be a ratio of field non-manual to
4 direct craft. But everything in the estimate and
5 on a project derives from how many people does it
6 take to do the direct craft building of the
7 construction, so those are ratios that are
8 important. And you also have to look at the
9 schedule, how many months -- how long is the
10 project, because there's a cost associated with
11 maintaining a site that doesn't show up in your
12 manpower. You know, you're renting offices,
13 you're taking -- you've got water you're paying
14 for, you've got your utilities and all those sorts
15 of things, your warehouse space, maybe. And
16 there's a cost per month that you have to figure.
17 So the longer your project is, the more months you
18 have of that cost. So those are the big things
19 that drive your costs.

20 Q And those four things that you mentioned,
21 performance factor, ratio of indirect to direct
22 labor, field non-manual and schedule, were those
23 all factors that went into your cost estimate
24 model?

25 A Yes.

1 Q Are there any other factors that you can recall
2 now that went into that model?

3 A I can't recall any. Those were the big ones.
4 Those are what drove the costs.

5 Q This model, did you have -- did you create some
6 kind of database with formulas in it that would
7 spit out an estimate or --

8 A It was a spreadsheet, just a fairly large
9 spreadsheet. You could print it all on one sheet
10 with the variables that you would change, such as
11 those ratios and your performance factor and the
12 schedule, duration and how much per month does it
13 cost to maintain a site. And when you put all of
14 that in there, the cost is going to come out.

15 Q So on the spreadsheet, if you were to change the
16 estimated schedule completion date, there would be
17 a formula in the spreadsheet that would show how
18 that would affect the estimated cost for the
19 estimated completion?

20 A Yes.

21 Q And you talked about this earlier, but I just want
22 to go back and be sure I understand. Was it your
23 testimony that both the Consortium estimate at
24 completion costing and your EAC team used the same
25 cost estimate model?

1 A No, that's not true.

2 Q Okay. Can you explain to me what model they used?

3 A They didn't use a model. They developed a
4 bottoms-up estimate that had reams of paper in it,
5 where ours was just one sheet. So their cost was
6 built up based on starting from, you know, how
7 much rebar is in the project, how much structural
8 steel, how much concrete. We started with how
9 many labor hours are in the project and applied
10 those ratios to it to get a total. But we got our
11 labor hours from their raw data.

12 Q They were, though, using some sort of assumption
13 or estimate of what the productivity factor would
14 be?

15 A Yes.

16 Q Do you have any understanding as to how they used
17 that number in their estimate?

18 A They used the 1.15 performance factor in their
19 estimate.

20 Q And do you have any understanding as to how --
21 what formulas they used in their model versus the
22 formula that you used in your model with a given
23 performance factor? Do you understand that
24 question?

25 A No.

1 Q Okay, let me -- so I understand they used a
2 performance factor of 1.15 --

3 A Right.

4 Q -- and your EAC team used a performance factor of
5 1.40. Is that right?

6 MR. CHALLY: Object to form.

7 A I'm not sure.

8 Q Okay.

9 A I'm not sure what we used. We used several. I'm
10 not sure what the final number was based on.

11 Q Okay. And we'll get to that later. Do you have
12 any understanding as to whether they weighted the
13 performance factor differently in their model
14 versus the weight that you placed on performance
15 factor in your cost estimate model?

16 A I don't think so, but I don't know.

17 Q Did Westinghouse ever provide you with the reams
18 of paper that you're talking about that they used
19 to come up with their EAC?

20 A Some of it, not all.

21 Q Can you describe what portion of it you received?

22 A We got a huge spreadsheet with, I don't know,
23 maybe 300 pages of stuff that went all the way
24 back to how much steel and how much rebar and how
25 much concrete and rolled into a cost for doing the

1 work.

2 Q Were you able to understand the spreadsheet that
3 they gave you?

4 A Pretty much. Pretty much.

5 Q Did your EAC team use the same schedule assessment
6 that the Consortium EAC cost team used in 2014?

7 MR. CHALLY: Object to form.

8 A Yes.

9 Q Did you just -- did your team just accept the
10 schedule assessment that was used by the
11 Consortium or did SCE&G do any independent
12 schedule assessment?

13 A Parties in SCE&G did do a schedule assessment, but
14 business and finance did not. And we used the
15 same schedule that the contractor used.

16 Q And I want to understand if you used that same
17 schedule because the construction team at SCE&G
18 did some analysis and came up with the same
19 assessment that the Consortium did or if the
20 construction team said just use the schedule
21 assessment that the Consortium came up with? Do
22 you understand the difference there?

23 A I do, but we were instructed to use the same
24 guaranteed substantial completion dates that were
25 in that schedule for our cost estimate.

1 Q So your understanding is that SCE&G did not do any
2 independent schedule assessment, but was -- but
3 you were told to use the dates that the Consortium
4 --

5 A Well, my understanding is that SCE&G did do an
6 independent schedule assessment. I don't know the
7 results of that, but there was an assessment done
8 by others within SCE&G. But for consistency and
9 cost and matching, we had to use the same
10 schedule. You have too many variables. If you
11 start throwing in a different schedule and trying
12 to explain why is your cost different from theirs,
13 well, we used a different schedule. So we based
14 our cost on the same schedule that the contractor
15 used.

16 Q And I guess the question I would ask you about
17 that is your team said, look, we can't use the
18 same -- we don't think it's accurate to use the
19 same performance factor that the Consortium used,
20 so we're not going to assume that same performance
21 factor. Why could your team not say we're not
22 going to use the same schedule assessment that the
23 Consortium's using because we don't think that's
24 accurate --

25 A Because we were not the schedule people. We were

1 the commercial people.

2 Q So your team was doing what was told?

3 MR. CHALLY: Object to form.

4 A Correct.

5 Q And who told your team to use the schedule
6 assessment that was provided by the Consortium?

7 MR. CHALLY: Object to form.

8 A Our team was not told to use the schedule
9 assessment by the Consortium. Our team was told
10 to use the guaranteed substantial completion dates
11 that were in place at that time.

12 Q And those dates to your understanding, were those
13 dates the same schedule assessment input that the
14 Consortium EAC team used to develop its cost
15 analysis?

16 A Yes.

17 Q Who told your team to use the dates, the
18 guaranteed substantial completion dates, that the
19 Consortium had agreed to?

20 A I'm not sure.

21 Q Who would you generally expect that to have told
22 you that?

23 MR. CHALLY: Object to form.

24 A I don't know the source of -- you know, we were
25 just told to use the same dates for consistency

1 that the contractor used.

2 Q Do you recall who in your chain of command first
3 told you about your role in heading up this EAC
4 team?

5 A That would have been Skip, my boss.

6 Q Could it have been Skip who told you to use the
7 guaranteed substantial completion dates as the
8 input?

9 MR. CHALLY: Object to form.

10 A Possibly.

11 Q Is there anyone else who you would put within the
12 realm of the possible people who could have told
13 you that?

14 MR. CHALLY: Same objection.

15 A It did not originate with Skip. Somebody would
16 have told Skip.

17 Q And just to go back to your testimony, if the
18 substantial completion dates that were used by
19 your team had been later dates than what you used,
20 that would have increased the cost estimate that
21 your team reached. Is that correct?

22 A Yes. Not by a substantial amount, but -- because
23 your -- the cost was driven by the labor cost. If
24 you've got a certain amount of work to do, if it
25 takes you a little bit longer to do it, your labor

1 costs are the same. The only cost that would be
2 impacted by the schedule is that monthly carrying
3 cost for the facilities and things like that,
4 which is a small portion of the total cost
5 estimate. Does that make sense?

6 Q It does. Correct me if I'm wrong, but you're
7 saying that performance factor is by far the most
8 important input on this EAC --

9 A Absolutely. Absolutely.

10 Q That's the input that you cared the most about it?

11 A Yes, performance factors and those ratios that I
12 addressed.

13 Q Okay. And that would be the indirect to direct
14 labor and the field non-manual ratio?

15 A That's right.

16 Q Can you describe the process that your team used
17 in coming up with the PF estimate that you used
18 for determining your own EAC estimate?

19 A We looked at what -- some specific areas where
20 they focused on doing work and we got some input
21 from our construction group, Kyle Young and his
22 people. And we looked at what their performance
23 factors had been on that recent work similar to
24 some of the work that was going to be done in the
25 future. And we applied a little bit of

1 performance improvement, but not a lot to that.

2 And we felt like that was a rational analysis of,
3 you know, what could be expected in the future for
4 performance.

5 Q Why did you feel that was the rational approach?

6 A Because it would not be realistic to base it all
7 on the -- all categories of work if they weren't
8 going to be doing much of that work in the future.
9 And also, we wanted to have some focused areas
10 where experienced people were doing things for at
11 least the second time going forward because there
12 would be a lot of repetitive work. So we wanted
13 to take advantage of the learning curve instead of
14 having brand new people coming in because that
15 impacts your performance. So we felt like, you
16 know, these people have done this before; what was
17 their performance in this area; the design is all
18 worked out; they're doing it for at least a second
19 time; what was their performance here. And we
20 felt like that was the best that they could
21 achieve would be doing that.

22 Q Were you the lead on your team as far as
23 developing that PF assumption or estimate to be
24 used in the EAC model due to your engineering
25 background?

1 A Yes.

2 Q I think you mentioned that your EAC team conducted
3 some interviews during this process. Is that
4 correct?

5 A Yes.

6 Q Do you recall who you interviewed?

7 A The primary person was Joe Aurostogui, and I'm
8 going to make a stab at spelling his last name.
9 A-r-o-s-t-e-g-u-i, I believe. He was a CB&I
10 project controls manager.

11 Q And why did you interview him?

12 A Because he was the lead project controls person
13 for CB&I on developing their cost estimate.

14 Q What information did you gather from him?

15 A An explanation of that 300 page spreadsheet and,
16 you know, explaining those -- their methodology
17 and developing their estimate. Because in order
18 to have an opinion on their estimate, we had to
19 understand as best we could how they developed it
20 and what went into their development of the
21 estimate.

22 Q Did you talk to him about the 1.15 PF that the
23 Consortium was using in its estimate?

24 A Yes.

25 Q What did he say about that?

1 A It was too low.

2 Q He didn't agree with it?

3 A He didn't agree with it.

4 Q Did he say why?

5 A He just didn't think they were going to make that
6 performance.

7 Q Did that factor into your conclusion that it
8 wasn't a good factor to use in --

9 A It didn't really factor into it. It reinforced
10 it.

11 Q Did he mention anything about why the Consortium
12 was proposing that productivity factor when he
13 didn't think it could be reached?

14 A Over his paygrade. He was directed to use it.

15 Q Did he mention who --

16 A No.

17 Q Were there any other interviews that your team
18 conducted, other than Joe?

19 A We interviewed some of the Westinghouse people,
20 and I can't remember specifically who. But most
21 of the costs were CB&I cost. And Joe was our --
22 we talked to him more than once.

23 Q Did CBI hire both the direct and the indirect
24 laborers?

25 A Yes.

1 Q Did they also hire the field non-manual labor?

2 A Yes. Well, there were Westinghouse people on-site
3 who would be considered field non-manual, but they
4 were not in the target price, they were in the
5 firm price scope.

6 Q So that wouldn't be a factor in your assessment of
7 costs?

8 A Correct. We were evaluating target price only,
9 target and T&M.

10 (Whereupon, Email SCANA_RP0258894-96 was
11 marked Exhibit No. 14 for
12 identification.)

13

14 BY MR. COX:

15 Q So, Mr. Browne, I've handed you a document marked
16 Exhibit No. 14. Like Mr. Haltiwanger instructed
17 you, go ahead and take a moment to review this
18 document. It's an email that I think you reviewed
19 partially in an earlier exhibit. It also includes
20 an attachment. Just let me know when you're ready
21 to discuss it.

22 A Sure. (Witness reviewing document). Okay.

23 Q So, Mr. Browne, the first sentence you talk about,
24 "a plan for review of the EAC when we get it."
25 There you're referring to the EAC that was being

1 conducted by the Consortium. Is that right?

2 A That's correct.

3 Q And you were planning to get it on Friday, August
4 29th. Is that right?

5 A That would be right, yes.

6 Q In bullet point number one, you reference, "Being
7 separated from everything for the last two weeks
8 for work on the schedule has been good." What are
9 you referring to there?

10 A It was a schedule evaluation that was taking place
11 parallel to this EAC, and the people participating
12 in that were segregated into a different building
13 to get away from the normal daily phone calls and
14 emails and questions that came up. And I was
15 thinking that it would probably be good to be able
16 to do the same thing with the EAC team.

17 Q You weren't part of that schedule team, right?

18 A I was part of that schedule team, as the observer
19 from business and finance, because I knew that
20 information would be needed to go into this.

21 Q Who else was on that schedule team?

22 A Oh my goodness. It was a joint team between the
23 contractor and SCE&G. From SCE&G, Kyle Young, and
24 Bernie Hydrick were probably the only
25 representatives. It was primarily driven by the

1 contractors.

2 Q Was Mr. Torres part of that group?

3 A No.

4 Q The work that that schedule team did, was that
5 used at all for your EAC cost estimate?

6 A No.

7 Q Do you know what the results that that team
8 reached were?

9 A No. I pulled off of that to do this.

10 Q Were you unsure, at this time when you wrote this
11 email, whether you would be using the results of
12 that schedule analysis in your EAC cost estimate
13 rather than the guaranteed substantial completion
14 dates?

15 A Didn't really know then what we were going to be
16 using. Somewhere in the process, we were told to
17 use the guaranteed substantial completion dates.

18 Q Following up on that question, down at bullet
19 point number five you say, "What schedule do we
20 want to base our EAC on?"

21 A That's correct, that's the question.

22 Q So at some point after you sent this email, you
23 were told that the schedule that you would use for
24 your EAC estimate would be the guaranteed
25 substantial completion dates?

1 A Yes.

2 Q Bullet point number four in this email, you
3 reference the need to define our mission and goals
4 for the EAC review. Can you describe what the
5 mission and goals were that eventually were
6 developed for your team?

7 A Our mission, as it turned out, was primarily to
8 validate the cost estimate, understand it and
9 validate it.

10 Q And in bullet point number six you say, "What will
11 be the product? Presentation to management?
12 Report? Both?"

13 A Right.

14 Q Ultimately, what was the product that your team
15 reached?

16 A A presentation, no report.

17 Q Now, you reference an attachment to this email,
18 and it's page three of this exhibit. Can you
19 describe what this attachment to your email is?

20 A These are questions that -- I think I probably did
21 this at home one night just trying to think about,
22 you know, what questions are we going to need
23 answered to be able to make an educated assumption
24 of the EAC. And it gets back to a lot of the
25 things that we've already talked about, such as

1 the ratios, the PF for subcontract work, PFs for
2 direct labor work, field non-manual categories,
3 things like that, all of the inputs that would go
4 into developing a cost estimate. Or most of them,
5 I'm sure there's some that are not in here.

6 Q You mentioned on bullet point number one, "To what
7 level schedule has the EAC been developed?"

8 A Yes.

9 Q What do you mean by that?

10 A In scheduling, there's like a level one schedule
11 which you could draw with one line. Some people
12 call them stick and ball. It's just a line with a
13 circle and a date. And then you get all the way
14 down to the detailed schedule. I don't know how
15 many items were in the VC Summer schedule, but it
16 was over 100,000 activities in the schedule with,
17 you know, durations for each of those activities
18 and the sequence. Maybe a level three or a level
19 four is what that would be called. And my
20 question here was, you know, did they use the
21 detailed schedule for developing the cost or did
22 they use a level one schedule?

23 Q Would that affect how much you weighted the
24 schedule in your cost estimate?

25 A No, it would affect the accuracy of their schedule

1 because they did a much more -- of their cost
2 estimate because they did a much more detailed
3 analysis as opposed to our one sheet. You don't
4 do a cost estimate for a \$10 billion nuclear plant
5 on a one-page spreadsheet. The real cost estimate
6 should be done with, you know, lots and lots of
7 information going into it. And that validity of
8 that information is directly related to what level
9 of schedule you base it on.

10 Q So I guess the question I'm asking is your -- the
11 cost estimate model you developed didn't weight
12 the schedule based on how reliable you thought the
13 schedule was?

14 A Correct.

15 Q And ultimately, you were provided schedule
16 information and told to use that in your cost
17 estimate, correct?

18 A Correct. Which was just the dates -- completion
19 dates. You're starting today and you're finishing
20 September 2019, September of 2020. From today
21 until then, how many months is it? How much is it
22 a month? You know, that was the level of what was
23 in our model.

24 Q Just to go back to that schedule team that
25 Mr. Young and Mr. Hydrick were part, are you

1 familiar with the form of their final product, as
2 far as a schedule assessment, like whether it was
3 a PowerPoint, a presentation, an email?

4 A I am not, no.

5 (Whereupon, EAC Review Team Preliminary
6 Update was marked Exhibit No. 15 for
7 identification.)

8

9 BY MR. COX:

10 Q Mr. Browne, I'm handing you a document that's been
11 marked Exhibit No. 15 Bates-stamped
12 SCANA_RP0024674.

13 A Yes.

14 Q If you can go ahead and review that and let me
15 know when you're prepared to discuss it.

16 A I'm prepared already.

17 Q Can you describe what this document is?

18 A This is the PowerPoint presentation that was used
19 in presenting the owner's EAC to our management.

20 Q Who prepared this document?

21 A Our team, the EAC team. I think Margaret Felkel
22 actually put it together, but it was with input
23 from our team.

24 Q Do you believe the preparation date of October 6,
25 2014 is accurate to you?

1 A I can't say for sure. I don't know why it
2 wouldn't be.

3 Q Do you recall whether the executive meeting that
4 you had the presentation occurred around
5 October 13, 2014?

6 A That's about right.

7 Q Who was at that meeting?

8 A I can't say for sure. I do know -- I know Kevin
9 Marsh was there because I sat next to him. I know
10 that Lonnie Carter, Mike Crosby and Marion Cherry
11 were there from Santee Cooper. Skip Smith was
12 there. And I don't know who else was there.

13 Q Were all the members --

14 A Typically, it would have been Jeff Archie, Steve
15 Byrne, Kevin Marsh. That's probably -- you know,
16 but I can't say for sure they were there, all of
17 those people. It's been four years ago.

18 Q So let's turn to page three of this document. The
19 first bullet on that page says "CB&I projects the
20 To-Go PF will be 1.15." That references the
21 performance factor that the Consortium was
22 projecting until the end of the project, correct?

23 A Yes. To-Go means from current date to the end of
24 the project, forgetting about the historical
25 impact of it.

1 Q And you're also representing there that the
2 performance factor up to the date of August 14th
3 was 1.46. Is that right?

4 A That's correct.

5 Q And the third bullet point references, "EAC team
6 anticipates a To-Go PF closer to 1.40 and
7 recalculated the cost, resulting in an additional
8 increase of approximately 101 million." Does this
9 refresh your recollection of what the PF that your
10 team used was?

11 A Obviously. 1.4, yes.

12 Q When you say this is the cost impact of the To-Go
13 PF of 1.40 versus 1.15, what do you mean by that?

14 A That's \$101 million more than the contractor's
15 cost estimate just because of this difference in
16 performance factor. For the same number of
17 hours -- same number of work hours, earned hours,
18 if you will, it's going to increase the cost by
19 \$101 million just to go from a 1.15 to a 1.4.

20 Q Do you believe the Consortium's use of an
21 inappropriately low PF is the biggest factor as to
22 why their cost estimate was inappropriately low?

23 MR. CHALLY: Object to form.

24 A Several factors, not just the performance factor.
25 Those ratios that are mentioned, the indirect

1 craft to direct craft, the field non-manual to
2 manual, the cost, the carrying cost, I don't
3 recall what they used, but it seems like it was
4 low. We did find in their cost estimate - And I
5 think it's probably mentioned in here. - they
6 developed a cost, sent it to their headquarters in
7 Texas, CB&I's headquarters, and the management of
8 CB&I just made discretionary cuts to the cost with
9 no explanation. We call them the Woodlands cuts,
10 and we identified those and felt like there was no
11 justification for making those cuts and costs.
12 The work still had to be done.

13 Q So there were a number of reasons that you felt
14 the Consortium's EAC estimate was inappropriately
15 low?

16 A Yes. They're probably pointed out in this
17 presentation.

18 Q Do you feel like the PF factor was the most
19 important one or could you not say that for sure?

20 A I don't think it was. I think the Woodlands cuts
21 were more than that 100 million. Yeah, they cut
22 296 million, which is on slide nine. CB&I cut the
23 EAC by 296 million at a very high level.

24 Q So that's the page that has the long number at the
25 bottom of SCANA_RP 0024682?

1 A Yes.

2 Q Can you explain, again, what that 269 million
3 number represents?

4 A 269 million?

5 Q Yeah.

6 A Those are cuts that were removed from the
7 developed cost estimate by management of the
8 contractor in Woodlands, Texas without any
9 explanation as to how they were going to achieve
10 those cost savings. Because its target price, it
11 didn't really matter to them if they ever achieved
12 them or not. They were going to get paid what
13 their cost was.

14 Q So did your team use the full number?

15 A We put it back.

16 Q Who actually made the presentation to the
17 management team at this meeting?

18 A Our team, different sections. People had
19 separated out. Each one had a responsibility
20 during the review and we each did our own piece at
21 the presentation.

22 Q Did you receive any questions from management at
23 the end of the presentation?

24 A Yes.

25 Q Do you recall what questions were asked?

1 A No.

2 Q Do you recall the general response of the
3 executive team, such as surprise, disappointment,
4 fear? Could you characterize their response?

5 A I think it was more disappointment.

6 Q Was there any talk at that meeting about what
7 would occur next?

8 A No.

9 Q How long did that meeting last?

10 A A few hours.

11 Q Did anyone take notes at that meeting?

12 A Yes.

13 Q Who took notes?

14 A I couldn't say. Just about everybody. I mean,
15 everybody had a copy of this presentation and they
16 were jotting notes on it, so.

17 Q And I actually saw some notes on this one, page
18 24685?

19 A There's one note on 24680. Yeah.

20 Q Do you know whose notes those are?

21 A I don't.

22 Q Where was this meeting held at?

23 A At the corporate campus, the new office building
24 down off of I-77. I don't know if you know what
25 I'm talking about when I say that.

1 Q I don't. I don't know the old office either.

2 A Downtown at the -- what's -- the Hub now I think
3 they call it, residence.

4 (Whereupon, Email SCANA_RP0020794,
5 0954157-161 was marked Exhibit No. 16
6 for identification.)

7

8 MR. CHALLY: I didn't notice this until just
9 now, but did you mean to have two attachments to
10 15?

11 MR. COX: I did. I included a native file
12 with it.

13

14 BY MR. COX:

15 Q Mr. Browne, if you could go and review Exhibit
16 No. 16 and let me know when you're ready to
17 discuss that.

18 A (Witness reviewing document). Okay.

19 Q So, Mr. Browne, this is an email that was
20 forwarded to you from Marion Cherry. Is that
21 right?

22 A I was copied on it. Actually, it's from Marion to
23 Ron Jones and I received a copy of it.

24 Q Okay. And in the email that's being forwarded to
25 you, Mr. Crosby is sending an email to Mr. Byrne.

1 Is that right?

2 A Yes.

3 Q And in the email, Mr. Crosby says that Marion
4 worked with business and finance to produce the
5 following charts that were discussed in the
6 executive steering committee meeting on March
7 6th.

8 A Yes.

9 Q When Mr. Crosby says "business and finance," were
10 you one of the people that Marion Cherry worked
11 with to produce these charts?

12 A I think Marion produced the charts with
13 information that he got from business and finance,
14 and I did not give him the information. I was
15 aware of it. You know, it's -- I think he got the
16 information from Sheri Wicker. But either Kevin
17 or Sheri probably gave it to Marion.

18 Q The executive steering committee meeting on
19 March 6th, were you present at that meeting?

20 A No.

21 Q At the bottom of the first page of the email,
22 Mr. Crosby states, "As you recall upon receiving
23 the EAC August 2014, the Consortium promised to
24 self-correct and drive productivity and the labor
25 ratios back closer to the EPC basis." Is that a

1 correct statement about what the Consortium
2 promised to do?

3 MR. CHALLY: Object to form.

4 A That is a correct statement.

5 Q I'd like to turn to the last three pages which are
6 the charts attached to the email that was
7 forwarded to you. The first page of charts, at
8 the top it says, "Target cost 62.4 million over
9 EAC basis and five months following receipt of
10 EAC."

11 A Yes.

12 Q Do you know what that means?

13 A Yes.

14 Q Can you describe what that means?

15 A What that means is that as a result of not
16 achieving the PF performance goals and craft
17 ratios that we discussed, the target cost had
18 increased by \$62.4 million during this period.

19 Q So would that be a statement that already just six
20 or so months after the Consortium's EAC, it's
21 already 62.4 million over the target cost that it
22 projected in August 2014?

23 A That's correct.

24 Q Can you describe what the three charts below that
25 statement show?

1 A The first chart is the direct craft productivity
2 which is the performance factors. The green line
3 down at the bottom is approximately 1.15 which is
4 what the EAC was based on. The red bullets above
5 there are the actual performance factors that
6 occurred in each of those months, which are all in
7 the neighborhood of two or more. One was as high
8 as 2.8. And the blue line is the cumulative
9 performance factor, that would be the
10 inception-to-date performance factor, increasing
11 as a result of those red bullets that you see
12 above it. And the \$11.4 million is the cost
13 impact of those higher PFs during this period --

14 Q So that would be -- I'm sorry, go ahead.

15 A During this five-month period.

16 Q So that would be 11.4 million over the estimated
17 target due to the higher productivity factors?

18 A Yes.

19 Q Can you go on to the next chart?

20 A The next chart is the indirect and direct craft
21 labor. Again, that's the people building the
22 plant compared to the people supporting them, or
23 indirect craft. The EAC basis of -- it looks like
24 it's a .4 something, 0.4. And the actuals are the
25 red bullets. And the cost of that is \$20 million

1 compared to what it would have been had they met
2 their goals at the EAC.

3 Q Okay. Can you go to the last --

4 A And below is field non-manual to direct craft,
5 similar. The EAC basis looks like it's about a
6 .55 or something. Actuals are up over 1.2 and the
7 cost is \$31 million.

8 Q Would it be fair to say, Mr. Browne, that by the
9 time of this email, there already existed
10 significant evidence that the Consortium was not
11 going to meet the EAC that they had projected just
12 six months earlier?

13 A Yes.

14 Q Is that the purpose, in your mind, of Mr. Crosby's
15 email to point out that the Consortium is already
16 not fulfilling the promises it made in August?

17 MR. CHALLY: Object to form.

18 A That would be my guess.

19 Q Do you know why Mr. Cherry forwarded this to you?

20 MR. CHALLY: Object to form.

21 A I can't say, other than to show me these curves.
22 I didn't -- I have not -- you know, he didn't give
23 me these curves. He gave -- he prepared these
24 curves and gave them to his management. And this
25 would be him providing that to me.

1 Q When you say "curves," what are you referring to?

2 A The charts.

3 Q Do you have any reason to believe that
4 Mr. Cherry's information used here was not
5 accurate?

6 A None whatsoever.

7 Q Did he usually use accurate information?

8 A Absolutely, yes.

9 Q Can you go to the next to last page and describe
10 what this chart shows?

11 A This one, yes. This is what I was describing
12 earlier today --

13 Q This is the chart?

14 A -- percent complete direct craft work. The
15 extrapolation shows along their current progress
16 where they would be at the August '19 date. And
17 the 100 percent complete is at the end of the
18 other line, if you're following me here. This
19 is -- at their current progress, they would be
20 here when it was supposed to be finished here. So
21 in order to make this date, they had to work and
22 improve and do the work along this line. And what
23 made it even more difficult is as this goes out,
24 this line gets steeper and steeper.

25 Q Is it fair to say, Mr. Browne, that the steeper

1 that line gets, the harder it is for the
2 Consortium to meet the goals that it set out for
3 itself to complete?

4 A Yes. Yes, definitely. The steepness of this line
5 represents how much work they would have to do in
6 a given period. So while they were accomplishing
7 this much work, they needed to be doing that much.

8 Q Did this cause you concern?

9 MR. CHALLY: Object to form.

10 A This did not -- specific situation cause me a lot
11 of concern. This information did not cause me
12 concern because I already knew it. This was the
13 same thing that I had been raising flags about for
14 months.

15 Q So it didn't surprise you?

16 A Correct.

17 Q Why is it concerning for the project?

18 A Because it indicates that you're not going to
19 finish on schedule.

20 Q Turning to the last page, Mr. Browne. Can you
21 describe what that chart shows?

22 A It looks like there is a series of curves. And
23 this was prepared by Mr. Cherry and I'm not
24 totally familiar with it, but it appears to be a
25 series of curves that represent different inputs

1 to the EAC cost model, such as varying the
2 performance factor or varying the indirect to
3 direct craft ratio and the field non-manual to
4 direct craft ratio and what those impacts of
5 varying those numbers are on the cost.

6 Q And there's a dot on this chart labeled PSC
7 filing. Can you explain what that represents?

8 A That would represent the cost that was included in
9 the Public Service Commission filing.

10 Q That was the filing in March 2015. Is that right?

11 A I'm not sure what the date of this was. Probably
12 is, yes, because this is -- this data is
13 September '14 to January '15.

14 Q The curve labeled EAC, is that a curve that uses
15 that EAC estimate developed by the Consortium or
16 by your team?

17 A That would be the Consortium number. That's a
18 1.15 performance factor, 0.39 direct -- or
19 indirect to direct and .53 field non-manual to
20 direct.

21 Q Do you know why the estimated cost for the
22 Consortium was higher than the number that was
23 provided by the company to the PSC?

24 A I do not.

25 Q Was it your belief that the number was the same?

1 A Yes.

2 Q The top of this chart includes a row labeled
3 September '14 to January 2015 average PF 2.27.
4 Does that indicate that the performance factor of
5 the Consortium during that time period averaged
6 out to 2.27?

7 A I would assume, yes.

8 Q That's about twice the PF that the Consortium
9 projected. Is that right?

10 A That's correct.

11 Q What does that mean in layman's terms?

12 A That means that the cost has doubled, in layman's
13 terms.

14 Q Does it mean it's taken them almost twice as long
15 to get the work time?

16 A Not necessarily because you could have more
17 people. This is not a schedule related item here;
18 this is a cost related item. If you could
19 physically hire the people and put them in the
20 place to do the job, it just impacts your cost
21 because it takes more people to do the work. If
22 you can't hire the people or you can't get them
23 into the place to do the job, that impacts your
24 schedule because it takes longer.

25 Q Do you need a break, Mr. Browne?

1 A I'm fine.

2 MR. COX: Does anyone need a break? Let's go
3 off the record.

4 VIDEOGRAPHER: This is the end of tape number
5 five in the deposition of Kenneth Browne. We're
6 off the record at 5:22 p.m.

7 (Off the Record)

8 VIDEOGRAPHER: This is tape number six in the
9 deposition of Kenneth Browne. We're on the record
10 at 5:32 p.m.

11 (Whereupon, Email SCANA_RP0021575,
12 577-583 was marked Exhibit No. 17 for
13 identification.)

14

15 BY MR. COX:

16 Q Mr. Browne, I have handed you a document that's
17 been labeled Exhibit No. 17. Have you had a
18 chance to review that document?

19 A Yes.

20 Q It's an email from Sheri Wicker to Carlette Walker
21 copying you and Kevin Kochems. There's two
22 attachments to the email. Can you describe what
23 each attachment is?

24 A The first attachment is a log, as we called it,
25 but it's a spreadsheet. But it's actually just a

1 log of questions that we would come up with during
2 our independent review and send the questions to
3 different people with the Consortium for
4 correspondence, you know, to provide an answer to
5 us. The different columns on there just represent
6 the date, who came up with the question or who
7 they should respond to with an answer. The basis
8 looks like a Unit Two substantial completion date.
9 Description of the question, which Consortium
10 member, either CB&I or Westinghouse, the person at
11 the Consortium and then a completion date and any
12 notes or comments regarding the response from the
13 Consortium.

14 Q Was this document sort of a living document that
15 was completed as your team did its work?

16 A Yes.

17 Q Who prepared the original spreadsheet?

18 A Sheri Wicker.

19 Q Where did she get the information to put in it?

20 A From the team members as we were reviewing through
21 the EAC.

22 Q So I guess I meant -- there's a column labeled
23 description along with each action item. How did
24 the team come up with these action items?

25 A Just questions that we may have as we're looking

1 through the EAC.

2 Q Through the Consortium's EAC?

3 A Yes, yes.

4 Q Do you recall when this spreadsheet was completed?

5 A It was done as we were conducting the review. I'm
6 not sure that every question was answered, so I
7 don't know if you could call it completed or not,
8 but it was just a working document for us to keep
9 track of our questions and the responses to the
10 questions.

11 Q The filename for this spreadsheet is EACs Review
12 Team Action Items Final 11-11-14. Does that
13 indicate to you that this spreadsheet was
14 finalized or you quit working on the action item
15 somewhere around November 11, 2014?

16 A That may be the final date for a response. I
17 don't know that we did anything after our
18 presentation to management, as far as reviewing
19 the EAC.

20 Q And that's what I was going to ask. That's a few
21 weeks after your presentation. And I was
22 wondering if you did recall whether there was any
23 cleanup items or work that was done right after
24 your presentation?

25 A I think there were some questions that were still

1 outstanding and the answers may have come back
2 after. If you look at the date of the questions
3 originating, I think all of those will show up
4 during our review period.

5 Q Who is Joann Hyde?

6 A She was the commercial manager for Westinghouse.

7 Q Is she the one you would go to from Westinghouse
8 if you needed data to help you come up with your
9 EAC estimate?

10 A Yes.

11 Q Was she helpful in providing information?

12 A Yes.

13 Q During your team's work, did she ever refuse to
14 provide any information you asked for?

15 A I don't think so.

16 Q At any time during your work on the project, did
17 anyone from Westinghouse refuse to provide
18 information for any assessments or estimates you
19 wanted to make on cost?

20 A I don't think so. But, again, we were not asking
21 them for information. What we were asking them
22 for were explanations of their costs. We had them
23 explain their cost and we would take their
24 explanation and either accept it as it was -- in
25 the case with Westinghouse, I think we did accept

1 most of their cost as they presented them. CB&I,
2 we didn't agree with a lot of their costs so we
3 modified them.

4 Q So if -- for example, if the Consortium had a
5 certain PF factor for indirect to direct labor,
6 you would want to know how they came up with that
7 assumption or estimate for that factor?

8 A That's right.

9 Q And was Joe Aurostogui, was he helpful in
10 providing information that you needed for your
11 team's estimate?

12 A Yes.

13 Q Did he refuse to ever provide any information to
14 you?

15 A No.

16 Q Can you explain or describe what the second
17 attachment is to this email?

18 A This is an explanation of a spreadsheet that we
19 developed that had columns of various -- the first
20 column was the cost basis of the contract and then
21 the following columns were modifications to that
22 cost estimate. Without the spreadsheet, it's
23 difficult to make much sense of this, but it does
24 explain what the columns are on that sheet.

25 Q So we're talking now about the document that at

1 the bottom is labeled EAC Validation Report. Is
2 that correct?

3 A That's correct.

4 Q And you're saying this document matches up with
5 certain columns on a spreadsheet that your team
6 prepared?

7 A Yes.

8 Q We haven't seen that spreadsheet here today, have
9 we?

10 A I have not seen that today. You may have, but I
11 haven't.

12 Q The meeting where the Consortium presented you
13 with their EAC, was that a sitdown meeting or did
14 they just give you paperwork?

15 A No, that was a sitdown meeting at our corporate
16 headquarters off of I-77.

17 Q So that's the same location where you presented
18 the results of your team's assessment to senior
19 management?

20 A Yes. And mostly the same people there.

21 Q And let's go ahead and go to that. The meeting
22 where the Consortium presented to you their
23 results, can you go ahead and state to the best of
24 your recollection who was there?

25 A It was myself, Skip Smith, Carlette Walker, Kevin

1 Kochems. In general. I mean, I don't recall the
2 names and faces of everybody that were at that
3 meeting, but in general, it would have been us,
4 Kevin Marsh, Steve Byrne. I don't know if Jeff
5 Archie was there or Jimmy Addison, I can't say.

6 Q And that's what I wanted to know if it was only to
7 your EAC team or some members of senior management
8 were there?

9 A Yes, absolutely.

10 Q I think you mentioned earlier that you're not sure
11 what caused the Consortium to conduct an EAC
12 analysis. Is that right?

13 A We had -- the owner had asked for an EAC analysis
14 to be done for several years. I'm not sure what
15 finally prompted them to do it. Does that make
16 sense?

17 Q It does. And I'll follow up with that with asking
18 you based on your role at the project, do you know
19 who would be the most likely person to know what
20 caused the Consortium to do that review?

21 A It had to happen in senior management. I mean, I
22 don't know where it came from otherwise. That
23 would be, you know, Jeff Archie, Steve Byrne or
24 Kevin Marsh. You'd have to get the answer to that
25 from one of those three.

1 Q Did you ever discuss with SCANA and SCE&G
2 management the possibility of doing an owner's EAC
3 earlier than 2014?

4 A No.

5 Q Was that topic ever brought up to you by anyone
6 else?

7 A Well, we had our model that we developed and
8 trying to keep that updated. And it was sort of a
9 living model as well. And we probably started
10 doing that in early 2014. But it was not prompted
11 by anyone. We just did it within business and
12 finance.

13 Q So business and finance started a model that gave
14 a rough estimate of EAC costs starting in early
15 2014?

16 A That's when we started working on it. It took a
17 while to get it tweaked and working, yes.

18 Q Did that model continue working even after your
19 team finished its work and presented the results
20 of your in-depth analysis to senior management?

21 A Yes, we actually used that model to justify the
22 fixed-price.

23 Q I'd like to turn to the last attachment to this
24 email, page three of that document. It's labeled
25 21579 at the bottom.

1 A Right.

2 Q Actually, go to the bottom of page two of this
3 document. It says, "In the four subsequent months
4 since receipt of the EAC, the ITD PF has increased
5 steadily from to 1.45 to the current value due to
6 monthly values of 1.97 for August, 1.95 for
7 September, 1.91 for October, and 2.48 for
8 November." To your knowledge, is that an accurate
9 statement of the data that occurred after --

10 A I believe so, yes.

11 Q The next page says, "In its EAC, the Consortium
12 assumed that the project would reach a goal of
13 PF -- a goal PF of 1.15 within six months. This
14 does not appear to be achievable." Is it correct
15 to say that the Consortium assumed that the PF
16 goal of 1.15 would be reached within six months?

17 A Yes.

18 Q And that would be around February 2015. Is that
19 correct?

20 A Right.

21 Q So is it correct to say that in February 2015
22 SCE&G knew that the Consortium had failed in its
23 goal of reaching a PF of 1.15 within six months?

24 A Yes.

25 Q This last attachment to this email, do you know

1 when this document was created?

2 A I believe it was created concurrently with the EAC
3 review, so fall of '14.

4 Q It's referring to PFs --

5 A It does have -- it has PFs after that, so it had
6 to be afterwards, yeah.

7 Q And I think you had testified earlier that your
8 team didn't prepare a report. When I saw this, I
9 looked at it as a report from your team. Would
10 you look at it as a different type of document?

11 A Yes.

12 Q Can you describe the difference?

13 A This is separate from -- okay. This document is,
14 again, addressing the spreadsheet that we've not
15 seen yet, which was a summary of the Consortium's
16 EAC and our review comments specifically addressed
17 to those columns from the EAC.

18 Q So, in your mind, this document kind of sets forth
19 what's in that spreadsheet?

20 A Yes.

21 Q Explains it.

22 A Explains it. Now, had there been a final report
23 done, it would have been developed based on this
24 information. This was our working papers here of
25 the review. This is not prepared to be a formal

1 presentation of a report to be given to anyone,
2 but it is our summary of our review team's efforts
3 for our use.

4 Q Did Ms. Wicker also draft -- do the drafting of
5 this report?

6 A All of us took part in this.

7 Q It sounds like all of the documents that your team
8 generated, your team all contributed to those
9 documents. Is that correct?

10 A Yes, that's correct.

11 Q Do you know why Ms. Wicker was sending these
12 documents to you in May of 2015?

13 A Actually, she sent them to Carlette. And I'm not
14 sure why she did it in May of '15.

15 Q That meeting that you described earlier in which
16 Carlette Walker's PSC testimony was being
17 developed, was there any discussion at that
18 meeting about concern that the Consortium's EAC
19 estimates were already six months later off the
20 mark from what the Consortium had represented that
21 they could do?

22 MR. CHALLY: Hold on. Subject to the
23 discussion had earlier on the record and
24 specifically our continuing instruction since
25 overruled by the judge for the witness not to

1 answer, if you want to proceed have at it.

2

3 A So, yes, there was discussion of the facts that
4 performance since submission of the EAC did not
5 support the cost contained in the EAC.

6 Q Is that a point you raised at the meeting?

7 A Yes.

8 Q And how was that point responded to by those
9 present?

10 A The response was we cannot submit a cost that is
11 higher than what the Consortium has provided us in
12 their estimate because that would be viewed as a
13 contingency over and above the cost provided by
14 the Consortium, and we cannot propose a
15 contingency on the project.

16 Q Was there any discussion at that meeting of asking
17 the Consortium for an updated cost estimate since
18 the estimate they had provided was over six months
19 old?

20 A No.

21 Q Is that a point that anyone brought up?

22 A I don't recall it being brought up.

23 Q I know you testified that you don't believe
24 Carlette Walker was at that meeting. Do you
25 recall whether any non-attorneys were present at

1 that meeting besides yourself?

2 A Yes.

3 Q Who was there?

4 A Probably Kevin. I mean, I don't have a
5 photographic memory, but I would guess Kevin
6 Kochems, Byron Hinson. He typically was at the
7 testimony prep meetings. Skip Smith. Carlette
8 would have been there had she not been required
9 other places. Kenny Jackson was there
10 occasionally. He may be an attorney, I'm not
11 sure. Again, those are typical attendees. And I
12 can't say for sure who was in every one of those
13 meetings.

14 Q Did you attend any other testimony prep meetings
15 other than that one?

16 A I did before that. And incidentally, I was never
17 invited to another testimony prep meeting.

18 Q Are you aware that Mr. Kochems took over
19 Ms. Walker's role in submitting cost information
20 to the PSC after Ms. Walker left SCANA?

21 MR. CHALLY: Object to form.

22 A Yes.

23 Q And you were not invited to the meeting in which
24 he was -- his testimony was prepared. Is that
25 right?

1 A Right.

2 Q Did that strike you as unusual?

3 A A little bit.

4 Q Why is that?

5 A Because I had always been involved before.

6 Q Did you ask anyone about that?

7 A No. I didn't want to go. I was happy, I had
8 enough to do.

9 Q How many had you attended before the 2015 one in
10 which Ms. Walker you don't believe was present?

11 A Five to ten, not a lot. More than -- you know,
12 not one or two.

13 Q I think you testified earlier that the explanation
14 that you were given about a contingency as being
15 the reason for the data being submitted to the PSC
16 was made by one of the attorneys, but you didn't
17 recall which attorney. Is that correct?

18 A Yes.

19 Q It was either Mr. Gissander (ph) or Mr. Belton?

20 MR. CHALLY: Object to form.

21 A No. It was either Mr. Ziegler or Willoughby.

22 Q Were both of them present at that meeting?

23 A I think so. I'm not positive, but I think so.

24 Q When the fixed-price option was being considered
25 later in 2015, did you ever hear anyone say that

1 one benefit of entering the option was to avoid
2 telling the PSC about any discrepancies between
3 actual projected costs and costs under the
4 fixed-price option?

5 A I never heard that.

6 Q Same question with respect to ORS. Did you ever
7 hear anyone say that one benefit of entering the
8 fixed-price option was to avoid telling ORS about
9 any discrepancy between the actual estimated cost
10 to complete and the cost under the fixed-price
11 option?

12 A I did not hear.

13 Q Did you ever have any discussions with anyone
14 regarding whether to disclose your EAC team's work
15 to ORS?

16 A I did not participate in any discussions of that.

17 Q What was your involvement with ORS during your
18 time on the project?

19 A It was fairly limited. I did, incidentally, with
20 the EAC, I was asked to make a presentation to the
21 ORS group on-site. Two, maybe three other times,
22 I had met with them to discuss issues, you know,
23 specific issues or questions that I was most
24 qualified to explain. But that particular time
25 with the EAC, that was probably my most focused

1 involvement with the ORS.

2 Q What did you share with ORS at that meeting?

3 A The EAC costs.

4 Q Your team's work?

5 A No.

6 Q Okay.

7 A The contractor's work.

8 Q Do you recall, roughly, when that meeting occurred
9 in relation to the briefing the Consortium gave
10 you in late August 2014 and your team's
11 presentation of your results to senior management
12 in October?

13 A I don't recall.

14 Q You don't recall whether your meeting with ORS
15 occurred before or after you presented the results
16 of your team's work to senior management?

17 A I think it was after, but I can't say for sure. I
18 think it was actually much after, you know, like
19 maybe six months later or so, but I can't say for
20 sure.

21 Q And what did you tell the ORS about the
22 Consortium's EAC estimates?

23 A I presented to the ORS the estimate that we had
24 been provided. I made it clear the factors that
25 the estimate was based upon, including the

1 performance factor and the ratios. I also
2 presented what the current ratios were. And I
3 guess the way my conscience allowed me to do that
4 is because the ORS had people there who were
5 capable of taking the information that I provided
6 in coming to their own conclusion. And I can't
7 say what conclusion they came to or what they did
8 with it.

9 Q And when you say "your conscious allowed you to do
10 that," you mean the ORS could see the disconnect
11 between the productivity that's actually occurring
12 and what the Consortium had estimated for their
13 EAC?

14 A Yes.

15 Q When you say "your conscious allowed you to
16 present that," do you mean that you didn't
17 actually connect the dots for them and say we
18 don't think this EAC is --

19 A Exactly.

20 Q -- is attainable?

21 A That's correct.

22 Q Okay. Did anyone instruct you not to inform ORS
23 that you did not believe the Consortium's EAC was
24 attainable?

25 A I was not instructed what not to say. I was

1 instructed what to say. We had talking points
2 that were developed and I was to provide those
3 talking points. There's a difference.

4 Q By receiving those talking points, did you get the
5 understanding that you were not to tell ORS that
6 you did not believe the Consortium's EAC was
7 attainable?

8 A By getting those talking points, I was instructed
9 as to what I was to tell the ORS.

10 Q And your belief that the Consortium's EAC was not
11 attainable was not among those talking points?

12 A That's correct.

13 Q Who gave you those talking points?

14 A I believe it was Byron Hinson. I can't say for
15 sure, but I think it was Byron.

16 Q What was his role?

17 A He's something in the regulatory field. I'm not
18 sure what his -- he deals day-to-day with the ORS.

19 Q Were the talking points he gave you, was it a
20 one-page document or multipage?

21 A Oh, I don't remember.

22 Q Were they in writing or did he orally give you --

23 A They were in writing.

24 Q Let me finish the question.

25 A Yes.

1 Q Did you get those talking points via email or were
2 they delivered to you by hand?

3 A By hand.

4 Q Did that strike you as unusual?

5 A No.

6 Q Why is that?

7 A Because we got a lot of stuff, particularly
8 regarding the regulatory issues and the testimony
9 preparation and things like that were copies
10 presented at the meetings that we would attend, no
11 email.

12 Q Did you have any understanding as to why that was
13 done?

14 A No.

15 Q What did you do with the talking points after your
16 ORS briefing?

17 A Most likely carried them back to my office and
18 stuck them in a file somewhere. It might have
19 been file 13, I don't know.

20 Q Was Mr. Hinson present at that meeting with the
21 ORS?

22 A Yes.

23 Q Do you know whom else from SCE&G or SCANA was
24 present?

25 A I believe Skip Smith was there, Shirley Johnson,

1 Margaret Felkel. And that's probably it.

2 Q Do you know who from ORS was there?

3 A I know Gary Jones was there, a consultant.

4 Anthony James. It seems like Ellen. I can't
5 remember her last name. Ellen Powell, maybe.

6 Q Was there any discussion at that meeting about the
7 disappointing productivity to date from the
8 Consortium?

9 A Yes.

10 Q Can you describe what discussion occurred there?

11 A Mr. Jones was very familiar with the performance
12 and the performance factors to date, and he
13 challenged why we were comfortable assuming those
14 factors.

15 Q And how did you respond to those challenges?

16 A Just told him that the Consortium had promised us
17 they were going to achieve them.

18 Q Do you recall any other discussions that occurred
19 at that meeting other than what you've described
20 so far?

21 A No.

22 Q How long did that meeting last?

23 A The meeting was all day, but I was only there for
24 a short period. I was there to discuss that and I
25 left.

1 Q Was there any other paperwork that you recall
2 using in your portion of the meeting, other than
3 the talking points?

4 A We may have had a spreadsheet from the Consortium,
5 but I'm not sure, you know, the cost, the EAC
6 spreadsheet that they provided.

7 Q Was there any discussion that you had with any of
8 your colleagues at SCE&G and SCANA about revealing
9 the results of your EAC team's work?

10 A To the ORS?

11 Q Correct.

12 A Not really.

13 Q Were you ever involved in responding to
14 information requests from the ORS?

15 A Occasionally.

16 Q Can you describe what kind of information request
17 you would respond to?

18 A It's been a while and I can't specifically address
19 any.

20 Q Would it include these invoice disputes?

21 A Not usually. The ORS did not normally get
22 involved in -- to the level of detail that I was
23 on the invoice disputes. Now, in general, they
24 have, you know, asked a question, how much, what
25 value have you disputed and things like that, but

1 even I didn't answer those. Sheri Wicker
2 typically would handle that.

3 Q Did you have any conversations with your
4 colleagues after that meeting with ORS about what
5 was revealed to ORS at that meeting and what was
6 not revealed?

7 A No.

8 Q Did you have any discussions with any of your
9 colleagues about whether to reveal the results of
10 the Monte Carlo analysis and SCE&G's 2016 filing
11 to the PSC? In other words, the analysis that
12 showed the actual costs on the project would
13 almost surely be greater than the fixed-price
14 option costs?

15 A I did not have any discussion, but I believe it
16 was revealed as justification for the fixed-price
17 option.

18 Q And you weren't involved at all in that 2016 PSC
19 filing, correct?

20 A No.

21 Q I'm going to skip around to several different
22 topics, Mr. Browne. The good news for you is that
23 means I'm almost done. Mr. Browne, there were no
24 revenue modification cases filed with the PSC
25 between 2012 and 2015. Do you know why that is?

1 MR. CHALLY: Object to form.

2 A I don't.

3 Q Who would be the most likely source of information
4 on that question?

5 MR. CHALLY: Same objection.

6 A Kevin.

7 Q Kevin Marsh?

8 A Kevin Kochems.

9 Q Oh.

10 A I'm sorry, yes.

11 Q Are you aware of any employees that left the
12 project because they disagreed with the way the
13 project was being operated?

14 A No.

15 Q In your opinion, was SCE&G either too stringent in
16 holding invoice payments in 2015 and early 2016 or
17 failing to be forceful and paying too much on
18 invoices?

19 A I think we did all we could do within the bounds
20 of the contract. It was a very onerous contract
21 on the owner, as far as disputing invoices. If
22 there was something that we disputed, if it was
23 under a million dollars, we had to pay it anyway
24 and then still dispute it. It was over a million,
25 we could only withhold ten percent and then

1 dispute it. And we went outside of the bounds of
2 that because there were just some things that we
3 couldn't take anymore and we started disputing and
4 withholding and daring the contractor to make an
5 issue out of it.

6 Q Is it fair to say that you don't have any
7 criticisms of the way senior management ran the
8 invoice dispute process for the project?

9 A That is correct.

10 Q Did the commercial team ever discuss the need to
11 delay equipment purchases due to the lack of
12 schedule progress?

13 A No.

14 Q During your time on the project, what was your
15 observations as far as the relationship among the
16 Consortium members, Westinghouse and CB&I?

17 A Seemed to be troubled, very troubled. At times, I
18 think we got along individually better with
19 Westinghouse and with CB&I than they got along
20 with each other, and they were supposed to be
21 partners. There was something in the background
22 that was causing problems there.

23 Q Did you view Westinghouse's request to remove CB&I
24 as a member of the Consortium as potentially being
25 a positive step?

1 A Yes.

2 Q What did you observe as far as the relationship
3 between the Consortium and SCE&G during your time
4 on the project?

5 A Generally positive. There were some hard spots
6 that we got into occasionally, but generally it
7 was a positive relationship.

8 Q Do you have any criticisms of actions that were
9 not taken by SCE&G that might have improved the
10 productivity factor on the project?

11 A Say that again.

12 Q Sure. You were disappointed, as you've testified,
13 about the productivity that the Consortium,
14 particularly CB&I --

15 A Right.

16 Q -- had on the project. And I was wondering if
17 there were any actions that you felt the owners
18 could have taken to improve that and weren't
19 taken?

20 A Yes. I honestly believe there were some actions
21 that we could have taken to improve that.

22 Q Can you describe those?

23 A A big problem that I saw -- and this is an opinion
24 and not a fact. But from my experience, I saw as
25 the schedule was pushed out for regulatory reasons

1 or designs not being complete, but we had craft on
2 site with no work to do. That impacts your
3 performance factor in two ways. Because at the
4 time that's happening, you got people you're
5 paying with no work to do, so that impacts your
6 performance. Then when they get work to do, they
7 don't want to do it because they're used to
8 sitting around. So I think that was what we saw
9 later in the project with poor performance factors
10 was we had three or 4,000 craft people there who
11 had gotten used to not working a full day. So
12 when there was work there for them to do, they
13 didn't want to do it.

14 Q What could SCE&G have done to help address that
15 issue?

16 A We could have told the contractors to when you
17 don't have work for people to do, send them home.
18 Don't have them working 50 hours a week when they
19 don't have work to do. And we didn't do that.

20 Q That type of instruction would have come from a
21 different section than your section, correct?

22 A Yes, yes.

23 Q Are there any other examples you would give as to
24 steps that SCE&G could have taken to improve
25 productivity?

1 A Probably not. Probably not. That situation that
2 I explained is just one that bothered me a lot
3 because we didn't take that action.

4 Q What involvement did your team have in verifying
5 milestone payments that were made to the
6 Consortium?

7 A The commercial team received verification from the
8 construction group for construction milestones.
9 And we would make the payments based on that
10 documentation that we got from construction. Now,
11 if the milestone was the procurement of a certain
12 piece of equipment or something like that that was
13 more of a paperwork milestone, we verified those.
14 But as far as construction milestones, the
15 documentation to support that was totally prepared
16 by the construction group.

17 Q Did you feel there were adequate tracking and
18 auditing systems to validate these payments?

19 A Yes.

20 Q When you say commercial group, is that referring
21 to both you and Skip and Carlette, SCANA team?

22 A Yes.

23 Q Is there any groups besides those two teams?

24 A No.

25 Q How much involvement did commercial have with

1 Santee Cooper in reviewing invoices and
2 reconciling them?

3 A Marion participated generally in the final invoice
4 review and sign-off meetings. But detailed
5 review, he did not participate, you know, to the
6 level of what I was doing and the other people
7 that were reviewing.

8 Q What was your view of Fluor coming onto the
9 project? Did you view that as a positive?

10 A I viewed that as very positive.

11 Q What was your impression of their work during the
12 time you were on the project when they were there?

13 A I was only there for a short period, but it was --
14 I did see an improvement immediately when they
15 showed up on-site.

16 Q When did you learn about the schedule assessment
17 results that the Bechtel group reached from their
18 2015 assessment?

19 MR. CHALLY: Object to form.

20 A I didn't ever learn of that. I didn't see
21 anything from Bechtel other than they made a list
22 of recommendations. And sometime in early 2016,
23 Skip brought to me some of those recommendations
24 and wanted -- that were related to business and
25 finance and wanted to know, you know, if we were

1 doing that or, you know, what we could do to meet
2 those recommendations. As far as Bechtel's review
3 of the schedule -- in fact, today, I still don't
4 know what it was.

5 Q Does it surprise you that you weren't told about
6 their assessment results?

7 MR. CHALLY: Object to the form.

8 Q I mean, do you view that as more of a construction
9 type issue that you would expect to be notified
10 about?

11 MR. CHALLY: Same objection.

12 A For the schedule or for their total review?

13 Q Let's start with the schedule.

14 A I didn't get involved too much with schedule, so
15 I'm not surprised. That was -- schedule was
16 handled by the construction group.

17 Q What about their total review?

18 A Their total review, I can't say for sure because
19 no one ever told me don't talk to Bechtel. But
20 there seemed to be a wall between me and Bechtel
21 while they were on-site, sort of an invisible
22 wall. They didn't want Bechtel to talk to me.

23 Q What gave you that impression?

24 A Anytime Bechtel came up, if I walked in the room
25 (sound effect) it was quiet. I never met any of

1 the Bechtel people, which was a little unusual.

2 Q Do you know of other finance people who did meet
3 them?

4 A I don't think any of our people met them.

5 Q Is there anything else that gave you the
6 impression that there was that wall between you
7 and Bechtel?

8 A Just a feeling.

9 Q Did you ever attend any PSC hearings?

10 A No.

11 Q What did you think of Carlette Walker's
12 performance as an employee, up to the time she
13 left the project?

14 A I thought Carlette was a very, very respectable
15 and hard-working, conscientious, good employee.

16 Q Did you feel her performance was still good even
17 after she started experiencing these personal
18 stressors?

19 A Yes.

20 Q Do you believe that the stress that she felt from
21 providing testimony that she didn't believe in
22 contributed to the overall stress that she was
23 experiencing?

24 MR. CHALLY: Object to form.

25 A I can't say for sure. One would think, yes.

1 Q Are you familiar with any SCE&G employees copying
2 and safeguarding plans on how to build the units?

3 A I don't understand that question.

4 Q Do you know who Shirley Johnson is?

5 A Yes.

6 Q Do you know if she ever told you that SCE&G was
7 safeguarding plans on how to build the units?

8 A Well, that gets back to the lockbox that we
9 discussed this morning. We were supposed to have
10 in that box all of the proprietary information
11 necessary to complete construction and licensing
12 and operation of the plant.

13 Q Do you feel that the Consortium met its
14 obligations to provide the information in that
15 lockbox --

16 A I have no idea. It's probably still locked. I
17 don't know.

18 Q Did you help prepare a document that Carlette
19 Walker provided to Jimmy Addison about the
20 potential target costs around early 2015?

21 MR. CHALLY: Object to form.

22 A I provided Carlette with information. And what
23 she did with it, I don't know.

24 Q She never mentioned to you that she wanted
25 information to present to Jimmy Addison?

1 A Yes.

2 Q She did mention that?

3 A She did mention that.

4 Q Did she tell you what she wanted, what information
5 she wanted?

6 A She told me she wanted the cost information.

7 Q Did she tell you why?

8 A To present to Jimmy Addison.

9 Q And did you have an understanding of why she
10 wanted to show him that?

11 MR. CHALLY: Object to form.

12 A I guess he needed to know. I mean, that's her
13 job. I do my job; she did her job.

14 Q Did she ever tell you I think Jimmy Addison needs
15 to understand that the cost projections are not
16 what the Consortium's telling us and so that's why
17 I need you to give me the information --

18 A She didn't directly tell me that, no.

19 Q Do you know who Bill Timmerman is?

20 A Yes.

21 Q Who is he?

22 A He's a former president and chairman of the board
23 for SCANA.

24 Q Do you know if any payments were made to him after
25 he retired?

1 A Yes.

2 Q What do you know about that?

3 A I know there was a series of payments that were
4 made to him. I don't recall the exact amount, but
5 as a consultant for negotiating any problems or
6 issues that may come up during construction, and
7 those payments were made for several years after
8 he retired.

9 Q How did you come to understand or learn about
10 these payments?

11 A Kevin Kochems told me.

12 Q What was your view of these payments?

13 A I don't understand that question.

14 Q Did you feel these payments were justified?

15 MR. CHALLY: Object to form.

16 A That's not my business to know if they're
17 justified or not. I didn't get any when I left.

18 Q Are you aware that there's a hearing scheduled
19 before the Public Service Commission in November?

20 A No.

21 Q There's a hearing scheduled on SCE&G's request to
22 participate in a merger and to recover its costs
23 in the project of approximately \$5 billion on the
24 ground that its behavior on the project was
25 prudent and to have those costs recovered through

1 rates paid by ratepayers. Do you believe, based
2 on your experience on the project, that SCE&G
3 should be able to recover all of the costs that it
4 incurred on the project on the ground that it was
5 prudent?

6 MR. CHALLY: Object to form.

7 A One hundred percent or some portion?

8 Q One hundred percent. Do you think they should
9 recover all of their cost?

10 A No.

11 Q And why is that?

12 A Because there were decisions made throughout the
13 project that I would consider not prudent.

14 Q And this goes back to your statements earlier
15 about the representations of the progress of the
16 project versus what was actually happening on the
17 ground?

18 A No, it goes back to decisions that were made on
19 expenses that were paid throughout the project
20 that I would not consider to be prudent.

21 Q And that goes back to your examples about the
22 expenses that you identified?

23 A I haven't given any examples of those.

24 Q Can you give one now?

25 A I can't. I don't know. I just know there were

1 expenses incurred that I don't feel were prudent.

2 Q Do you have any travel planned in the month of
3 November?

4 A Travel planned?

5 Q Do you have any vacations to the Bahamas planned?

6 A I do not, but I do have -- if you're seriously
7 asking this question, I am currently a reserve
8 technical specialist for FEMA and there's a very
9 good chance that I'm going to be deployed to
10 somewhere in eastern North Carolina probably in
11 early November.

12 Q How do you get that understanding?

13 A Through the contractor that I'm employed by. I'm
14 not employed, but I'm on his roster as a technical
15 specialist.

16 Q How much notice will you get when that occurs?

17 A It could be as little as 48 hours.

18 Q And how long could deployment last?

19 A Six to 12 months.

20 Q Other than that, if that deployment does not
21 occur, are you planning to be in the state the
22 month of November?

23 A Yes.

24 MR. COX: Thank you for your time,
25 Mr. Browne. I have no further questions.

1 MR. ELLERBE: I have no questions.

2 - - - - -

3 EXAMINATION

4 BY MR. CHALLY:

5 Q Mr. Browne, my name is Jon Chally. I represent
6 SCE&G and SCANA in the matters that are here, that
7 we're here to talk about today. I do have a few
8 questions for you.

9 A Okay.

10 Q First, you indicated that you had interacted with
11 the ORS at certain times throughout the project.
12 Is that right?

13 A Occasionally. Rare occasions, yes.

14 Q And specifically, this meeting you discussed with
15 Mr. Cox, I'm not sure we identified a precise
16 timeframe for it, but the meeting with the ORS
17 where you discussed estimate at completion. Is
18 that right?

19 A Correct.

20 Q Do you believe you should be subject to criminal
21 prosecution for any of the information you shared
22 or did not share with the ORS in this meeting?

23 A No.

24 Q Do you believe you made any material misstatements
25 to the ORS at any point throughout the project?

1 A No.

2 Q Do you believe you made any material misstatements
3 to the ORS in the meeting that you discussed with
4 Mr. Cox?

5 A No.

6 Q And do I understand your testimony previously that
7 you believe you did not make any material
8 misstatements because you disclosed three things
9 to the ORS in this meeting. One, that the
10 estimate at completion you were presenting is one
11 that came from the Consortium?

12 A Right.

13 Q Is that right? Two, that there, that -- well, I
14 think I only have two issues. Second, you tell me
15 if I'm missing any, that you also described the
16 current productivity ratios that you had seen the
17 Consortium be able to meet?

18 A I presented the cost as provided by the
19 Consortium. I presented the factors that that
20 cost was based on, which were the performance
21 factors, the indirect to direct craft ratios, and
22 the field non-manual to direct craft ratios that
23 the cost was based on, and I also presented the
24 current data for those ratios.

25 Q So that, in your view, is a complete and

1 sufficient picture to describe the estimate at
2 completion work that you did. Is that right?

3 A That is a complete picture to describe the
4 estimate at completion that we got from our
5 contractor. I never presented that as SCANA's
6 estimate at completion.

7 Q Fair enough. And describing what you received
8 from your contractor in the way that you did, is
9 not, in your view, a material misstatement, right?

10 A Correct.

11 Q Would you agree with me that Westinghouse provided
12 an estimate at completion to SCE&G in 2014?

13 A Yes.

14 Q Would you also agree with me that that estimate at
15 completion was based on certain assumptions that
16 Consortium had made as to continuing progress on
17 the project?

18 A Yes.

19 Q Would you agree with me that one of the specific
20 assumptions was that there would be a productivity
21 factor of 1.15?

22 A Yes.

23 Q Would you agree with me that the Consortium had
24 committed to achieve that productivity level?

25 A They did, yes.

1 Q Would you agree that it was in SCE&G's financial
2 interest to hold the Consortium to this
3 commitment?

4 A Absolutely, yes.

5 Q And that's because any deviation or decrease in
6 productivity beyond the 1.15 productivity factor,
7 meaning the productivity factor goes up --

8 A Right.

9 Q -- would lead to higher SCE&G costs, right?

10 A That's correct.

11 Q It would also lead to higher cost to the
12 ratepayers, right?

13 A That's correct.

14 Q So it was in everyone's interest, SCE&G and the
15 ratepayers' interest, to hold Westinghouse and the
16 Consortium to this 1.15 commitment?

17 A Yes.

18 Q Then you're aware, are you not, that in 2015 SCE&G
19 requested approval of certain costs from the PSC
20 and that those costs accepted the consortiums
21 productivity assumptions?

22 A Correct.

23 Q You also agree with me, would you not, that SCE&G
24 said that, that it was using the productivity
25 assumptions it had received from Westinghouse and

1 CB&I went it requested that information, right?

2 A SCE&G said it to whom?

3 Q To the Public Service Commission.

4 A I'm not sure what SCE&G said to the Public Service
5 Commission.

6 Q You're familiar with the testimony that was
7 provided in connection with this request for
8 increase costs in 2015, right?

9 A I know there was a testimony prepared. I didn't
10 memorize it.

11 Q Sure. But you're familiar with the fact there was
12 testimony?

13 A Yes, absolutely.

14 Q And you've already discussed some of Carlette
15 Walker's testimony?

16 A Right.

17 Q And that was provided in connection, in this
18 proceeding that we're talking about, right?

19 A Right.

20 Q Are you familiar with the fact that Steve Byrne
21 provided testimony in that proceeding?

22 A Yes.

23 (Whereupon, 2015 Direct Testimony of
24 Stephen Byrne was marked Exhibit No. 18
25 for identification.)

1 BY MR. CHALLY:

2 Q Mr. Browne, I have handed you what I've marked as
3 Exhibit No. 18 to your deposition. This is
4 prefiled testimony, direct testimony of Stephen
5 Byrne submitted on behalf of SCE&G in Docket No.
6 2015-103E.

7 A Right.

8 Q Do you recall seeing this before?

9 A I don't recall ever seeing the entire testimony in
10 this form. I did see it on the screen as it was
11 being developed.

12 Q So this is among the testimony that you recall
13 reviewing in this meeting --

14 A Yes.

15 Q -- that was the subject of some discussion
16 earlier. Is that right?

17 A Yes.

18 Q Just one reminder for us as we're getting late in
19 the day. I'll do my best to let you complete
20 answers before I begin my next question. I'd
21 appreciate it if you could do the same, allow me
22 to complete the question before you begin your
23 answer. Is that fair?

24 A Yes, it is.

25 Q Okay, good. Flip with me to page 20 of this

1 document.

2 A (Witness complies).

3 Q First, let me ask you this, do you have any
4 question in your mind that this testimony
5 accurately conveyed that the assumptions
6 supporting the cost estimate provided in this
7 testimony came from Westinghouse and CB&I?

8 A Please ask that question again.

9 MR. CHALLY: Can you read it back.

10 COURT REPORTER: First, let me ask you this,
11 do you have any question in your mind that this
12 testimony accurately conveyed that the assumptions
13 supporting the cost estimate provided in this
14 testimony came from Westinghouse and CB&I?

15

16 A I will have to look in here and see what's in
17 here.

18 Q Okay, let me refer you to the page, page 36
19 paragraph begins, "In the third quarter of 2014."

20 A Right. I don't see the PF addressed in here.

21 Q I didn't ask about the PF yet. We'll get to that.
22 Right now I'm asking you whether this testimony
23 accurately conveyed that the information, the
24 assumptions under which we were -- SCE&G was
25 requesting revised costs in this proceeding or

1 assumptions that came from WEC and CB&I.

2 A I understand now, yes.

3 Q Does this language in this testimony convey that
4 point to you?

5 A In general, yes.

6 Q Let me refer you to page 39, the first full
7 paragraph. I'm going to read it into the record
8 while you review it. "The schedules presented here
9 are the schedules that WEC and CB&I has presented
10 to SCE&G that it is prepared to meet and that
11 SCE&G has carefully reviewed with WEC and CB&I."
12 Do you see that?

13 A Yes.

14 Q Does that also convey to you that the assumptions
15 under which the costs were developed, the costs as
16 sought in this proceeding, were those received
17 from WEC and CB&I?

18 A Yes.

19 Q Now let's talk about productivity factors a little
20 bit. Were you aware that this testimony conveys
21 the fact that WEC and CB&I has not met the overall
22 productivity factor on which its original cost
23 estimates were based?

24 A I have to read it to see before I can answer that
25 question.

1 Q Okay, let me refer you to page 21.

2 A Yes. Okay.

3 Q The very first sentence of the second paragraph,
4 I'll read it while you review it. "For various
5 reasons, to date WEC and CB&I has not met the
6 overall PF on which its original cost estimates
7 were based."

8 A Okay.

9 Q So does that accurately describe to you the facts
10 that you understood at the time that WEC and CB&I
11 had not met the productivity factors?

12 A Yes.

13 Q This is the same point that you conveyed to the
14 ORS in your meeting with them, right?

15 A Yes.

16 Q And then it continues, "Unfavorable productivity
17 factors have been a matter of frank and direct
18 discussion between the parties and WEC/CB&I's
19 senior leadership has recognized the need to
20 improve in this area." Do you see that?

21 A Yes.

22 Q Is that similar to what you conveyed to the ORS in
23 your meeting with them?

24 A Yes, it is.

25 Q Then it continues further. "In justifying their

1 confidence in the revised rate on which the
2 current construction schedule is based, WEC and
3 CB&I points to things like reduced delay in
4 submodule production, increasing levels of design
5 finalization, and lessons learned from the
6 construction of the first AP1000 unit in China."
7 Did you understand that WEC and CB&I had conveyed
8 to SCE&G that these were among the issues that it
9 could focus on in an effort to try to reduce the
10 inefficiencies in their productivity?

11 A Yes.

12 Q Page 22. The very last sentence before "But the
13 possibility that WEC/CB&I will fail to meet
14 current productivity assumptions for the project
15 represents an important risk to both the cost
16 forecasts and construction schedule for the
17 project." Do you see that?

18 A Yes.

19 Q Is that also similar to the substance of the
20 information you conveyed to the ORS in your
21 meeting with them?

22 A It is.

23 Q Flip with me to page 38.

24 A (Witness complies). Okay.

25 Q The last paragraph that begins on this page, the

1 third sentence. "As to both timing and cost, the
2 schedules are based on productivity factors that
3 WEC/CB&I represents can be met given the current
4 status of the project. Meeting these productivity
5 factors will pose a challenge to WEC and CB&I.
6 But doing so will benefit the project both in
7 terms of cost and schedule -- now we're on page
8 39 -- For that reason, as owner SCE&G has no basis
9 or interest in assisting that WEC/CB&I should use
10 less challenging assumptions. However, SCE&G does
11 recognize that WEC/CB&I has set itself a
12 significant challenge as to future productivity."

13 Do you see that?

14 A Yes.

15 Q So does this accurately convey to you that the
16 historical productivity factors WEC and CB&I had
17 been able to achieve were significantly worse than
18 those that they were using to develop the EAC that
19 supported this request?

20 A I don't know that the magnitude of the difference
21 between actual performance and projected
22 performance is sufficiently addressed in this
23 language, but it does address the difference.

24 Q Okay. What would, in your view, have to be
25 disclosed to account for this magnitude?

1 A I'm a numbers person, and I would like to see the
2 numbers presented as a -- what their current
3 productivity is and what their expected projected
4 productivity is that the estimate is based on.

5 Q And are you aware of the fact that SCE&G disclosed
6 just that to the PSC and other public filings?

7 A Probably.

8 MR. COX: Object to the form.

9 Q I'm sorry?

10 A Probably. I mean, I don't have it memorized,
11 these testimonies, and it's been several years.

12 Q All right. Well, you said that you were familiar
13 of certain testimony provided by Dr. Lynch,
14 correct?

15 A Not familiar.

16 Q But you're aware of it's existence?

17 A I'm aware of it, yes. There's a difference.

18 Q Understood. I'll hand you a copy of it. Give me
19 just a second. It's going to be Exhibit No. 19.

20 (Whereupon, 2016 Testimony of Joseph
21 Lynch was marked Exhibit No. 19 for
22 identification.)

23

24 A Can I point out this is a 2016 document and not a
25 2015 document.

1 Q You certainly can.

2 A Without looking at this, this would -- I would
3 assume is testimony prepared to support the
4 fixed-price decision.

5 Q We'll come to that in a little bit later. What I
6 really want to focus on is the productivity
7 factor.

8 A Yes.

9 Q First flip with me to page seven.

10 A (Witness complies.)

11 Q Mr. Browne, have you been able to read all of page
12 seven?

13 A Yes.

14 Q Does this disclose the same substance of the
15 information that you had provided to the ORS in
16 this meeting that you were referring to?

17 A Yes.

18 Q Is there anything that's left out?

19 A It doesn't appear to be. I don't see the
20 relevance of this related to the 2015 filing.

21 Q So you would agree with me -- just referring to
22 the 2015 filing, you would you agree with me,
23 would you not, that SCE&G said that it was using
24 WEC's productivity assumptions?

25 A Yes.

1 Q Would you agree with me that SCE&G said through
2 Mr. Byrne that that assumption was materially
3 better than past performance?

4 A Yes.

5 Q Would you agree with me that SCE&G said in 2015
6 that WEC would have to mitigate productivity
7 concerns to get to the assumption that it had
8 used?

9 A Yes.

10 Q And would you agree with me that Mr. Byrne
11 accurately conveyed that SCE&G viewed this assumed
12 PF, WEC's assumed PF, to be a significant
13 challenge?

14 A Yes.

15 Q And one that SCE&G was not sure WEC would
16 ultimately be able to achieve?

17 A I don't recall if that's in there or not.

18 Q Let's go back to it. It indicates on page 38 of
19 the Byrne testimony --

20 A Yes.

21 Q I believe it's Exhibit No. 18. "Meeting these
22 productivity factors will pose a challenge to
23 WEC/CB&I."

24 A That's correct, but I don't see in here that SCE&G
25 does not believe they're going to make it, which

1 is what you asked me.

2 Q How about page 39. The question is, "Could these
3 schedules change?" Line 19, "These schedules can
4 and almost certainly will change." Do you see
5 that?

6 A Yes.

7 Q So does that also convey that we were not sure WEC
8 and CB&I would be able to meet the assumptions
9 that they had relied on in providing the estimate
10 at completion?

11 MR. COX: Object to the form.

12 A If I'm not mistaken this is referring to a
13 schedule and not a cost.

14 Q How about the last sentence that begins on this
15 page, "The construction and cost forecast will be
16 subject to ongoing change and revision as any
17 forecast would be."

18 A Yes.

19 Q Does that make clear that this particular
20 paragraph to you -- does that make clear to you
21 that this particular paragraph is referring to the
22 schedule and associated cost impacts?

23 A No.

24 Q It does not?

25 A No.

1 Q When it says, "The construction and cost forecast
2 will be subject to ongoing change and revision"
3 in this paragraph, it's your testimony that that
4 does not convey to you that this paragraph also
5 relates to the costs?

6 MR. ELLERBE: Object to the form.

7 A It does not.

8 Q Why not?

9 A Because the heading says, "Could these schedules
10 change?" Response, "These schedules can and
11 almost certainly will change." That is because
12 the construction schedule for any project as
13 complex as this is one that will be dynamic. Then
14 the final sentence addresses the fact that not
15 only could the schedule change, but the costs may
16 change somewhat as well. I'm not sure what you're
17 trying to get there.

18 Q Okay. All right. So would you agree with me that
19 productivity factor doesn't necessarily determine
20 whether a schedule can be met?

21 A Yes.

22 Q And that's because hiring more people can address
23 a poor productivity factor and nevertheless still
24 achieve a desired schedule.

25 A Correct.

1 Q And that's because you could always hire more
2 people, right?

3 A That's right.

4 Q Now, hiring more people would lead to an increase
5 in costs, right?

6 A That's correct.

7 Q And in 2015, SCE&G entered into an amendment to
8 the EPC agreement that gave it the option of
9 altering the contract to a fixed-price agreement,
10 right?

11 A Yes.

12 Q And then it ultimately exercised that option in
13 2016, correct?

14 A Yes.

15 Q So, through that amendment, Westinghouse agreed to
16 assume the cost of hiring more people to meet the
17 anticipated substantial completion dates. Is that
18 right?

19 A That's correct, yes.

20 Q And when SCE&G ultimately exercised that option,
21 SCE&G was no longer responsible for the cost of
22 hiring more people to meet the anticipated
23 substantial completion dates?

24 A That's correct.

25 Q And as a consequence, poor productivity factor was

1 materially less relevant, right?

2 A Absolutely.

3 Q Now, you testified that you wanted to see certain
4 criminal prosecutions for issues related to the
5 project, right?

6 A I don't know if the words were "I wanted to see,"
7 but I do believe I said I regretted that there
8 probably would not be. If that's -- there's a
9 difference there.

10 Q You regretted that there would not be criminal
11 prosecutions of who precisely?

12 A Specifically Kevin Marsh, Steve Byrne and Jimmy
13 Addison.

14 Q Anyone else?

15 A No.

16 Q And this is based on your belief that these three
17 individuals should not have disclosed that the
18 project was moving forward positively and that it
19 was healthy. Is that right?

20 A Yes.

21 Q Anything else?

22 A No.

23 Q Where exactly did these three individuals make
24 statements that you believe to be inaccurate?

25 A In the public -- not Public Service Commission, in

1 SEC filings.

2 Q So you're not aware of any statements made to the
3 Public Service Commission that you believe should
4 justify criminal prosecution.

5 MR. ELLERBE: Object to the form.

6 Q Is that right?

7 A I'm not aware of any, yes.

8 Q And you're not aware of any material misstatements
9 that you believe should justify criminal
10 prosecution in materials submitted to the Public
11 Service Commission. Is that right?

12 A Correct.

13 Q Only in the SEC filings?

14 A Yes.

15 Q What specific statements do you recall Messieurs
16 Marsh, Byrne, or Addison making in SEC statements
17 that you believe are inaccurate?

18 A I don't have a specific recollection of those.

19 Q You can't identify a single specific filing where
20 any of these individuals made a statement that you
21 believe to be materially inaccurate?

22 A At this point in time with no documentation in
23 front of me, I cannot.

24 Q What SEC filings have you reviewed?

25 A When?

1 Q Ever.

2 A Ever? Just about every quarterly filing. I did
3 not review it; I saw it after it was filed.

4 Q Do you do that as part of your job at SCANA?

5 A No, I did it as a stockholder at SCANA.

6 Q You say you reviewed every filing after it was
7 submitted to the Public Service Commission, right?

8 A I did not say I reviewed every one.

9 Q Okay, which ones did you review?

10 A I occasionally would look at the filings. I mean,
11 it's not a -- it's not my job. I didn't do it as
12 part of my job. I just would occasionally look at
13 a quarterly filing as filed by the -- in the
14 annual filings.

15 Q How much time would you spend reviewing them?

16 A A few minutes, an hour maybe.

17 Q Any of them that you recall spending more time
18 with than that?

19 A No.

20 Q So you understand that you're making a serious
21 accusation that these particular individuals
22 should be subject to criminal prosecution, right?

23 MR. ELLERBE: Object to the form.

24 A I understand that I have nothing to do with
25 whether they get criminally prosecuted or not.

1 Q I asked you a different question. Do you
2 understand you're making a serious accusation
3 these individuals should be subject to criminal
4 prosecution?

5 MR. HALTIWANGER: Object to the form.

6 Q Is that right? Do you understand you're doing
7 that today?

8 A I don't.

9 Q You don't understand that you're accusing these
10 people of committing a crime in connection with
11 the SEC filings?

12 MR. HALTIWANGER: Object to the form.

13 Q Is that not what you're doing?

14 MR. HALTIWANGER: Object to the form.

15 A I don't have the filings in front of me. I'm just
16 telling you that I felt like the progress of the
17 project was not correctly represented in those
18 filings. The general status of the project and
19 the health of the project was not correctly
20 represented in the filings.

21 Q But you can't identify a single filing where you
22 believe that information was conveyed in the way
23 that you're describing right now.

24 MR. COX: Object to the form.

25 A Today I cannot.

1 Q You say you reviewed these SEC filings while you
2 were employed at SCE&G, right?

3 A I did not.

4 Q I didn't -- I'm sorry, I'm just meaning in terms
5 of time.

6 A Time, yes.

7 Q In terms of time, during the time that you were
8 employed at SCE&G --

9 A Yes.

10 Q -- you reviewed these SEC filings?

11 A I read the SEC filings during the time period I
12 was employed at SCE&G.

13 Q And these are the same as the filings you believe,
14 although you can't identify with specificity, that
15 described the general status of the project in a
16 way that you believe inaccurate?

17 A Yes.

18 Q What precisely do you think should have been
19 disclosed, even if you can't identify what was
20 inaccurate, what precisely do you think should
21 have been disclosed in these SEC filings about the
22 fact that the project was unhealthy?

23 A I don't recall ever seeing a discussion of the
24 performance factors or the inefficiencies or
25 anything of the sort occurring in the SEC filings.

1 Q So you believe that the same sum and substance of
2 what we saw in Mr. Byrne's 2015 testimony should
3 have been disclosed in an SEC filing. Is that
4 right?

5 A Yes.

6 Q And that's it. Is that right? Is there anything
7 else that you believe should have been disclosed?

8 A Schedule issues and performance efficiency issues.

9 Q The same sum and substance of what we saw in
10 Mr. Byrne's 2015 testimony, right?

11 A Yes.

12 Q Let's take a quick break; we need to change the
13 tape.

14 VIDEOGRAPHER: This is the end of tape number
15 six in the deposition of Kenneth Browne. We're
16 off the record at 6:53 p.m.

17 (Off the Record)

18 VIDEOGRAPHER: This is tape number seven in
19 the deposition of Kenneth Browne. We're on the
20 record at 7:00 p.m.

21

22 BY MR. CHALLY:

23 Q Mr. Browne, before we broke to change the tape,
24 you had identified that you reviewed these SEC
25 filings that you were discussing while you were

1 employed -- during the time that you were employed
2 at SCE&G, right?

3 A I read the SEC filings.

4 Q Did you ever raise this concern you had regarding
5 the disclosures made in the SEC filings to anyone
6 at SCANA?

7 A Nothing other than casual conversation with
8 coworkers.

9 Q When specifically do you recall having a casual
10 conversation?

11 A I don't specifically recall having any casual
12 conversations.

13 Q So is it your testimony that you recall having
14 casual conversations with coworkers related to the
15 fact that you believed SCANA executives should be
16 subject to criminal prosecution?

17 A It's my recollection that I had casual
18 conversation with coworkers at SCE&G and SCANA
19 that the filings -- information contained in
20 filings did not present a clear picture of what I
21 saw was happening on the VC Summer nuclear
22 project.

23 Q But you can't recall a specific conversation?

24 A I cannot.

25 Q You're aware of an internal audit department at

1 SCANA, right?

2 A I'm aware there is one, yes.

3 Q And, in fact, you had referred some of the
4 Compuworld issues to the internal audit
5 department, right?

6 A Yes.

7 Q You never referred any of these issues, any of
8 your concerns related to the SEC filings to the
9 internal audit department, right?

10 A I did not.

11 Q Why not?

12 A I didn't think it was my place.

13 Q You understand, don't you, that there is a
14 confidential telephone line that's available to
15 SCE&G and SCANA employees that allows them to
16 raise concerns regarding the business and work
17 environment that they're operating in, right?

18 A Yes.

19 Q Did you ever use that resource to make any -- to
20 raise any concerns related to the SEC filings?

21 A I did not.

22 Q Did you ever raise any of these concerns with
23 anyone in SCANA's legal department?

24 A I did not.

25 Q Other than in these casual conversations, you

1 didn't discuss these concerns with anyone at all,
2 did you?

3 A Correct.

4 Q While you were employed, did you ever report these
5 issues to the South Carolina Law Enforcement
6 Division?

7 A I did not.

8 Q Did you ever report them to the FBI?

9 A I did not.

10 Q The US Attorney's office?

11 A No.

12 Q To police of any kind?

13 A No.

14 Q To the Securities and Exchange Commission?

15 A I did not.

16 Q Let me ask you this, before you left, did you ever
17 tell anyone, anyone, that you thought the activity
18 you're talking about, these SEC disclosures,
19 warranted criminal prosecution?

20 A I did not.

21 Q And you ultimately resigned from the company,
22 right?

23 A Yes.

24 Q Did you tell anybody when you resigned that you
25 thought SCANA senior executives had provided

1 materially inaccurate information in SEC filings?

2 A No, I did not.

3 Q In fact, when you resigned, you said you had
4 enjoyed working at SCE&G, correct?

5 A That's correct.

6 Q Let's have this marked as Exhibit No. 20.

7 (Whereupon, Resignation Letter of
8 Kenneth Browne was marked Exhibit No. 20
9 for identification.)

10

11 BY MR. CHALLY:

12 Q So you didn't say when you resigned that SCANA
13 senior executives were not disclosing the project
14 status accurately, did you?

15 A I did not.

16 Q You don't even -- you didn't even say when you
17 resigned that you weren't pleased with the status
18 of the project, right?

19 A In my resignation letter, I did not.

20 Q So you recognize the document that I have marked
21 as Exhibit No. 20 as your resignation letter,
22 right?

23 A Yes.

24 Q And in this document, you say that you "will miss
25 the friendships I have made here and the

1 excitement of working on this project."

2 A Yes.

3 Q Your further say in the second paragraph, very
4 last sentence, "This is a very important project
5 for SCE&G, Santee Cooper, and the residents of our
6 state, and I will be watching with great interest
7 as a spectator."

8 A That's correct.

9 Q And then the last paragraph, "I have enjoyed my
10 time at SCE&G, and I really appreciate the
11 opportunity that has been provided to me by the
12 company. The friendships made here and the spirit
13 of teamwork and cooperation enjoyed here have
14 added to my life greatly. I wish you all the best
15 and I look forward to successful completion of the
16 VC Summer new nuclear construction project."

17 A That's correct.

18 Q Does that accurately reflect your views at the
19 time you left the company?

20 A Yes, it does.

21 Q Other than these casual conversations, the first
22 time that you discussed your views as to the SEC
23 filings was when you were contacted by the FBI and
24 SLED. Isn't that right?

25 A That's correct.

1 Q How did you come to be contacted by the FBI and
2 SLED?

3 A I don't have a clue.

4 Q Did you reach out to them?

5 A I did not.

6 Q Did you have any discussions with Carlette Walker
7 about whether she pointed them, FBI and SLED, in
8 your direction?

9 A I don't recall having a specific conversation as
10 such, but it's possible that she did do that.

11 Q When did you say you had these meetings with the
12 FBI and SLED?

13 A November of last year.

14 Q And after those meetings, you called Al Bynum,
15 didn't you?

16 A Sometime substantially after the meetings I talked
17 with Al Bynum.

18 Q You do know who Al Bynum is, right?

19 A Yes.

20 Q He's a lawyer at SCANA?

21 A Correct.

22 Q He's someone you worked with while you were
23 employed with the company, right?

24 A Yes.

25 Q Do you recall calling him on December 18, 2017?

1 A I don't recall the date. I do recall making a
2 call to Al Bynum.

3 Q Do you recall that you told him on this call about
4 your meetings that occurred in November with the
5 FBI and SLED?

6 A I think I did, yes.

7 Q Do you recall telling him, and this is a quote,
8 "People were sometimes hard to work with, but
9 nothing criminal and nothing that they did really
10 affected the outcome." Do you recall telling
11 Mr. Bynum that's what you had conveyed to the FBI
12 and SLED?

13 A No.

14 Q You didn't -- are you telling --

15 A I don't recall telling Al Bynum that.

16 Q Let's get precise. Are you -- is it your
17 testimony that you did not tell Al Bynum what I
18 read to you just a minute ago?

19 A That is not my testimony. My testimony is I do
20 not recall telling Al Bynum that.

21 Q You may have told him that?

22 A It's possible.

23 Q Do you recall telling Al Bynum that you believe
24 after you left the company -- in this
25 December 2017 phone call, do you recall telling Al

1 Bynum that you believed SCANA senior executives
2 warranted criminal prosecution for these SEC
3 filings?

4 A I don't recall what I told Al Bynum in that phone
5 call.

6 Q Let's talk about this EAC work that you did in
7 2014 and 2015. You would agree with me, would you
8 not, that Westinghouse was the experienced
9 contractor, was an experienced contractor for
10 nuclear development, right?

11 A I would not agree with that.

12 Q You don't believe Westinghouse was an experienced
13 contractor for nuclear development?

14 A I do not.

15 Q You are aware, are you not, that they had designed
16 the AP1000 reactor?

17 A Yes.

18 Q You are aware that they had built those nuclear
19 reactors around the globe?

20 A They have not.

21 Q You are aware that they are in progress of
22 building those reactors around the globe?

23 A Yes.

24 Q And you are aware, are you not, that Westinghouse
25 had dozens of people involved in managing these

1 kinds of projects?

2 A Construction projects around the globe?

3 Q Specifically nuclear development.

4 A I'm still not aware of that.

5 Q How many people did they have on-site -- how many
6 people did the Consortium have on-site?

7 A We need to draw a distinction between design,
8 providing equipment, and construction, because
9 you're not permitting me to.

10 Q Fair enough. Let's ask it this way. What about
11 scheduling?

12 A Scheduling.

13 Q Are you aware of how many people the Consortium
14 had involved in scheduling?

15 A Consortium or Westinghouse?

16 Q Consortium.

17 A Consortium had many people involved in scheduling.

18 Q Is it fair to say dozens?

19 A Yes.

20 Q Are you also aware that the Consortium had
21 information that SCE&G did not have regarding the
22 construction of the project and the potential
23 schedule?

24 A Yes.

25 Q And the EAC team that you were a part of was

1 comprised of how many people?

2 A About five or six, whatever's on the sheet here.

3 Not a lot.

4 Q Only one was an engineer, right?

5 A If Marion Cherry was on the team, he's an
6 engineer.

7 Q So there was you and Mr. Cherry.

8 A He was not on the team; he just was in and out.
9 It was one engineer.

10 Q That was you, right?

11 A Oh, I'm sorry. Kyle Young is an engineer also.

12 Q So Kyle Young --

13 A Two engineers.

14 Q Two engineers.

15 A Correct.

16 Q I think you said that you were the only one on
17 your team that could, I think the words you used
18 were "speak construction" or something to that
19 effect?

20 A In our business and finance team.

21 Q Other than -- and did you have any experience in
22 scheduling the construction of a nuclear reactor
23 development?

24 A Scheduling, no.

25 Q Other than in this project, have you ever worked

1 on a nuclear construction project?

2 A I have not.

3 Q Have you ever been involved in managing a nuclear
4 reactor?

5 A I have not.

6 Q At this time, this time that you were working on
7 the EAC team, didn't you say you were also dealing
8 with your mother's health issues?

9 A No, not at the time.

10 Q You were trying to go part time, though, weren't
11 you?

12 A At this time, I don't recall exactly when I
13 started going part time.

14 Q Late 2014, you don't recall -- or early 2015, you
15 don't believe you were part time?

16 A No, I think it 2015, was middle of '15.

17 Q So you were the only engineer involved in the EAC
18 team --

19 A No.

20 Q Excuse me, Kyle Young and you were the only two
21 engineers.

22 A Yes.

23 Q Do you know whether Kyle Young, other than this
24 project, whether Kyle Young has had any
25 involvement in scheduling construction of a

1 nuclear construction project?

2 A Kyle Young had not.

3 Q Are you aware of him, other than in connection
4 with this project -- start that one over again.
5 Are you aware of Mr. Young ever being involved in
6 managing a nuclear reactor?

7 A I'm not aware. In fact, I can say that he was not
8 involved.

9 Q I think you said that you knew that Westinghouse,
10 in preparing its estimate at completion, had done
11 a bottom's-up approach. Is that right?

12 A I said that CB&I had done a bottoms-up approach.
13 You're going to have to draw a distinction between
14 CB&I and Westinghouse in your questions.

15 Q Fair enough. So, let's -- tell me if I'm -- one
16 thing that we should agree on, if at any point you
17 don't understand one of my questions or think that
18 you need to clarify one of my questions so you can
19 provide an answer, please do so, okay?

20 A Okay.

21 Q If you don't do that, though, is it fair to say
22 that you understood my question and can provide a
23 complete answer to it?

24 A Yes.

25 Q The estimate at completion that SCE&G received in

1 2014, did you understand that that was prepared
2 with a bottoms-up approach?

3 A Yes.

4 Q And I believe that you said that the actual output
5 provided to you, the model, involved reams of
6 paper, right?

7 A It was not a model; it was a cost estimate and it
8 did involve reams of paper.

9 Q And I believe you testified that the EAC's
10 estimate, the one that you developed, was a page?

11 A That's correct.

12 Q A single page?

13 A A large page, but a single page. Model.

14 Q Do you have any idea how much time was dedicated
15 to preparing the estimate at completion that SCE&G
16 received in 2014 from the Consortium?

17 A It was over six months of effort by probably a
18 dozen people.

19 Q Was it in part because of that that the EAC team
20 concluded that it should hold the Consortium to
21 this 1.15 productivity factor?

22 A I don't understand the question.

23 Q You do agree with me, though, don't you, that the
24 EAC team concluded that it should hold the
25 Consortium to its 1.15 productivity factor, right?

1 A Yes.

2 Q And that's reflected in Exhibit No. 15, the
3 presentation?

4 A Yes. Yes, it is.

5 Q Why did the EAC team make that recommendation?

6 A We made that recommendation because we felt like
7 if the Consortium was going to present to us that
8 they were going to meet that cost with the
9 performance factor of 1.15, that we should limit
10 our costs to what it would be with a 1.15
11 performance factor.

12 Q That was most prudent for the company to do at the
13 time, right?

14 A Yes. Now, do you understand what I mean when I
15 say that?

16 Q I believe I do, thank you. Do you know how the
17 company would hold the Consortium to this
18 productivity factor if you sought -- if the
19 company sought PSC approval for cost increases
20 more than what the 1.15 allowed?

21 A I don't understand that question.

22 Q If the company, if SCE&G had went to the PSC and
23 said I want approval for costs above what the
24 Consortium had provided based on the fact that we
25 have a productivity factor higher --

1 A Right.

2 Q -- how could -- do you know, how could SCE&G have
3 held the Consortium to its promised 1.15
4 productivity factor?

5 A They could not.

6 MR. COX: Object to the form.

7 Q They could not?

8 A No. In fact, SCE&G could not hold the Consortium
9 to that performance factor anyway because of the
10 contract.

11 Q I believe earlier in your testimony you said
12 something to the effect of, "Everybody acted like
13 the project would be done on time." Do you recall
14 that?

15 A Yes.

16 Q And that was one of your concerns related to the
17 project?

18 A Right.

19 Q We already looked at Mr. Byrne's testimony in
20 2015, right?

21 A Right.

22 Q Mr. Byrne didn't act like the project would be
23 done on time, did he?

24 A From appearances he did, yes.

25 Q So he acted like the project would be done on

1 time? Is that what you're saying?

2 A With the schedule that had been presented at that
3 time, yes.

4 Q Let's go back to his testimony. I believe you
5 have it in front of you.

6 A Yes.

7 Q Page 39, line 19. Mr. Byrne testifies, "These
8 schedules can and almost certainly will change."

9 A Right.

10 Q And it's your testimony here that you believe that
11 is Mr. Byrne acting as if the project was going to
12 be done on time?

13 A If you further read on, "That is because the
14 construction schedule for any project as complex
15 as this is one that will be dynamic." When I read
16 that, that's telling me that what he's saying
17 there when it's going to almost certainly change,
18 is there's some months it's gonna pull -- go out
19 and some months it's gonna come back.

20 Q He didn't say that; he said, "These schedules can
21 and almost certainly will change." Did he not?

22 A Right, "It can be expected to vary from month to
23 month during the construction period as conditions
24 change."

25 Q And that follows "These schedules can and almost

1 certainly will change."

2 A Correct, that's right.

3 Q In fact, the whole point of the 2015 testimony was
4 to extend the schedule and the expected cost for
5 the project, right?

6 A Yes, that's correct.

7 Q But it's nevertheless your testimony that
8 everybody acted like the project would be done on
9 time?

10 A On time as in the filing -- the date that was in
11 the filing, the scheduled date for the filing.

12 Q Let's flip to page 17. So page 17, beginning on
13 line 12, in response to a question of "What do you
14 consider to be the most important challenges that
15 the project faces going forward?" Beginning on
16 page 17, line 12, and then continuing through page
17 26 line, 10, Mr. Byrne describes these important
18 challenges, right?

19 A Yes.

20 Q Nine pages of challenges.

21 A Yes.

22 Q And he indicates in the introduction to each of
23 these challenges that, "I do not mean in any way
24 to minimize the importance of these remaining
25 challenges." Right?

1 A Yes.

2 Q "The project continues to be highly complex with
3 thousands of interdependent tasks and multiple
4 opportunities for problems and delay even where
5 contractors and subcontractors use great skill and
6 care." Do you see that?

7 A Yes.

8 Q And it's your testimony that you believe that is
9 Mr. Byrne saying that everyone -- excuse me,
10 saying that the project would be done on time?

11 A I believe that what is addressed here in this
12 testimony is schedule changes on the order of
13 magnitude of months, okay? My belief is that the
14 actual schedule was off in order of magnitude of
15 years. When I say that everyone behaved or acted
16 like the project was going to complete on
17 schedule, what I'm talking about is there was a
18 goal of meeting a date to support getting the
19 production tax credits.

20 Q How long did you -- and this is based on your
21 review in the EAC team that you were participating
22 in?

23 A It is not. It's based on my time working on the
24 project. Nothing to do with the EAC team. The
25 EAC team looked at cost, not schedule.

1 Q Okay. I think you said that you actually weren't
2 a part of the scheduling group, right?

3 A That's correct.

4 Q So even though you weren't part of the scheduling
5 group, you're independent assessment is that it
6 was years to be delayed?

7 A Yes. And, in fact, that's been borne out by
8 actual results.

9 Q Following Westinghouse's bankruptcy?

10 A Even prior to Westinghouse's bankruptcy. Look at
11 the Vogtle project. Have you looked at the Vogtle
12 project lately? Their cost estimate right now is
13 over \$25 billion and their schedule is pushed out
14 into the mid-2020s.

15 Q So would you agree that SCE&G's decision to
16 abandon the project was appropriate?

17 A Yes.

18 Q I think you also said that the contractor, and in
19 this instance, I understand you to be referring to
20 the Consortium, never gave any concrete examples
21 of what they could do to improve productivity. Is
22 that right?

23 A That's correct.

24 (Whereupon, Direct Testimony of Stephen
25 Byrne 2016 was marked Exhibit No. 21 for

1 identification.)

2

3 BY MR. CHALLY:

4 Q I'm handing you what I've marked Exhibit No 21.

5 Before we get there, can you go back to the 2015
6 testimony, page 21, line 18. Mr. Byrne testifies,
7 "In justifying their confidence in the revised
8 rate on which the current construction schedule is
9 based, WEC and CB&I points to things like reduced
10 delay in submodule production, increasing levels
11 of design finalization, and lessons learned from
12 construction of the first AP1000 unit in China."

13 Do you see that?

14 A Yes.

15 Q So aren't these examples of what they could do to
16 improve their productivity?

17 A Not really.

18 Q Why not?

19 A Because these three things here, reduce delay in
20 submodule production, has nothing to do with
21 productivity factors. That's off-site work,
22 producing submodules. Increasing levels of design
23 finalization is getting the design complete. That
24 doesn't impact performance factor. The last
25 lesson learned from construction of the first

1 AP1000 unit in China, they're not sending craft
2 people to China to learn how to build it. What
3 they're incorporating there is correcting design
4 deficiencies that are identified in China before
5 the work gets done on-site.

6 Q But they do -- you agree with me, though, that
7 they do explain why it was at least possible that
8 future PF, productivity factor, would be better
9 than historical productivity factor.

10 A Who explains?

11 Q These -- if you learned lessons from the
12 construction of the first AP1000 unit in China,
13 that might lead to increased productivity in the
14 future, right?

15 A If you sent the craft people to China so they
16 could learn the lessons, it would, but that's not
17 what this is addressing. I do not agree with you.
18 You said do I agree with you? I do not agree with
19 you.

20 Q Fair enough. So let's go to the 2016 testimony.

21 A Okay.

22 Q Particularly page 18. First off, you were
23 employed through the company -- you were employed
24 at the company through July of 2016, right?

25 A Correct.

1 Q So are you aware of 25 key work streams that
2 Westinghouse and Fluor identified as important
3 targets for improvement?

4 A Yes.

5 Q And you are aware that many of those changes were
6 implemented before the time you left, right?

7 A Yes.

8 Q And you are aware that those changes include
9 standardized and simplified work packages for
10 nuclear island construction, streamlined processes
11 for equipment transfers between suppliers and
12 contractors, and processes to minimize design
13 changes for module and submodule vendors, correct?

14 A Yes.

15 Q Is it your testimony that that has no impact on
16 productivity factor?

17 A Absolutely not. These are tremendous impacts to
18 productivity factor, all implemented by Fluor when
19 they came on-site after the fixed-price option was
20 implemented in 2015, 2016. All the discussions
21 concerning performance factors and failure to
22 address performance factors were through CB&I and
23 Shaw, which were all prior to Fluor coming
24 on-site. And if you'll check the record, I
25 believe I did say that Fluor made great

1 improvements when they came on-site and it was a
2 very good thing to see Fluor show up on-site.

3 Q Okay, so those were the concrete examples that you
4 were looking for?

5 A Yes.

6 Q And they came about when Fluor became involved?

7 A Yes.

8 Q I think you testified earlier that by the time we
9 went to -- time SCE&G went to the fixed-price
10 option, productivity factors were irrelevant,
11 right?

12 A Correct. Not irrelevant, because they impact the
13 schedule. But they were not relevant regarding
14 cost because we had the fixed-price.

15 Q Okay. I believe you also testified that you
16 understood the only benefit to Westinghouse of the
17 fixed-price option was getting CB&I out of the
18 Consortium. Is that right?

19 A Yes.

20 Q Don't you recall that the fixed-price option, or
21 at least the EPC amendment that led to the
22 fixed-price option, resolved various disputes
23 related to the project between the owners and the
24 Consortium?

25 A Yes.

1 Q And it ultimately facilitated a path forward on
2 the project, right?

3 A It resolved disputes that sooner or later would
4 have probably been impediments to progress.

5 Q So it was a way, was it not, that Westinghouse
6 particularly could move forward and attempt to
7 complete construction?

8 A Yes.

9 Q And that was in Westinghouse's interest, wasn't
10 it?

11 A It was in the owner's interest.

12 Q Certainly in the owner's interest, but it was also
13 in Westinghouse's interest, wasn't it?

14 A I'm not sure why.

15 Q Hadn't you been informed that Westinghouse was
16 pursuing these projects in other places, nuclear
17 develop projects?

18 A Which we were informed of that, yes.

19 Q And Westinghouse had said that to the owners,
20 right?

21 A Right.

22 Q And weren't you also aware that Westinghouse
23 viewed this project as a loss leader?

24 MR. COX: Object to the form.

25 A That was our understanding. I believe I mentioned

1 that earlier today. That was the only concept
2 that made it work.

3 Q We talked earlier, or you talked pretty
4 extensively with Mr. Haltiwanger and to a degree
5 with Mr. Cox, about the process that led to
6 testimony provided by Carlette Walker in 2015 to
7 the PSC?

8 A Yes.

9 Q Did you view yourself as somewhat of Carlette
10 Walker's stand-in at this meeting that you talked
11 about?

12 A No.

13 Q Why wasn't she there?

14 A I'm not sure.

15 Q You have no idea?

16 A I don't actually.

17 Q Did she regularly miss meetings where testimony
18 she was going to be providing to the PSC would be
19 discussed?

20 A She rarely missed meetings when she was away from
21 the site due to her husband's illnesses, but I'm
22 not sure if that was the case at this time or not.

23 Q Following this meeting, you understood the
24 decision to use the Consortium's number for
25 purposes of preparing the 2015 testimony, didn't

1 you?

2 A Yes.

3 Q You accepted that decision, didn't you?

4 A I did.

5 Q And Ms. Walker did as well, didn't she?

6 A I don't know if she did or not.

7 Q You are aware that she actually submitted the
8 testimony, correct?

9 A Yes.

10 Q Is it your testimony today that she was compelled
11 to submit the testimony?

12 MR. COX: Object to the form.

13 A That is not my testimony that she was compelled
14 to. I'm not sure that she was able to fully read
15 and understand the testimony because of her time
16 away.

17 Q Are you aware that she also provided testimony
18 live to the Commission?

19 A I'm not sure how it works; I've never been to a
20 PSC hearing.

21 Q You don't know whether or not she did?

22 A I don't know.

23 Q Did she tell you that she was going to go to the
24 internal audit department because of this
25 testimony?

1 A She did not.

2 Q In fact, she had been in the internal audit
3 department herself, right?

4 A Yes.

5 Q So she, to your knowledge, would have known how to
6 raise issues related to someone attempting to
7 compel her to provide false testimony if she
8 wanted to, right?

9 MR. COX: Object to the form.

10 A She was aware of the internal audit. If you're
11 trying to put words into my mouth and say she was
12 compelled to do it, I don't know if she was ever
13 compelled. She never did tell me that she was
14 forced to do this.

15 Q Did she ever tell you that she was going to resign
16 because she thought this testimony was inaccurate?

17 A She did not.

18 Q Did she ever tell you that she ever tried to get
19 out of providing this testimony in 2015?

20 A No, she did not.

21 Q Is it your testimony today that the testimony
22 Ms. Walker provided was inaccurate?

23 A It was not inaccurate.

24 Q And Ms. Walker's testimony is clear, is it not,
25 that she was disclosing the schedule and costs as

1 received by the Consortium, right?

2 MR. COX: Object to the form.

3 A Yes. I believe it was. It's clear in
4 Mr. Byrne's, and I would imagine hers was
5 consistent with that.

6 (Whereupon, Direct Testimony of Carlette
7 Walker 2015 was marked Exhibit No. 22
8 for identification.)

9

10 BY MR. CHALLY:

11 Q I've handed you what I've marked as Exhibit
12 No. 22. It is a copy of the prefiled testimony
13 that Ms. Walker submitted. Is this the testimony
14 that you were discussing earlier that you recall
15 seeing at this meeting?

16 A Yes. This testimony addresses cost only, but it
17 does appear to be clear that it was the cost
18 provided by Westinghouse and CB&I.

19 Q And, in fact, Ms. Walker specifically indicates
20 that, "the productivity factors realized on the
21 project to date are less favorable than those
22 originally projected by WEC and CB&I." Right?
23 Page 11, line 22.

24 A Yes. She refers to Mr. Byrnes' and Mr. Jones'
25 testimony and reiterates that it's less favorable.

1 Q Let's look at page 15, line 19. "WEC/CB&I also
2 has not met the overall productivity factors on
3 which its original cost estimates were based and
4 has increased its labor productivity factors
5 resulting in increased direct craft labor cost for
6 the project." Right?

7 A That's correct.

8 Q So Ms. Walker clearly disclosed that the
9 productivity factors had in the past been a
10 challenge for WEC and CB&I, right?

11 A Yes.

12 Q And that's totally accurate, isn't it?

13 A It is accurate.

14 Q Is there any aspect of this testimony at all that
15 you believe to be inaccurate in any way?

16 A Without sitting here and reading through the whole
17 thing again, I cannot answer that question.

18 Q I'd like you to do that.

19 A Okay. (Witness reviewing document). Can you ask
20 the question again.

21

22 COURT REPORTER: Is there any aspect of this
23 testimony at all that you believe to be inaccurate
24 in any way?

25

1 A The answer is yes.

2 Q Which portions?

3 A Page 14, the paragraph beginning on line 16,
4 there's a subtle difference here in this testimony
5 and what Mr. Byrne presented. Would you like for
6 me to read it?

7 Q However you think is best to describe your issue?

8 A This says, "Through discussions with the WEC/CB&I
9 team, EAC team, and based upon SCE&G's review and
10 analysis of the information provided and
11 representations made to the company by WEC/CB&I,
12 SCE&G approved for filing under the BLRA the EAC
13 cost as a reasonable and prudent estimate of the
14 target price and time and materials price for
15 completion of the project." Okay. That
16 doesn't -- there's a distinction there where this
17 says that while it was provided by WEC/CB&I, SCE&G
18 approves this as a reasonable and prudent cost.
19 And I don't believe that is a fair representation
20 of -- I say the EAC's team analysis of this cost.
21 Q You thought the cost should be higher, right?
22 A Yes.
23 Q Did you say that this is information you thought
24 was a slight variation of what Mr. Byrne
25 describes?

1 A I believe the wording is different here.

2 Q So the wording that you saw in Mr. Byrne's
3 testimony didn't have this issue. Is that right?

4 A I don't think so.

5 Q And I think you said there was another?

6 A It's the same issue on page 20. The question,
7 "Did SCE&G determine whether WEC/CB&I's revised
8 estimate was reasonable?" Response, "Yes. The
9 review team analyzed this increased cost as part
10 of the process I previously described and approved
11 for filing under the BLRA EAC this cost as a
12 reasonable and prudent estimate of the target
13 price and time and materials price for completion
14 of the project. However, the company has not
15 waived and has specifically reserved all rights
16 under the EPC contract and otherwise.

17 Q Is the similar concern you have with this
18 language?

19 A Yes.

20 Q Nothing else based on your review?

21 A Correct. And the distinction here, as I read
22 this, this is saying that SCE&G supports this as a
23 reasonable and prudent cost. Whereas, in
24 Mr. Byrne's testimony, I believe he represents it
25 fully as the cost as provided from the contractor.

1 Q I believe in your testimony -- we can put that one
2 aside; I'm done with that. I believe in your
3 testimony, you discussed your understanding of an
4 issue with owner's cost as initially disclosed to
5 the PSC. Is that right?

6 A Owner's cost?

7 Q Yeah, the expected owner's cost?

8 A I questioned about owner's cost, yes.

9 Q And specifically whether there was any alteration
10 to expected owner's cost between what was expected
11 of what was ultimately presented to the PSC. Do
12 you recall that?

13 A No, I don't recall -- I believe the discussion
14 was, and I don't know if we can go back to it or
15 not, but whether there had been changes made to
16 the owner's cost by SCE&G prior to filing that
17 cost with the Public Service Commission.

18 Q That's what I was referring to. I may not have
19 characterized it that way.

20 A And the answer to that was, yes, SCE&G did make
21 changes to the owner's cost prior to the filing,
22 and it was based on an input from Westinghouse
23 concerning the number of people that would be
24 required to operate and maintain the new units.
25 Our internal team felt like there was a

1 possibility for more people based on the unit one
2 quantity of people, and Westinghouse said because
3 of the new technology, we can do it with fewer
4 people.

5 Q Did you independently validate the information
6 provided to the PSC on owner's cost to determine
7 whether it was accurate?

8 A No.

9 Q And make sure I understand your testimony. SCE&G
10 disclosed what the Consortium had told SCE&G. Is
11 that right?

12 A That's what the owner's cost was based on, I
13 believe, yes.

14 Q Who specifically at SCE&G thought the number
15 should be lower?

16 A Lower than?

17 Q What Westinghouse had suggested.

18 A Nobody. They used the Westinghouse number.

19 Q So no one at SCE&G thought the number should be
20 lower than what Westinghouse --

21 A Correct. There were some people, I believe it was
22 Unit One operations people, who felt like it
23 should be higher, more people.

24 Q I'm sorry. Okay. Thank you. Who at SCE&G
25 thought that the number should be higher?

1 A Unit One operations people. I mean, I don't have
2 any names. The way the owner's cost was
3 developed, there was two parallel paths: Getting
4 information from Westinghouse and they were
5 getting information from Unit One as to how many
6 people do you need in each department to run the
7 plant with. And the headcount number came up
8 different. And it was decided to use the
9 Westinghouse number for the headcount which could
10 be inferred to develop an owner's cost, which was
11 low, fewer people than what the Unit One
12 operations, which is not an unreasonable thing
13 because it has more modern controls, it's modern
14 equipment, and it's reasonable to expect you would
15 have fewer people.

16 Q Earlier you said that there was one specific thing
17 that you thought could be done to improve the
18 productivity on-site.

19 A Yes.

20 Q And you referred to craft being on-site with no
21 work to do?

22 A Yes.

23 Q And you said that what SCE&G could have done is
24 told the contractors to send people home, right?

25 A We could have tried that, yes.

1 Q Did you?

2 A I did.

3 Q You tried that?

4 A Yes.

5 Q What was the response?

6 A The contract says that the contractor's
7 responsible for all means and methods of
8 construction. Which means as an EPC contract,
9 that's his business and not ours.

10 Q So you weren't aware of a contractual right to do
11 what it is you were suggesting be done to increase
12 productivity factor?

13 A I'm aware -- I can tell you there was no
14 contractual right to do that.

15 Q At the end of your testimony, your discussion with
16 Mr. Cox, you said that there were certain costs
17 that you believed were not prudent?

18 A Yes.

19 Q Which ones?

20 A Can't identify them right now.

21 Q You can't identify a single one?

22 A No.

23 Q How would you go about trying to define the
24 expenses that you believe to be imprudent even if
25 you can't identify them?

1 A I don't understand that -- how would I go about
2 identifying them?

3 Q Right.

4 A I'd have to go back through and look at all of the
5 costs and what we spent money on through the
6 project and every decision made.

7 Q What would you be looking for?

8 A I'd be looking for things that were built that
9 didn't need to be built. Equipment that was
10 purchased that didn't need to be purchased.

11 Q How would you determine whether it needed to be
12 built or equipment needed to be purchased?

13 A It was my understanding of prudent is what would a
14 reasonable person do in the same situation. And I
15 would have to look at every cost and say is it a
16 prudent decision to make that -- to make that
17 decision. I believe there were some decisions
18 made that were not prudent.

19 Q Which ones? Which ones?

20 A I'll tell you what, you put me on the payroll,
21 send me -- give me the budget and the money that
22 was spent and I'll pull them out and find them for
23 you. It's been two years since I set foot on that
24 project.

25 Q I believe you testified earlier that the

1 productivity factor had never been below 1.15. Do
2 you recall that?

3 MR. HALTIWANGER: Object to the form.

4 A It was below 1.15 early in the project when they
5 were doing civil work. Once they started vertical
6 construction, it was never below 1.15.

7 Q So if you had testified earlier today that the
8 productivity factor had never been below 1.15,
9 that was just inaccurate, right?

10 MR. HALTIWANGER: Object to the form.

11 A Yes.

12 MR. CHALLY: I need to take a couple minutes.
13 I think I might be through.

14 VIDEOGRAPHER: Off the record at 8 o'clock
15 p.m.

16 (Off the Record)

17 VIDEOGRAPHER: On the record at 8:10 p.m.

18

19 BY MR. CHALLY:

20 Q Mr. Browne, back to productivity for a second. On
21 things that SCE&G could have done and did do, are
22 you aware, are you not, that SCE&G was withholding
23 certain payments to the Consortium based on its
24 belief that the Consortium had experienced delays?

25 A Yes.

1 Q You said earlier that Ray Charles could see the
2 issues you had seen related to the status of the
3 project, right?

4 A Related to the schedule completion at the current
5 work completion rates.

6 Q And that's based on information that you had
7 related to historical productivity factors and the
8 various different rations that you identified,
9 right?

10 A If I can locate it, I can show you what that's
11 based on. This is Exhibit No. 16. The next to
12 the last curve, that is a graphical representation
13 of what I was describing at that time.

14 Q So I understand. But is your testimony, this sort
15 of Ray Charles comment, was that specific to this
16 particular document or was it broader to the
17 schedule and cost of the project?

18 A It was specific to the impact represented in this
19 curve.

20 Q So you're saying, if you just look -- if someone
21 provided this particular document to Ray Charles,
22 Ray Charles could understand what it's conveying.
23 Is that right?

24 A Yes. Of course, that is a -- there's not a lot of
25 humor in it because Ray Charles is blind.

1 Q Right.

2 A But this -- this would represent that I would
3 believe anyone could look at this curve if they
4 understood what is represented here and recognize
5 there is a problem.

6 Q And this, the inputs to this curve, as you
7 understand it, are the productivity factors. Is
8 that right?

9 A The input to this curve is the work completed
10 during a fixed period of time and the time
11 remaining in the project to complete the remaining
12 work.

13 Q And the amount of work completed in a fixed period
14 of time was known to individuals who were involved
15 in the project, right?

16 A Yes.

17 Q And the amount of work completed during a fixed
18 period of time was also known to the Office of
19 Regulatory Staff, wasn't it?

20 A Yes.

21 Q So the Office of Regulatory Staff could have
22 prepared a chart, to your understanding, very
23 similar to the one that we are looking at right
24 now in Exhibit No. 16?

25 MR. COX: Object to the form.

1 A They could have.

2 Q And so they could have then known just as Ray
3 Charles could know what the issues were in terms
4 of the likely schedule for the project, right?

5 MR. COX: Object to the form.

6 A Yes.

7 Q Can you pull out Exhibit No. 13, which is your
8 email exchange with Carlette Walker.

9 A Thirteen, yes.

10 Q In your testimony related to this particular
11 document, I believe you indicated that you
12 understood you were challenging an official
13 position of SCE&G?

14 A Yes.

15 Q What is the official position you thought you were
16 challenging?

17 A That the Unit Two would complete in September
18 of 2018 and Unit Three would complete in September
19 of 2019.

20 Q SCE&G promptly disclosed to the PSC that there
21 would be a delay in that project completion date,
22 didn't they?

23 MR. COX: Object to form.

24 A At what time?

25 Q You said that -- you sent this email in August.

1 Aren't you aware that in March of 2015, SCE&G
2 publicly petitioned the Public Service Commission
3 for a new schedule and new costs for completion of
4 the project?

5 A That's correct. What date was that?

6 Q That was in March 2015.

7 A And what date was this email?

8 Q August.

9 A Correct. In August of 2014, the official position
10 of SCE&G was September of 2018 and September
11 of 2019.

12 Q Where was that official position announced, to
13 your understanding?

14 A In any reports that would've been filed at this
15 point in time.

16 Q Is it your testimony that reports that went in
17 after August 2014 committed to a substantial
18 completion date shorter or sooner than what you
19 believed was appropriate at the time?

20 A Say that again.

21 Q Is it your testimony that you believe reports
22 submitted after the date of your email, filings
23 submitted to the PSC after that date, reported on
24 a substantial completion date different than -- or
25 excuse me, committed to a substantial completion

1 date of '18 and '19?

2 A Prior to the March of 2015 filing, I cannot
3 specifically give you dates of reports, but I
4 would expect that any reports submitted prior to
5 that March filing would have dates of September
6 '18 and September of '19.

7 Q But do you know whether or not they do?

8 A I don't have them in front of me.

9 Q Do you know whether there were any discussions
10 with the Office of Regulatory Staff or any member
11 of the PSC related to the expectation of
12 submitting a petition in 2015?

13 A I don't know that there was or not; I can't say.

14 Q The old schedule that we're talking about. This
15 '18 and '19, that schedule was also based on dates
16 that the Consortium had given SCE&G, right?

17 A Yes, that's correct.

18 Q Mr. Browne, since the time you left SCE&G, have
19 you had discussions with Carlette Walker?

20 A I have had discussions with Carlette Walker.

21 Q You said you had discussed your deposition with
22 Carlette, I believe, right?

23 A No, I did not. I told you that I discussed the
24 fact that I was going to have a deposition with
25 Carlette Walker.

1 Q When did you have that discussion with her?

2 A In an email conversation last week.

3 Q What's your email address?

4 A Actually, it was a Facebook Messenger discussion.

5 Q Did she reach out to you?

6 A She did.

7 Q How did she know you were going to be deposed?

8 A I don't know. I'm sure -- well, I know that it
9 was publicly posted by the Public Service
10 Commission, and I'm guessing that's how she knows.

11 Q The date of your deposition? It's your belief
12 that the date of your deposition was publicly
13 disclosed with the Public Service Commission?

14 A I know for a fact that the date of my deposition
15 was publicly disclosed by the Public Service
16 Commission.

17 Q What was the exchange with Ms. Walker on this
18 topic?

19 A Would you like for me to read it to you?

20 Q I would.

21 A I don't think this is appropriate, but I'm going
22 to humor you.

23 Q Okay.

24 A "Hey Ken, hope you are enjoying your grandbabies
25 and now being able to get back up to the

1 mountains. I thought you might be interested to
2 learn that I heard from Aaron Hawkins this
3 morning. He was trying to find out where Keller
4 Kissam's home is. He asked me to confirm his read
5 of my thoughts that Keller was an honest guy on
6 staff. I took the liberty to make sure they knew
7 of Byron Hinson's role as well as Kenny Jackson's.
8 They may not get in trouble, but at least I would
9 like to think that being interviewed by the FBI
10 will rattle their cages. I hope your deposition
11 goes well next week. I would love to talk to you
12 afterwards to learn of the nature of their
13 questions. I will call you. If I'm home, just
14 leave me a message and I will call you back
15 assuming you feel you want to talk about it. I
16 also want you to know my attorney had to answer a
17 subpoena with a copy of my file again. I don't
18 know who wanted it." And I don't know what she's
19 talking about there on the file.

20 Q Do you intend to call Ms. Walker after your
21 deposition?

22 A About the deposition?

23 Q Uh-huh.

24 A No.

25 Q Are you aware that Ms. Walker was deposed in this

1 case?

2 A No, I'm not.

3 Q It's your testimony that you didn't discuss with
4 Ms. Walker any aspect of her deposition?

5 A I did not. Yes, it is. That is my testimony.

6 Q I'd like to -- how many times have you discussed
7 issues related to the project or this litigation
8 with Ms. Walker since you left the company in
9 July 2016?

10 A I have never discussed litigations with the
11 company -- against the company, with Ms. Walker.

12 Q Well, your Facebook Messenger talks about a
13 subpoena that Ms. Walker received. I'm intending
14 litigation against the company to encompass even
15 those kinds of discussions.

16 A I have never discussed litigations with
17 Ms. Walker. The cases -- I don't even know what
18 the cases are to discuss.

19 Q Have you ever discussed a subpoena with Ms. Walker
20 since you left the company in July 2016?

21 A I know that she was subpoenaed by the FBI.

22 Q How do you know that?

23 A Because she told me.

24 Q When did she tell you that?

25 A I don't recall when it was. Sometime last winter.

1 Q Through what means did she tell you that? Was it
2 a Facebook message?

3 A No, it was a discussion. I've had dinner with her
4 and her husband.

5 Q What do you recall her telling you about this?

6 A About what?

7 Q The subpoena she received from the FBI?

8 A Just that she was subpoenaed.

9 Q Nothing else?

10 A No.

11 Q There's no other discussion on that topic?

12 A Nope.

13 Q She simply said "I received a subpoena from the
14 FBI" and you all moved on to a different issue?

15 A She said that she received a subpoena and that was
16 the only way she could testify -- or wasn't
17 testifying, just felt like she could discuss the
18 project. Her attorney told her that she had to
19 have a subpoena to be able to do it. That was
20 after the time that I had spoken with the FBI.

21 Q Did you tell her that you had spoken with the FBI?

22 A I did tell her that I spoke with the FBI.

23 Q What did you tell her about that discussion?

24 A That's all.

25 Q Did you tell her the topics that you discussed

1 with the FBI?

2 A I told her we had discussed a spreadsheet, the
3 cost spreadsheet.

4 Q Nothing else?

5 A Right.

6 Q Isn't that unusual, to have a discussion with a
7 former employee about an interview with the FBI?

8 MR. HALTIWANGER: Object to the form.

9 A I don't know if it's unusual or not. It's unusual
10 for me to have a discussion with the FBI. I've
11 only had one in my life.

12 Q So I'm trying to understand how it's possible that
13 it was a -- well, how long was the discussion
14 between you and Ms. Walker related to the
15 interview you had with the FBI?

16 A Just a few minutes.

17 Q Okay.

18 A It was at the Red Bowl Asian Bistro in the Village
19 at Sandhills. My wife and myself and her husband
20 and her. And my wife doesn't like for me to talk
21 about this stuff and neither does her husband.

22 Q Fair enough. Any other instance where you have
23 discussed with Ms. Walker a subpoena?

24 A No.

25 Q Any other instance where you have received a text

1 message or an email or a message of any kind from
2 Ms. Walker related to a subpoena?

3 A I don't think so, no.

4 Q Other than this one instance you already
5 discussed, have you ever discussed with Ms. Walker
6 any investigation currently underway related to
7 the project?

8 A Not other than that time.

9 Q What other discussions have you had with
10 Ms. Walker since you left the company in 2016 that
11 touched on the project?

12 A I don't recall any. I mean, we've seen them
13 socially maybe two or three times in that time
14 period.

15 Q Do you exchange emails with Ms. Walker?

16 A No.

17 Q Have you ever exchanged text messages with
18 Ms. Walker since you left the company?

19 A I don't know if I have or not, honestly.

20 Q Do you know her cell phone number?

21 A I have her cell phone number in my phone, yes.

22 Q Is there any reason why you couldn't tell me right
23 now whether you had text messages with Ms. Walker
24 from July 2016 to the present?

25 A I don't know if there is or not.

1 Q Do you have your phone with you?

2 A I have my phone.

3 Q Can you search your phone using Ms. Walker's phone
4 number to see whether or not you've had a text
5 message with her since July 2016?

6 A I can do that.

7 Q Okay, please.

8 A (Witness complies). All regarding my wife and
9 issues that my wife had this past spring.

10 Q So no text messages with Ms. Walker related to the
11 project?

12 A Not in my phone, right.

13 Q While you have that, what's the date of the
14 Facebook message that she sent you that you read?

15 A It doesn't have a date. It's Friday 6:49 p.m. and
16 I'm guessing it was probably a week-and-a-half
17 or -- a week-and-a-half ago or so.

18 Q Other than your lawyer, have you talked to any
19 lawyers in any way related to the project since
20 you left the company in July 2016?

21 A No. Well, I did call and talk to Al Bynum in
22 December of last year, and I specifically called
23 and talked to Al Bynum about getting assistance in
24 paying for my lawyer because I don't think it's
25 right. Because I'm suffering and spending my time

1 here and have my attorney and nobody's paying my
2 legal expenses.

3 Q Other than discussions with your lawyer and
4 Mr. Bynum, are you aware of any other discussions
5 you had with anyone who is affiliated with a
6 lawyer about the project. So an assistant, a
7 paralegal, an investigator, anything of that sort?

8 A I have not.

9 Q Since you left SCE&G in July 2016, have you talked
10 about the project with Marion Cherry?

11 A Yes.

12 Q How often?

13 A Maybe four times in that time period.

14 Q What do you recall discussing with Mr. Cherry?

15 A The status of things, what's going on.

16 Q Stuff you see in the newspaper?

17 A No. What's happening on the project. After it
18 shut down, what's happening with the equipment,
19 things like that. Just more of a casual interest
20 in the project than anything else.

21 Q Have you ever discussed the dispute that involves
22 SCE&G related to the project with Mr. Cherry since
23 you left SCE&G in July 2016?

24 A What dispute?

25 Q This dispute, any of the disputes that you're

1 aware of involving the company?

2 A No.

3 MR. CHALLY: That's all I have. Thank you.

4 VIDEOGRAPHER: This is the end of tape number
5 seven in the deposition of Kenneth Browne. We're
6 off the record at 8:30 p.m.

7 (Off the Record)

8 VIDEOGRAPHER: This is tape number eight in
9 the deposition of Kenneth Browne. We're on the
10 record at 8:35 p.m.

11

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13 RE-EXAMINATION

14 BY MR. COX:

15 Q Mr. Browne, I just have a few follow-up questions
16 for you. In March 2015, do you believe that the
17 cost EAC that your team prepared was a better and
18 more accurate forecast of the anticipated cost
19 required to complete the project than the
20 Consortium's cost EAC?

21 MR. CHALLY: Object to form.

22 A Yes.

23 Q Now, Mr. Chally had you go through Ms. Walker's
24 testimony and identify any statements you believed
25 were not correct. I don't believe you had the

1 chance to do that with Mr. Byrne's. So I would
2 like to turn you to, if you could pull out Exhibit
3 No. 18, which is Mr. Byrne's 2015 testimony.

4 A Got it.

5 Q If you could turn to page 39 of that document.

6 A Right.

7 Q I'm going to read the two sentences from line five
8 to 10, and then I'm going to ask you if you
9 believe these statements are correct? If the
10 statement is correct. "The schedules presented
11 here are the schedules that WEC/CB&I has
12 represented to SCE&G that it is prepared to meet
13 and that SCE&G has carefully reviewed with
14 WEC/CB&I. For those reasons, I can affirm that
15 these schedules represent the best and most
16 definitive forecast of the anticipated costs and
17 construction schedule required to complete this
18 project that is available as of the date of this
19 filing of the testimony." Do you believe that
20 second sentence was accurate?

21 A No.

22 Q Why not?

23 A Because the costs were not the best and most
24 definitive forecast at that time.

25 Q The work that your team did was the best and most

1 definitive forecast?

2 A It was better.

3 Q It was better evidence than what the Consortium
4 had given you?

5 A Correct.

6 Q And isn't it correct, Mr. Browne, that the SCE&G
7 attorneys that you spoke to did not tell you that
8 they were using the Consortium's numbers because
9 they were better and more accurate numbers?

10 MR. CHALLY: Object to form. And Judge Hayes
11 has ruled as to this particular meeting. If
12 you're asking a broader question, we're going to
13 have the same issue. So if you're limiting it to
14 this meeting, then we will -- subject to our, you
15 know.

16 MR. COX: Well, we can clear this up now.

17

18 BY MR. COX:

19 Q Did you have any other discussions about the 2015
20 testimony other than that meeting that you went to
21 regarding Ms. Walker's testimony to which she was
22 not present but two SCE&G attorneys were present?

23 A No.

24 Q So, at that meeting, the SCE&G attorneys did not
25 tell you that they were using the Consortium's

1 anticipated cost numbers because they were better
2 or more accurate numbers than the numbers your
3 team developed, correct.

4 MR. CHALLY: I do have a continuing objection
5 to that.

6 Q And isn't it true that you were told that the
7 reason that the Consortium numbers were going to
8 be used is because the Commission would disapprove
9 the filing if you used your team's numbers?

10 MR. CHALLY: Object to form.

11 A No, that is not true.

12 Q Okay. Tell me why that is not true.

13 A What I was told was, that our numbers were higher
14 than the Consortium's numbers, and to file with a
15 cost higher than the cost that had been provided
16 by our contractors would represent filing with a
17 contingency on the project. And the Public
18 Service Commission had ruled that a contingency
19 was not appropriate, that we could not have a
20 contingency on the project.

21 Q So was it your understanding that the Commission
22 would not approve the request if your team's
23 numbers were used?

24 MR. CHALLY: Object to form.

25 A If it had been structured as a contingency, yes.

1 Q And your understanding is the attorneys were
2 saying the Commission would interpret it as being
3 structured as a contingency if your team's numbers
4 were used?

5 MR. CHALLY: Object to form.

6 A That was my understanding, yes.

7 Q I'd like for you to turn to page 38 of that same
8 Exhibit No. 18, Mr. Byrne's testimony.

9 A Yes.

10 Q I'm going to read a sentence to you from lines 19
11 to 21 on that page. "As to both the timing and
12 cost, the schedules are based on productivity
13 factors that WEC/CB&I represents can be met given
14 the current status of the project." Now, it's
15 true, Mr. Browne, that by March 2015, SCE&G
16 already knew that the Consortium's promise or
17 representation that it would get to a PF factor of
18 1.15 within six months had not been met?

19 MR. CHALLY: Object to form.

20 A That's correct.

21 Q And SCE&G knew that at the time of this filing,
22 correct?

23 MR. CHALLY: Same objection.

24 A Yes. If I can clarify. You understand that what
25 they represented to us was that they would have

1 their monthly performance at a PF of 1.15 within
2 six months. The fact that they did not get to
3 there within six months does not mean that they're
4 not ever going to get there. It just means that
5 they didn't get there within the six months, if
6 you understand.

7 Q I understand. The question I have for you based
8 on that is that at the time of this filing, the
9 company, SCE&G, already knew that one of the
10 promises the Consortium had made when it provided
11 its cost estimates, i.e., that it could get it's
12 PF factor to 1.15 in six months, had not occurred?

13 A That's correct.

14 Q Turning back to the first quote that I read you
15 from page 39, given your opinion about that
16 statement by Mr. Byrne, do you wish to amend your
17 testimony as to whether there's anything
18 inaccurate in Mr. Byrne's testimony here?

19 MR. CHALLY: Object to form.

20 A Yes. I don't recall if I said that because I had
21 not read through every word of Mr. Byrne's
22 testimony. Specifically regarding the cost, I
23 believe, Mr. Byrne did -- his testimony more
24 closely represents it as the cost as provided from
25 the contractor and not the EAC as validated by

1 SCE&G.

2 Q But you disagree with Mr. Byrne's statement and do
3 not believe it's accurate that it was the best and
4 most definitive forecast of the anticipated cost
5 as of the date of the filing of the testimony?

6 A I disagree with that statement.

7 Q And you believe it's inaccurate. Is that correct?

8 A Yes.

9 Q Mr. Browne, Mr. Chally had asked you about the
10 single page model that your EAC team had used to
11 come up with its estimate. Is it correct to say
12 looking at exhibits 15 and 17 that the work
13 product of your team consisted of more than one
14 page?

15 MR. CHALLY: Object to form.

16 A Yes.

17 Q That's all I have on that. The comment you
18 mentioned about Ray Charles being able to see the
19 problems on the project, did you make that comment
20 to anyone on the project when you were working
21 with SCE&G?

22 A That Ray Charles could see it?

23 Q Right.

24 A Maybe. I don't know.

25 Q You don't recall specifically?

1 A I don't recall specifically. This curve in here
2 represents exactly what I was talking about,
3 though. The curve with the performance, you know,
4 our work completed and work to be done. And the
5 farther you get out, the steeper that work to be
6 done gets.

7 Q If you can turn to Exhibit No. 13, Mr. Browne.

8 A (Witness complies). Okay.

9 Q So this is an email between you and Carlette
10 Walker that Mr. Chally called your attention to.
11 Is it fair to say that you're expressing to
12 Ms. Walker that there is no chance that the
13 Consortium is going to meet the guaranteed
14 substantial completion dates of September 2018 and
15 '19?

16 A Yes.

17 Q And you were told by SCE&G to use those guaranteed
18 substantial completion dates as the input for your
19 EAC analysis. Is that correct?

20 MR. CHALLY: Object to form.

21 A I believe that is correct, yes.

22 Q That's all I have on that exhibit. I'd like to
23 talk about Ms. Walker's testimony. You pointed
24 out to Mr. Chally two portions of Ms. Walker's
25 testimony in which the work of your team is

1 referenced, page 14 and page 20. Is that right?

2 A Page 14 and 20, that's correct.

3 Q And in both parts of this testimony where your
4 team's work is referenced, at no point is the
5 conclusion of your team's analysis provided
6 regarding the cost estimate EAC?

7 A Correct.

8 Q And at this meeting that Mr. Chally mentioned
9 where Ms. Walker missed the meeting where her
10 testimony is prepared, do you know whether the
11 participants in that meeting knew that Ms. Walker
12 would not be there at the time the meeting was to
13 begin?

14 MR. CHALLY: Object to form.

15 A I don't know.

16 Q It's true that no attorney at that meeting, no
17 SCE&G attorney ever said "wait, stop, we can't
18 have this meeting occur without the witness here,
19 we need to do at a later time"?

20 MR. CHALLY: Object to form.

21 A Obviously that did not happen.

22 MR. COX: I have no further questions, thank
23 you, Mr. Browne.

24

25

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1 RE-EXAMINATION

2 BY MR. HALTIWANGER:

3 Q At that meeting, was there ever an occasion where
4 anybody's voices were raised during the discussion
5 argument-wise, that you recall?

6 A Actually, yes.

7 Q Can you describe what happened?

8 A I hate to be in this position, but yes, I can. I
9 was told when I raised my objection to the cost
10 that, I believe it was Mr. Willoughby, said that
11 he didn't give a damn what our EAC team cost was;
12 our contractor had provided that cost estimate and
13 that's what the filing was going to be based on.

14 MR. HALTIWANGER: Thank you. That's all I
15 have.

16

17 - - - - -

18 RE-EXAMINATION

19 BY MR. CHALLY:

20 Q Just one question. You identified with Mr. Cox
21 and you identified with me certain aspects of
22 Mr. Byrne's and Ms. Walker's testimony as provided
23 in 2015 that you believe to be incorrect. With
24 those specific statements in mind, did you voice
25 concern over those specific statements during this

1 meeting?

2 A I voiced concern over the cost that was used in
3 the filing, which is reflected by the statements,
4 but the specific statements, no.

5 MR. CHALLY: Done. Thank you.

6 VIDEOGRAPHER: This concludes tape number
7 eight and the deposition of Kenneth Browne. We
8 are off the record at 8:49 p.m.

9 MR. CHALLY: We don't need this on the video.
10 We will designate this as confidential. If we
11 want to talk about what portions are and what
12 aren't, we can talk about that. Okay. Put that
13 on the record, thank you.

14

15 (There being no further questions, the
16 deposition concluded at 8:49 p.m.)

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CERTIFICATE

Be it known that the foregoing
Deposition of KENNETH BROWNE was taken by Jennifer L.
Thompson, CVR-M;

That I was then and there a notary
public in and for the State of South Carolina-at-Large;

That the witness was sworn by me or
administered an oath of affirmation to testify the
truth, the whole truth, and nothing but the truth,
concerning the matter in controversy aforesaid;

The foregoing transcript represents
a true, accurate and complete transcription of the
testimony so given at the time and place aforesaid to
the best of my skill and ability;

That I am not related to nor an
employee of any of the parties hereto, nor a relative
or employee of any attorney or counsel employed by the
parties hereto, nor interested in the outcome of this
action.

Witness my hand and seal this 10th day of
October 2018.



Jennifer L. Thompson, CVR-M

Notary Public for South Carolina
My Commission Expires: August 14, 2019

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DEPOSITION ERRATA SHEET

In the matter of: Richard Lightsey, et al. vs. SCE&G,
et al.

Deponent: Kenneth Browne

Date of Deposition: 9/25/18

- - - - -

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the captioned matter
or the same has been read to me, and
the same is true and accurate, save and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the _____ day of
_____, 20__.

KENNETH BROWNE

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